

# Section 4

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# IV – Individualized Education Program

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## GENERAL INFORMATION

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***FBISD Board Policies: CQA, DMA (Legal), EEH, EEL (Legal), EEM, EHAC, EHBE (Legal), EHBF(Legal), EHBAE (Legal), EHBAB (Legal); EHBAD (Legal), EHBA (Legal), EHBAA (Legal), EHBAC (Legal), EHBC (Legal), EHBF (Legal), EIE (Legal), EIF (Legal), EK (Legal), EKB (Legal), EKBA (Legal), EKC (Legal), EKD (Legal), EHBE(Legal), EHBAA (Legal), EHBH(Legal), EHDE (Legal), FDB, FFB, FC, FFE, FOF (Legal), FM (Legal), FMH***

## RULE OF CONSTRUCTION

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***19 TAC §§ 89.1050(a), 89.1040(b); 34 CFR §§ 300.306(a)(1), 300.320-300.321; 20 USC § 1414; TEC §§ 29.005, 29.0051***

The District must establish an Admission, Review, and Dismissal Committee (ARDC) for each child with a disability and for each child whom an evaluation is conducted.

The term “*individualized education program*” (IEP) means a written statement for each child with a disability that is developed, reviewed, and revised in accordance with the Admission, Review, and Dismissal (ARD) framework.

The ARDC is the:

1. Group that determines whether the child is a child with a disability and the educational needs of the child,
2. Team defined in federal law that develops the IEP, and
3. Group that determines the educational placement of the child.

Additional information need not be included in the child’s IEP beyond what is explicitly required in the ARD framework and in the Texas Education Agency’s (TEA’s) model IEP form.

The ARDC need not include information under one component of the child’s IEP that is already contained under another component.

The ARDC may use the TEA’s model IEP form to comply with the ARD framework:

[http://tea.texas.gov/Curriculum\\_and\\_Instructional\\_Programs/Special\\_Education/Programs\\_and\\_Services/IEP\\_Model\\_Form/](http://tea.texas.gov/Curriculum_and_Instructional_Programs/Special_Education/Programs_and_Services/IEP_Model_Form/)

“Prior to IEP meetings, staff may engage in activities, such as researching placement and services options, preparing draft IEP documents, writing reports, creating charts, and comparing student makeup of various program settings, in preparation for IEP team meetings. Actual IEP and placement decisions, however, are not made until parental concerns and input are considered in the actual IEP meeting. Although staff may have formed opinions about various IEP and placement options, no final decision is made before full consideration of data and parental input at the IEP team meeting. The District has no policies, formal or informal, conclusively against any particular service, program, or placement option.”

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## REQUIRED ARD

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***19 TAC § 89.1011; TEC § 29.005; 34 CFR § 300.112***

Fort Bend ISD may not legally provide special education and related services to a child with a disability, regardless of the nature of the disability or the level of need, at any time before the child has been evaluated and determined by an Admission, Review, and Dismissal (ARD) Committee to be eligible for such services. Prior to the evaluation and ARD Committee determination, it would only be legally appropriate to provide the child with regular education support services available to all students which could include academic and/or behavioral support services. A temporary placement made in the absence of an ARD Committee decision and without evaluation data runs the risk of violating LRE provisions and gives the mistaken impression that such decisions are made on the basis of the specific disability instead of the individualized educational plan (IEP).

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## FREE APPROPRIATE PUBLIC EDUCATION (FAPE)

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The Individuals with Disabilities Act (IDEA) guarantees every eligible student a “free appropriate public education”. The law states that all public schools must:

- find and identify students who have a disability (*Child Find*),
- involve parents in decision-making,
- evaluate (test) students in a non-discriminatory way,
- develop an Individualized Education Plan (IEP) for each student that will help him/her be involved in and progress in the general curriculum,
- decide what special instruction and related services the school district will provide, and
- provide services in the least restrictive environment (a placement that allows a student with disabilities to be educated to the maximum extent appropriate with students who do not have disabilities).

Every eligible FBISD student with a disability is entitled to a free appropriate public education. Each student’s Individualized Education Program (IEP) is the centerpiece of the District’s plan for providing appropriate special education and related services that are reasonably calculated to enable the student to make progress appropriate considering the student’s unique and individual circumstances. 34 C.F.R. § 300.17; *Endrew F. ex rel. Joseph F. v. Douglas County School Dist. RE-1*, 137 S.Ct. 988 (2017); *E.R. v. Spring Branch Indep. Sch. Dist.*, 909 F.3d 754 (5th Cir. 2018).

