

TEXAS SCHOOL FOR THE DEAF

SPECIAL EDUCATION PROCEDURAL REQUIREMENTS

EHBAE

Procedural Safeguards

The School shall establish and maintain procedures to ensure that children with disabilities and their parent/legal guardians are guaranteed procedural safeguards with respect to the provision of a free appropriate public education (FAPE). 20 U.S.C. 1415(a)

These procedures shall include the following:

1. An opportunity for the parent/legal guardians to review all education records and to participate in meetings relating to the identification, evaluation, and educational placement of the child and the provision of FAPE to the child. 34 C.F.R. 300.501
2. An opportunity for the parent/legal guardians to obtain an independent educational evaluation of the child. 34 C.F.R. 300.502
3. Protecting the rights of a child when no parent/legal guardians can be identified, the School cannot locate the guardian, or the child is a ward of the state, which may include the assignment of an individual to act as a surrogate parent/legal guardian. 34 C.F.R. 300.519
4. Prior written notice to the parent/legal guardians when the School proposes to initiate or change, or refuses to initiate or change, the identification, evaluation, or educational placement of the child, or the provision of FAPE to the child. 34 C.F.R. 300.503 [See Prior Notice and Consent, below]
5. Procedures to allow parties to resolve disputes through a mediation process. 34 C.F.R. 300.506
6. An opportunity for any party to file a due process complaint on any matter relating to the identification, evaluation, or educational placement of the child, or the provision of FAPE to the child. [See Dispute Resolution, below] 34 C.F.R. 300.507
7. Procedures that require either party, or the attorney representing a party, to provide to the other party a due process complaint (which shall remain confidential). 34 C.F.R. 300.508

Consent

Consent means that:

1. The parent/legal guardians has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication;
2. The parent/legal guardians understands and agrees in writing to the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and
3. The parent/legal guardian understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time. A revocation of consent is not retroactive.

If the parent/legal guardian revokes consent in writing for his or her child's receipt of services after the child is initially provided special education and related services, the School is not required to amend the child's education records to remove any references to the child's receipt of services because of the revocation of consent. 34 C.F.R. 300.9

Language of Notices The procedural safeguards and prior notices described below must be written in language understandable to the general public. The notice must be provided in the native language of the parent/legal guardian or other mode of communication used by the parent/legal guardian, unless it is clearly not feasible to do so. 34 C.F.R. 300.503(c), .504(d)

Electronic Delivery of Notices A parent/legal guardian may elect to receive the procedural safeguards notice, prior notice, or notice of due process complaint by electronic mail if the School makes that option available. 34 C.F.R. 300.505

Procedural Safeguards Notice The School shall provide a copy of the procedural safeguards to parent/legal guardian only one time a year, except that a copy also shall be given to the parent/legal guardian:

1. Upon initial referral or parent/legal guardian request for evaluation;
2. Upon receipt of the first state complaint and upon receipt of the first due process complaint in a school year;
3. On the date of a decision to make a disciplinary removal that is a change in placement; and
4. Upon request by a parent/legal guardian.

Contents of Notice The School may place a current copy of the procedural safeguards notice on its website.

The notice shall include a full explanation of the procedural safeguards relating to:

1. Independent educational evaluations;
2. Prior written notice;
3. Parental consent;
4. Access to educational records;
5. Opportunity to present and resolve complaints through the due process complaint and state complaint procedures, including:
 - a. The time period in which to file a complaint;
 - b. The opportunity for the School to resolve the complaint; and
 - c. The difference between the due process complaint and the state complaint procedures, including the jurisdiction of each procedure, what issues may be raised, filing and decisional timelines, and relevant procedures.

6. The availability of mediation;
7. The child's placement during pendency of any due process proceedings;
8. Procedures for children who are subject to placement in an interim alternative educational setting;
9. Requirements for unilateral placement by parents of children in private schools at public expense;
10. Hearings on due process complaints, including requirements for disclosure of evaluation results and recommendations;
11. Civil actions, including the time period in which to file such actions; and
12. Attorneys' fees.