FBISD shall ensure that the documents produced at a student’s ARD committee meeting reflect a consideration of the following four factors:

1. **The student’s IEP is individualized and based on the student’s assessment and performance.** For example, goals and objectives are appropriately ambitious considering the student’s present levels of academic achievement and functional performance. The student’s program conforms to current FIE findings and recommendations.
2. **The program is implemented in the student’s Least Restrictive Environment (LRE).** For example, the ARD committee may review the supplementary aids and services that a student may have received in the general education setting together with the placement recommendations in a student’s most recent FIE.
3. **The services are provided in a coordinated and collaborative manner by all key stakeholders.** For example, the ARD committee may obtain parental consent to discuss a student’s services with any relevant outside provider or private evaluator. Campus staff and administrators may document any staff meetings regarding the student and his/her educational program. Individual conferences may be held with the parent, explaining assessments or other programmatic elements, may promote collaborations, and these efforts are also documented.

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4. **The student must demonstrate positive academic and non-academic benefits.** For example, the ARD committee may consider the student’s achievement on state mandated assessments, district wide assessments, benchmarks, grades, progress reports, evaluation results, and participation and engagement in the educational environment, including as appropriate extra-curricular activities. Behavioral progress may be demonstrated by the student’s acquisition of social and behavioral skills that may be included in counseling or social skills programming.<sup>1</sup>

## TIMELINE

### ***19 TAC §§ 89.1011(d), 89.1011(e)***

The admission, review, and dismissal (ARD) committee must make its decisions regarding a student's initial eligibility determination and, if appropriate, individualized education program (IEP) and placement within 30 calendar days from the date of the completion of the written FIIE report. If the 30th day falls during the summer and school is not in session, the ARD committee must meet not later than the 15th school day of the following school year to finalize decisions concerning the student's initial eligibility determination, and, if appropriate, IEP and placement. If the 30th day falls during the summer and school is not in session, but an FIIE report indicates that the student would need extended school year services during that summer, the ARD committee must meet as expeditiously as possible after completion of the report.

A copy of the written FIIE report must be provided to the parent as soon as possible after completion of the report but no later than 5 school days prior to the initial ARD committee meeting, which will determine a student's initial eligibility. If consent was received at least 35 but less than 45 school days before the last instructional day, the FIIE must be provided to the parent by June 30th.

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<sup>1</sup> *Cypress-Fairbanks Indep. Sch. Dist. v. Michael F.*, 118 F.3d 245 (5<sup>th</sup> Cir.1997).

# IV – Individualized Education Program

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## PRIOR WRITTEN NOTICES (PWN)

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**34 CFR §§ 300.503, 300.505; 19 TAC § 89.1050; OSEP Letter to Lieberman; TEC § 29.004**

Section 300.503 of IDEA requires that a Prior Written Notice of Change be sent home to the parent in a reasonable time (5 school days) before the school:

1. Proposes or refuses to initiate or change the identification of the child,
2. Proposes or refuses to initiate or change the evaluation of the child,
3. Proposes or refuses to initiate or change the educational placement of the child,
4. Proposes or refuses to initiate or change the provision of a free appropriate public education (FAPE) to the child, or
5. Ceases the provision of special education and related services due to the parent’s revocation of consent for services.

The school must provide prior written notice regardless of whether the parent agreed to the change or requested the change.

Type	Used When...	Location in Special Education Administration Procedures
PWN of ARD Meeting	An ARD Meeting is scheduled for a student.	This area
PWN of Change	A change is made to a student’s IEP.	This area
PWN of Evaluation	An evaluation is proposed for a student.	Section 1 in Special Education Administration Procedures
PWN of Refusal	A reconvened ARD Meeting does not reach mutual agreement or when the District refuses a specific request by the parent outside of an ARD meeting.	This area
Revocation of Consent	A parent or adult student revokes their consent for the provision of Special Education services.	This area

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## Required Contents

The Prior Written Notice must contain:

1. A description of the action proposed or refused by the agency,
2. An explanation of why the agency proposes or refuses to take the action,
3. A description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action,
4. A statement that the parents of a child with a disability have protection under TEA’s Notice of Procedural Safeguards,
5. Sources for parents to contact to obtain assistance in understanding the provisions of a Prior Written Notice, such as the Region Education Services Center or TEA,
6. A description of other options that the ARDC considered and the reasons why those options were rejected, and
7. A description of other factors that are relevant to the agency's proposal or refusal.