20 U.S.C. 1415(a)–(b), (d); 34 C.F.R. 300.504

Prior Notice and Consent

The School shall provide prior written notice to the parent/legal guardian a reasonable time before the district proposes to initiate or change, or refuses to initiate or change, the identification, evaluation, or educational placement of a child or the provision of FAPE to the child. 34 C.F.R. 300.503(a)

Contents of Notice

Notice must be provided to the parent/legal guardian in the parent/legal guardian's native language or other mode of communication at least five school days before the school district proposes or refuses the action unless the parent agrees to a shorter time frame. 19 TAC 89.1050(h)

The notice must include:

1. A description of the action proposed or refused by the School;
2. An explanation of why the School proposes or refuses to take the action;
3. A description of each evaluation procedure, assessment, record, or report the district used as a basis for the proposed or refused action;
4. A statement that the parent/legal guardian have protection under the procedural safeguards and, if this notice is not an initial referral for evaluation, the means by which a copy of the procedural safeguards can be obtained;
5. Sources for parent/legal guardian to contact to obtain assistance in understanding the Individuals with Disabilities Act (IDEA) rules;
6. A description of other options the admission, review, and dismissal (ARD) committee [see EHBAB] considered and the reasons why those options were rejected; and

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7. A description of other factors that are relevant to the district's proposal or refusal.

- Consent to Initial Evaluation 34 C.F.R. 300.503(b)
Before the School conducts an initial evaluation, it shall provide prior written notice, including a description of any evaluation the district proposes to conduct, and obtain informed consent for the evaluation from the parent/legal guardians. 20 U.S.C. 1414(a)(1)(D), (E); 34 C.F.R. 300.304(a)
- Consent to Services The School shall seek informed consent from the parent/legal guardian before providing special education and related services to a child. 20 U.S.C. 1414(a)(1)(D) [See EHBAA]
- Consent to Psychological Examinations and Tests The School shall obtain informed parent/legal guardian consent before conducting any reevaluation of a child with a disability, except that such informed consent need not be obtained if the district can demonstrate that it has taken reasonable measures to obtain such consent and the parent/legal guardian has failed to respond. 20 U.S.C. 1414(c) (3)

On request of a child's parent/legal guardian, before obtaining the parent/legal guardian's consent for the administration of any psychological examination or test to the child as part of the evaluation of the child's need for special education, The School shall provide to the child's parent/legal guardian:

1. The name and type of the examination or test; and
2. An explanation of how the examination or test will be used to develop an appropriate individualized education program (IEP) for the child.

If a district determines that an additional examination or test is required for the evaluation of a child's need for special education, the district shall provide the information above to the parent regarding the additional examination or test and shall obtain additional consent for the examination of test.

Education Code 29.0041(a), (b)

Dispute Resolution The possible options for resolving disputes that arise between a parent/legal guardians and the School relating to the identification, evaluation, or educational placement of or the provision of FAPE to a student with a disability include, but are not limited to:

1. ARD committee meetings, including IEP facilitation if offered by the district, under 19 Administrative Code 89.1196;
2. Meetings or conferences with the student's teachers;
3. Meetings or conferences, subject to the School's policies, with the department principal, special education director, director of instruction, superintendent, or board;
4. Requesting state IEP facilitation in accordance with 19 Administrative Code 89.1197;

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5. Requesting mediation through the Texas Education Agency (TEA) in accordance with 19 Administrative Code 89.1193;
6. Filing a complaint with TEA in accordance with 19 Administrative Code 89.1195; or
7. Requesting a due process hearing through TEA in accordance with 19 Administrative Code 89.1151–.1191.
19 TAC 89.1150