## Timeline and Manner

The school must provide the parent with Prior Written Notice at least 5 school days before the school proposes or refuses the action unless the parent agrees to a shorter timeframe.

If a parent submits a written request to the District’s director of special education services or to an administrative employee for an initial evaluation, the District must, not later than the 15<sup>th</sup> school day after the date of the receipt, provide the parent with:

1. Prior Written Notice of its proposal to conduct an evaluation, a copy of the Notice of Procedural Safeguards, and an opportunity to give written consent for initial evaluation; or
2. Prior Written Notice of its refusal to conduct an evaluation and a copy of the Notice of Procedural Safeguards.

If the Prior Written Notice is in response to a parent’s revocation of consent for services, the school must provide Prior Written Notice before ceasing the provision of special education and related services to the child.

The school must provide Prior Written Notice in language understandable to the general public and in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.

A parent may elect to receive Prior Written Notices by an electronic mail communication if the District makes that option available. Parents may elect to receive prior written notices, procedural safeguards, and due process complaints by email, if that option is available.<sup>2</sup> Additionally, FBISD may distribute IEP documents and progress reports via email if the parents are in agreement to such delivery and the emails are secure.<sup>3</sup>

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<sup>2</sup>34 C.F.R. 300.505

<sup>3</sup> *Ltr to Breton* (OSEP 2014); *Analysis of Comments and Changes to the 2006 IDEA Part B Regulations*, 71 Fed.Reg. 46,540 (2006)

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## **Prior Written Notice of ARD**

A Prior Written Notice of the ARD meeting must be received by the parent at least 5 school days prior to the date of the ARD. If the Prior Written Notice of the ARD Meeting is received by the parent less than or equal to 5 school days prior to the ARD, the parent must sign that they waive their right to the 5-day notice, and the signed notice must be attached to the ARD packet and filed in the State Audit Folder. The notice must also clearly identify the purpose of the ARD (Annual or Review).

## **Development of the IEP**

### ***34 C.F.R. § 300.324(a)-(b)***

At a duly constituted ARD committee meeting that is conducted after at least 5 school days-notice to the student's parent or guardian, the student's ARD committee, including the student's parent or guardian, shall develop an IEP, consistent with FAPE, by considering -

- the student's strengths; the concerns of the parents or guardians for enhancing the education of the student; the results of the student's initial or most recent evaluation; and the present academic, developmental, and functional needs of the student,
- in the case of a student whose behavior impedes the student's learning or that of others, the use of positive behavioral interventions and supports, and other strategies to address that behavior,
- the language needs of a student who is Emergent Bilingual as those needs relate to the student's IEP,
- providing for instruction in Braille and the use of Braille unless the ARD committee determines, after an evaluation of the student's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the student's future needs for instruction in Braille or the use of Braille), consistent with FBISD Evaluation Procedures, that instruction in Braille or the use of Braille is not appropriate for the student,
- the communication needs of the student, including, for a student who is deaf or hard of hearing, the student's 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 student's language and communication mode, and
- the student's need for assistive technology devices and services.

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## OVERVIEW OF ELEMENTS OF AN IEP

*34 C.F.R. § 300.324(a)(1)(ii); 34 C.F.R. § 300.324(a)(1)(i), (iii); 34 CFR § 300.502(c)(1); 34 CFR § 300.320(a); 34 C.F.R. § 300.324(a)(1)(iv); Tex. Ed. Code § 39.0263; 34 C.F.R. § 300.320; 34 C.F.R. § 300.42; 34 C.F.R. § 300.324(a)(2)(i); 34 C.F.R. § 300.38(b)(3); 34 C.F.R. §300.39(a)(1); 34 C.F.R. § 300.34(a); 19 TEX. ADMIN. CODE § 89.1055(h); 19 TEX. ADMIN. CODE § 89.1065*

1. **Parent and Student Concerns.** [34 C.F.R. § 300.324(a)(1)(ii)] The ARD committee shall elicit, consider, and document the concerns of the parent or guardian for enhancing the education of her or his child. This may be reflected in a concise statement in the deliberations summarizing the educational, social, behavioral and/or emotional concerns of the parent or guardian and student, as appropriate. Additionally, details regarding the campus’ response to the concerns and/or questions should be noted in the deliberations.
2. **Student Strengths and Relevant Evaluation Results.** [34 C.F.R. § 300.324(a)(1)(i), (iii)] The IEP shall identify the assessment data considered by the ARD committee, including both state and district-wide assessment results, as well as relevant information from any campus. Privately obtained assessments provided by the student’s parent or guardian shall be considered in any decision made with respect to the provision of FAPE to the student if it meets District criteria [34 CFR § 300.502(c)(1)]. To the extent appropriate, the student’s general education performance shall also be documented. This summary shall also include an explanation of how the student’s disability or disabilities impact the student’s progress and participation in the general education curriculum. [U.S. Dept. of Education, 71 Fed. Reg. 46577 (August 14, 2006) (“§ 300.320(a)(2)(i) requires annual IEP goals to be designed to enable the child to be involved in and make progress in the general education curriculum”)].
3. **Present Levels of Academic Achievement and Functional Performance (PLAAFP).** [34 CFR § 300.320(a); 34 C.F.R. § 300.324(a)(1)(iv).] The student’s relevant ARD committee members, general and special education teachers, and/or related service providers, shall collaborate to ensure, through their preparation and participation in the ARD committee meeting and through the participation of the parent or guardian, that the student’s IEP contains an accurate description of how the student is performing in the areas of educational and functional need. The statement of present levels in a student’s IEP should convey sufficient information to provide clear levels of the student’s current academic and functional performance.
4. **Measurable Annual Goals.** The student’s IEP, as developed by the ARD committee shall include:
  - a. a statement of measurable annual goals, including academic and functional goals.
  - b. goals designed to meet the student’s needs that result from the student’s disability to enable the student to be involved and make progress in the general education curriculum, and to meet each of the student’s other educational needs that result from the student’s disability.

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- i. Must include the components of a timeframe, condition, behavior, and criterion.
  - ii. Annual goals are required in the following circumstances:
    - 1. When the content of a subject/course is modified, whether the content is taught in a general or special education setting, in order to address how the content is modified; and
    - 2. When a student is removed from the general education setting for a scheduled period of time but the content of the subject/course is not modified (i.e., a student who is progressing on enrolled grade level curriculum but requires a more restrictive environment due to behavioral concerns)
  - iii. Short-term objectives/benchmarks used as intermediary steps or milestones toward accomplishing an annual goal may be included in a measurable annual goal. Short-term objectives/benchmarks:
    - 1. must be included in an annual goal if the ARD committee has determined that the student will not participate in the general state assessment; and
    - 2. regardless of whether the objectives/benchmarks are related to a student not participating in the general state assessment, cannot be used as the criterion to indicate mastery of the annual goal
- c. for students who take alternate assessment aligned to alternate achievement standards, a description of benchmarks [Tex. Ed. Code § 39.0263] and short-term objectives [34 C.F.R. § 300.320].

5. **Supplementary Aids and Services.** The student’s IEP, as developed by the ARD committee, shall include a statement of needed supplementary aids and services (aids, services, and other supports) in general education classes, other education-related settings, and in extracurricular and nonacademic settings, to enable the student to be educated with non-disabled students to the maximum extent appropriate.<sup>4</sup>

- a. As part of supplementary aids and services, the IEP may include a list or a chart of all accommodations, behavioral or academic, determined by the student’s ARD committee to be appropriate to meet the educational needs of the student in the general education setting.

6. **Behavioral Supports and Interventions.**<sup>5</sup> In the case of a student with a disability whose behavior impedes the student’s own learning or that of others, the student’s ARD committee shall consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior, and includes as part of the IEP any needed interventions, supports and strategies.<sup>6</sup> The student’s ARD committee may determine that a behavioral intervention plan (BIP) is appropriate

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<sup>4</sup> 34 C.F.R. § 300.42; 34 C.F.R. § 300.320

<sup>5</sup> 34 C.F.R. § 300.324(a)(2)(i)

<sup>6</sup> 34 C.F.R. § 300.324(a)(2)(i)

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for a student. In such instances, the ARD committee determines the appropriate components of a BIP for the student’s individual needs. There are no formal requirements for a BIP.<sup>7</sup> If the student’s ARD committee determines that a BIP is appropriate, the BIP shall be included as part of the student’s IEP and provided to each responsible teacher or service provider.<sup>8</sup> Students will be subject to the Student Code of Conduct (SCOC) consistent with students without disabilities, provided that any discipline under the SCOC shall be subject to the timelines and protections provided to a student with a disability under the IDEA, including holding an ARD Committee (MDR) meeting in connection with any “disciplinary change of placement” in accordance with the District’s [FOF\(Legal\)](#) policy.