Due Process Complaint	Whenever a due process complaint has been received by a district, the parent shall have an opportunity for an impartial due process hearing, which shall be conducted by an impartial hearing officer selected by TEA. [For TEA rules on due process hearings, see 19 Administrative Code 89.1151–.1191.]
<i>Timeline</i>	Such due process complaint must set forth an alleged violation that occurred not more than two years before the date the parent knew or should have known about the alleged action that forms the basis of the complaint.
Exception	20 U.S.C. 1415(f)(1)(A); 19 TAC 89.1151(c), .1170(a) This timeline shall not apply if the parent was prevented from requesting a hearing due to: <ol style="list-style-type: none">1. A specific misrepresentation by the School that it had resolved the problem forming the basis of the complaint2. The School’s withholding of information from the parent/legal guardians that the School was required by the IDEA to provide
“Stay Put”	20 U.S.C. 1415(f)(3)(D); 34 C.F.R. 300.511(f), 19 TAC 89.1151(d) During the pendency of any proceeding conducted under IDEA part B (except proceedings to challenge a disciplinary change of placement or manifestation determination), the child shall remain in the then-current educational placement unless the district and the parent/legal guardians agree otherwise. If the child is applying for initial admission to a public school, the child shall, with the consent of the parent/legal guardians, be placed in the public school program (LEA) until all proceedings have been completed. 20 U.S.C. 1415(j); 34 C.F.R. 300.518, .533
Exception	When a due process hearing has been requested by a parent/legal guardians or the School concerning a disciplinary change of placement or manifestation determination, the child shall remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the child’s assignment to the alternative setting, or the 45-day time line, if applicable, whichever occurs first, unless the parent and district agree otherwise. 20 U.S.C. 1415(k)(3)(A), 1415(k)(4)(A); 34 C.F.R. 300.533 [See FOF]
Resolution Process	Within 15 calendar days of receiving notice of a parent/legal guardian’s due process complaint, and before initiating a due process hearing, the School shall convene a meeting with the parent/legal guardians and the relevant member or members of the ARD committee. The purpose of the meeting is for the guardian to discuss the due process complaint and the facts that form the

basis of the due process complaint, so that the School has the opportunity to resolve the dispute.

The meeting need not be held if the parent/legal guardians and the School agree in writing to waive the meeting, or the parent/legal guardians and the School agree to use the mediation process.

If the School has not resolved the due process complaint to the satisfaction of the guardian within 30 calendar days of the receipt of the complaint, the due process hearing may occur. If the School is unable to obtain the participation of the parent/legal guardians in the resolution meeting after reasonable efforts have been made, the School may, at the conclusion of the 30-day period, request that a hearing officer dismiss the parent/legal guardian's request for a hearing.

Transfer of Rights to Adult Students

34 C.F.R. 300.510, 19 TAC 89.1183

Not later than one year before the 18th birthday of a student with a disability, the district at which the student is enrolled shall:

1. Provide to the student and the student's parent/legal guardians:
 - a. Written notice regarding the transfer of rights; and
 - b. Information and resources regarding parent/legal guardianship, alternatives to parent/legal guardianship, including a supported decision-making agreement under Estates Code, Chapter 1357, and other supports and services that may enable the student to live independently; and
2. Ensure that the student's IEP includes a statement that the district provided the required notice, information, and resources.

If a student with a disability or the student's parent/legal guardian requests information regarding parent/legal guardianship or alternatives to guardianship from the School, the School shall provide to the student or parent/legal guardians information and resources on supported decision-making agreements under Estates Code, Chapter 1357.

A student with a disability who is 18 years of age or older or whose disabilities of minority have been removed for general purposes under Chapter 31, Family Code, shall have the same right to make educational decisions as a student without a disability. All other rights accorded to parents under Chapter 29, Subchapter A of the Education Code or 20 U.S.C. 1415 transfer to the student.

34 C.F.R. 300.520; Education Code 29.017(a), (c), (c-1), (c-2); 19 TAC 89.1049(a)

Notice

When a student reaches the age of 18, the School shall provide written notice to the student and the student's parent/legal guardians of the transfer of parental rights. This notice is separate and distinct from the requirement that, beginning at least one year before the student reaches the age of 18, the student's IEP include a statement regarding transfer of parental rights.

The notice must include information and resources regarding guardianship,

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alternatives to guardianship, including a supported decision-making agreement, and other supports and services that enable the student to live independently. The notice must also provide contact information for the parties to use in obtaining additional information.