7. **Specially Designed Instruction.**<sup>9</sup> The student’s IEP as developed by the ARD committee shall include a statement of needed special education services. Special education means “specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability.”<sup>10</sup> Specially designed instruction means—

- a. “Adapting, as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction-
  - i. To address the unique needs of the child that result from the child's disability, and
  - ii. To ensure access of the child to *the general curriculum*, so that the child can meet *the educational standards within the jurisdiction of the public agency that apply to all children.*”<sup>11</sup>
- b. The general curriculum and educational standards that “apply to all children” in FBISD are the [Texas Essential Knowledge and Skills \(TEKS\)](#) as well as the District’s Policy **EIE(Local)**.<sup>12</sup> The state-wide assessments that determine a student’s progress toward meeting those educational standards are the [State of Texas Assessments of Academic Readiness \(STAAR\)](#).
- c. When developing specially designed instruction, the student’s ARD committee shall consider—
  - i. How content, methodology and delivery of instruction will be modified from the general curriculum.
  - ii. Student performance criteria that accurately and appropriately evidences the modification of the content of the performance or assessment.

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<sup>7</sup> *Alex R. v. Forestville Valley Community Unit School District*, 375 F.3d 603 (7<sup>th</sup> Cir. 2004)

<sup>8</sup> Tex. Ed. Code § 29.005(g)

<sup>9</sup> 34 CFR § 300.320; 34 C.F.R. § 300.38(b)(3)

<sup>10</sup> 34 C.F.R. §300.39(a)(1)

<sup>11</sup> 34 C.F.R. §300.39(b)(3)(emphasis added)

<sup>12</sup> The educational standards applicable to all children in the state of Texas are also outlined in Tex. Ed. Code § 28.002 and in 19 TEX. ADMIN. CODE § 74.1.

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8. **Program Modifications and Supports for School Personnel.** The student’s IEP as developed by the ARD committee shall include a statement of any needed program modifications or supports for campus and other District personnel that will be provided to enable the student: to advance appropriately toward attaining the annual goals in the student’s IEP; to be involved in and make progress in the general education curriculum; to participate in extracurricular and other nonacademic activities<sup>13</sup>; to be educated and participate with other students with disabilities and non-disabled students.<sup>14</sup>
9. **Related Services.** The student’s IEP as developed by the ARD committee shall include any needed related services and the projected date for the beginning of the student’s related services, together with the anticipated frequency, location, and duration of the student’s related services. Related services means transportation and such developmental, corrective, and other supportive services *as are required* to assist a student with a disability to benefit from special education, and includes: speech-language pathology and audiology services; interpreting services; psychological services; physical and occupational therapy; recreation, including therapeutic recreation; early identification and assessment of disabilities in children; counseling services, including rehabilitation counseling; orientation and mobility services; medical services for diagnostic or evaluation purposes. Related services also include school health services and school nurse services, social work services in schools, and parent counseling and training.<sup>15</sup> The IEP developed by the ARD committee shall include sufficient information about the amount and type of services, so that it is clear to the parent, as well as to the student’s related service providers and teachers, what level of support the student is to receive.<sup>16</sup>
10. **Consideration of Strategies for Students with Autism.** For a student eligible for special education and related services as a student with Autism, the student’s ARD committee shall consider the eleven strategies as described in the Autism Supplement and include as part of the IEP any strategies deemed necessary and appropriate for the student.<sup>17</sup> Those strategies deemed necessary and appropriate for the student may be incorporated throughout the IEP and/or described in a supplement.
11. **Transition Services.** Beginning not later than the first IEP to be in effect when a student turns 14 and then updated annually, the student’s IEP as developed by the student’s ARD committee shall include:
- i. appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills, and

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<sup>13</sup> 34 CFR § 300.320(a)(4)(iii).

<sup>14</sup> 34 CFR § 300.320

<sup>15</sup> 34 C.F.R. § 300.34(a)

<sup>16</sup> U.S. Department of Education, 71 Fed. Reg. 46667(2006)

<sup>17</sup> 19 TEX. ADMIN. CODE § 89.1055(h)

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ii. the transition services (including courses of study) needed to assist the student in reaching those goals.<sup>18</sup>

b. The student’s ARD committee shall comply with FBISD’s [Policy EHBAD\(Legal\)](#) (“Special Education Transition Services”) regarding the procedures for including representatives from the [Texas Workforce Commission](#) on a student’s ARD committee.

**12. State and District-wide Assessment.** The IEP must include a statement of any individual appropriate and allowable accommodation in the administration of assessment instruments developed in accordance with TEC, §39.023(a)-(c), or districtwide assessments of student achievement (if the district administers such optional assessments) that are necessary to measure academic achievement and functional performance of the student. If the ARD committee determines that the student will not participate in general statewide or district wide assessment of student achievement (or part of an assessment), the following requirements must be met:

1) the IEP must include a statement explaining:

(A) why the student cannot participate in the general assessment; and

(B) why the alternate assessment selected is appropriate for the student, and

(2) The Texas Education Agency's alternate assessment participation requirements form, if one is made available to school districts, must be included in the student's IEP to document the statement required under this subsection.

**12. Placement in the Least Restrictive Environment and the Justification for any Removal from General Education.** LRE discussed can be found later in this document.

**13. Extended School Year Services (ESYS).** Whenever appropriate, the student’s ARD committee shall determine whether the student requires an extended school year based on a regression-recoupment analysis. The need for ESY services shall be documented from formal and/or informal evaluations provided by the District or the student’s parents or guardians. The documentation must demonstrate that in one or more critical areas addressed in the student’s current IEP goals and objectives, the student has exhibited, or reasonably may be expected to exhibit, severe or substantial regression that cannot be recouped within a reasonable period of time. Severe or substantial regression means that the student has been, or will be, unable to *maintain* one or more acquired critical skills in the absence of ESY services.<sup>19</sup> It is important to remember that ARD committee determinations regarding ESY services are prospective in nature and not intended to make up for past denials of FAPE, if any.<sup>20</sup>

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<sup>18</sup> 34 CFR § 300.320(b)(1); U.S. Department of Education, 71 Fed. Reg. 46668 (2006)

<sup>19</sup> 19 TEX. ADMIN. CODE § 89.1065 ; *Alamo Heights ISD v. State Board of Ed.*, 790 F2d. 1153 (5<sup>th</sup> Cir. 1986)(severe or substantial regression required for ESY).

<sup>20</sup> OSEP. [Part B Implementation of IDEA Provision of Services in the Current COVID-19 Environment Q&A Document](#). September 28, 2020.

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**14. Response to Bullying or Harassment.** Following an investigation of a student with a disability who is an alleged victim or perpetrator of bullying or harassment in violation of the District’s FFH (Local) and FFI (Local) policies, an ARD committee meeting shall be held to review the conduct and to consider the impact, if any, of the bullying conduct on the provision of FAPE to the student.<sup>21</sup> The District will provide notice of an ARD committee meeting in collaboration with the campus administrator.

## **ARD Meeting at Parent’s Request**

### ***19 TAC 89.1050(e)***

Upon receipt of a written request for an ARD Meeting from a parent, the school district must collaborate with the parent on a mutually agreeable date and time. In accordance with Board Policy EHBAB Legal, if the school district refuses to convene the ARD Meeting, within **five** days of the request, the parent must be provided with a Prior Written Notice of Refusal explaining why the district refuses to convene the meeting.

If a campus believes an ARD meeting is not warranted, the CCC/ARD Facilitator, in conjunction with the campus principal must contact the Director of Special Education regarding the refusal prior to initiating the Prior Written Notice of Refusal.

## **Non-Consensus ARD Procedure**

1. When mutual agreement about all required elements of the IEP is not achieved, the parent or adult student who disagrees shall be offered a single opportunity to have the committee recess for a period of time not to exceed ten school days unless the parties mutually agree otherwise and reconvene.
2. The 10-day recess is not required when the student’s presence on the campus presents a danger of physical harm to the student or others or when the student has committed an expellable offense or an offense that may lead to placement in a DAEP [ 19 TAC § 89.1050(g)(1)].
3. The deliberations should thoroughly outline the school district’s recommendations as well as the parent’s points of disagreement.
4. Prior to the end of the ARD, schedule the date and time of the next ARD, often referred to as the 10-day ARD or the Reconvened ARD. This date must be held within 10 school days of the ARD Meeting (unless both the parent and the LEA agree to extend beyond the 10-day timeline).
5. Contact the Program Manager for the student’s program regarding the ARD that ended in disagreement to schedule a staffing at least 2-3 days prior to the Reconvened or 10-Day ARD.
6. A Prior Written Notice of Decision is not necessary after the non-consensus ARD unless the ARD Committee will not reconvene for a 10-day recess ARD. The Prior Written Notice of Decision should be provided after the final 10-day recess.