34 C.F.R. 300.520(a)(3); Education Code 29.017(c); 19 TAC 89.1049(c)

Special
Education
Decision-
Making for
Children in
Foster Care

A foster parent may act as a parent of a child with a disability, as authorized under 20 U.S.C. Section 1415(b) and its subsequent amendments, if:

1. The Department of Family and Protective Services (DFPS) is appointed as the temporary or permanent managing conservator of the child;
2. The rights and duties of the department to make decisions regarding education provided to the child under Family Code 153.371 have not been limited by court order; and
3. The foster parent agrees to:
 - a. Participate in making special education decisions on the child's behalf; and
 - b. Complete a training program that complies with minimum standards established by agency rule.

Training

A foster parent who will act as a parent of a child with a disability must complete a training program before the next scheduled ARD committee meeting for the child but not later than the 90th day after the date the foster parent begins acting as the parent for the purpose of making special education decisions.

The School may not require a foster parent to retake a training program to continue serving as a child's parent or to serve as the surrogate parent for another child if the foster parent has completed a training program to act as a parent of a child with a disability provided by:

1. DFPS;
2. A school district;
3. An education service center; or
4. Any other entity that receives federal funds to provide special education training to parents.

A foster parent who is denied the right to act as a parent by a school district may file a complaint with TEA in accordance with federal law and regulations.

Not later than the fifth day after the date a child with a disability is enrolled in a school, DFPS must inform the appropriate school personnel if the child's foster parent is unwilling or unable to serve as a parent.

Education Code 29.015; 19 TAC 89.1047

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Appointment
of Surrogate
Parent for
Certain
Children

These provisions apply to a child with a disability for whom:

1. DFPS is appointed as the temporary or permanent managing conservator of the child; and
2. The rights and duties of the department to make decisions regarding the child's education under Family Code 153.371 have not been limited by court order.

A school district must appoint an individual to serve as the surrogate parent for a child if the district is unable to identify or locate a parent for a child with a disability or the foster parent of a child is unwilling or unable to serve as a parent for the purposes of this subchapter.

Eligibility and
Duties of a
Surrogate
Parent

Education Code 29.0151(a)–(b)

A surrogate parent appointed by a school district may not be an employee of TEA, the school district, or any other agency involved in the education or care of the child; or have any interest that conflicts with the interests of the child.

A surrogate parent appointed by a district must:

1. Be willing to serve in that capacity;
2. Exercise independent judgment in pursuing the child's interests;
3. Ensure that the child's due process rights under applicable state and federal laws are not violated;
4. Complete a training program that complies with minimum standards established by agency rule within the time specified in Education Code 29.015(b);
5. Visit the child and the school where the child is enrolled;
6. Review the child's educational records;
7. Consult with any person involved in the child's education, including the child's:
 - a. Teachers;
 - b. Caseworkers;
 - c. Court-appointed volunteers;
 - d. Guardian ad litem;
 - e. Attorney ad litem;
 - f. Foster parent; and
 - g. Caregiver; and

8. Attend meetings of the child's ARD committee.

The School may appoint a person who has been appointed to serve as a child's guardian ad litem or as a court-certified volunteer advocate, as provided under Section 107.031(c), Family Code, as the child's surrogate parent.

Education Code 29.0151(c)–(d); 19 TAC 89.1047

Notice of Appointment

As soon as practicable after appointing a surrogate parent, the School shall provide written notice of the appointment to the child's educational decision-maker and caseworker as required under Education Code 25.007(b)(10)(H) [see FFC]. Education Code 29.0151(e-1)

Failure to Properly Perform

If a court appoints a surrogate parent for a child with a disability under Family Code 263.0025, and the School determines that the surrogate parent is not properly performing the duties, the School shall consult with DFPS regarding whether another person should be appointed to serve as the surrogate parent for the child. Education Code 29.0151(f); 19 TAC 89.1047

Adopted: 12.15.06

**Amended: 08.25.16,
10.21.22, 03.03.23**