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<sup>21</sup> Tex. Ed. Code § 37.001(b-1)

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7. During the recess, the parents and the school-based committee members shall consider alternatives for any disputed educational programming, gather data, prepare further documentation, and/or obtain additional resource persons which may assist in enabling the committee to reach mutual agreement, if possible [19 TAC § 89.1050(g)(2)].
8. If the Reconvened/10 Day ARD committee does not reach mutual agreement, give the parent a current copy of the [Notice of Procedural Safeguards](#) and explain the Resolving Disagreement process found within the document. Let the parent know that the District will implement the IEP which it has determined to be appropriate in five school days from receipt of the Prior Written Notice. Inform the parent that the Prior Written Notice will be sent to the parent as soon as possible. Before you send the Prior Written Notice to the Parent, contact the Assistant Special Education Director assigned to your campus to discuss and review the Notice before sending to the parent.

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## **Prior Written Notice of Refusal**

***19 TAC § 89.1050(e)(2); TEC § 29.004(c)(2)***

If the reconvened ARD meeting ends in non-consensus, Assistant Special Education Director assigned to your campus immediately following the ARD meeting so that plans can be made to send the parent the required Notice of Refusal.

The Assistant Director must notify the appropriate Director or Executive Director regarding the non-consensus ARD before the final Prior Written Notice is provided to the parent.

## **Prior Written Notice: Notice of Decision**

The PWN of Decision is in EmpoWER and must be completed at the end of each ARD to summarize the changes from the previous ARD. The PWN of Decision must be completed to clarify changes to services, document concerns and outcomes, and give a brief review of the ARD decisions. The PWN of Decision is sent to parents along with the copy of the ARD, 5 school days in advance of implementation of the ARD committee decisions.

## **Parent’s Revocation of Consent**

***34 CFR § 300.300(b)(4)***

Revocation of consent by a parent for the continued provision of special education and related services must be in writing. If at any time after the initial provision of special education and related services, the parent of a child revokes consent for the continued provision of special education and related services, the LEA:

- May not continue to provide special education and related services to the child,
- Must provide Prior Written Notice before ceasing the provision of special education and related services,
- May not use the procedural safeguards (including the mediation procedures or the due process procedures) to obtain agreement or a ruling that the services may be provided to the child,
- Will not be in violation of the requirement to make a FAPE available to the child because of the failure to provide the child with further special education and related services, and
- Is not required to convene an ARD Committee Meeting or develop an IEP for further provision of special education and related services for the child, as defined in Rule of Construction.

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## **Procedure**

When a parent notifies the LEA of their desire to revoke consent for special education services, the following procedure should be followed:

1. The campus CCC/ARD Facilitator will notify the Program Manager of Program Improvement and the Program Manager over the program in which the student is served.
2. The Program Manager of Program Improvement will complete the revocation process with the parent, and notify the CCC/AF, Compliance Team, and Principal once parent signature has been received.
3. Program Manager of Program Improvement will upload the signed revocation form and Prior Written Notice. CCC/AF will notify all related service providers of revocation.

\*All revocation requests will be processed within 10 days of request. If Program Manager is unable to reach parent or obtain signatures, the campus will be contacted to assist obtaining the parent signature.

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## Frequently Asked Questions

1. *Question 1: When is a school district required to provide a parent or an adult student with prior written notice?*

A school district must provide a parent or an adult student with prior written notice when it proposes or refuses to initiate or change the student's identification, evaluation, placement, or how the student is provided a Free Appropriate Public Education (FAPE). A school district is also required to provide prior written notice to a parent or an adult student before it ceases to provide special education and related services in response to the parent's or adult student's revocation of consent for the continued provision of services. In addition, a school district must provide prior written notice before implementing an individualized education program (IEP) with which the parent or adult student disagrees.

Some examples of when a school district must provide prior written notice are when it proposes or refuses to:

1. Conduct an initial evaluation of the student,
  2. Change the student's placement from a special education classroom to a general education classroom, or
  3. Change the types or amounts of related services the student receives.
2. *Is there a timeline for when a school district must provide a parent or an adult student with prior written notice?*

Yes. A school district must provide prior written notice at least five school days before it implements the proposal or refusal described in the notice unless the parent or adult student agrees otherwise. This means that a student's new or revised IEP cannot be implemented until at least five school days after the school district provides the prior written notice.

3. *Can a parent or an adult student waive the five-day notice requirement so that a change to the student's IEP can be implemented sooner?*

Yes. The parent or adult student may waive the five-day notice requirement. TEA recommends that school districts implement policies and procedures that address how a waiver of the five-day notice requirement should be documented.

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4. *Must a school district provide a parent or an adult student with prior written notice every instance where a student's IEP is changed?*

Whenever a student's IEP is changed regarding the student's identification, evaluation, or educational placement, the school district must provide prior written notice. In addition, a school district is required to provide prior written notice when a change relates to the provision of FAPE to the student. FAPE means, among other things, special education, and related services that are provided in conformity with a student's IEP. Therefore, a proposal to change a student's IEP, which typically involves a change to the type, amount, or location of the services provided to the student, would trigger the requirement to provide prior written notice.

5. *Must a school district provide prior written notice to a parent or an adult student even if the parent or adult student has agreed to the proposed change?*

Yes. A school district must provide prior written notice regardless of whether the parent agrees or disagrees with the change.

6. *Must a school district provide prior written notice to a parent or an adult student even if the proposed change was initiated by the parent or adult student?*

Yes. A school district must provide prior written notice regardless of who initiated the change.

7. *Must a school district provide prior written notice to a parent or an adult student when a student's IEP is amended outside of an Admission, Review, and Dismissal (ARD) committee meeting?*

Yes. If a school district and a parent or an adult student agrees to amend the student's IEP without convening an ARD committee meeting, the school district must provide the parent or adult student with prior written notice of the amendment.

8. *Must a school district provide prior written notice to a parent or an adult student when the student graduates from high school?*

Yes. Provisions at 34 CFR §300.102 read in part, "Graduation from high school with a regular high school diploma constitutes a change in placement, requiring written prior notice in accordance with §300.503."

9. *Is there a specific form that school districts must use for prior written notices?*

No. The federal regulations do not require that a standard form be used but do specify the content that must be included in a prior written notice. The District utilizes the Prior Written Notice found in EmpoWEr.

10. *What information must the prior written notice contain?*

The prior written notice must include the following:

1. A description of the action proposed or refused by the school district,
2. An explanation of why the school district proposes or refuses to take the action,
3. A description of each evaluation procedure, assessment, record, or report that the school district used as a basis for the proposed or refused action,

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4. A statement that the parent of a student with a disability (or an adult student) has protection under the procedural safeguards of Part B of the Individuals with Disabilities Act (IDEA), and if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained,
5. Sources to contact to obtain assistance in understanding the provisions of Part B of IDEA,
6. A description of other options that the ARD committee considered and the reasons why those options were rejected, and
7. A description of other factors is relevant to the school district’s proposal or refusal.

*11. Can the record from the ARD committee meeting itself constitute the prior written notice, rather than requiring a separate document?*

The record from the ARD committee meeting, which includes, among other things, the proposed IEP, may be used as part of the prior written notice as long as it documents that the parent or adult student receives contain all of the content that must be included in a prior written notice. (See Response to Question 9.)

*12. Does the five-day notice requirement apply to notices of ARD committee meetings?*

Yes. A school district must provide a parent or an adult student with a notice of the student’s ARD committee meeting at least five school days before the meeting unless the parent or adult student agrees otherwise.

*13. When must a school district provide prior written notice that it will implement an IEP with which the parent or adult student disagrees?*

When a school district and a parent or an adult student cannot reach agreement about all of the required elements of an IEP, the school district must offer the parent or adult student one opportunity to have the ARD committee recess for a period not to exceed 10 school days. If the parent or adult student refuses the offer to recess the meeting or if the ARD committee still cannot reach agreement after reconvening, the school district must provide the parent or adult student with prior written notice that it will implement the IEP that it has determined to be appropriate.

*14. What if a parent’s native language is not English?*

A prior written notice must be provided in the parent’s native language or other mode of communication unless it is clearly not feasible to do so. If the native language or other mode of communication is not a written language, the school district must take steps to ensure that: (a) the notice is translated orally or by other means to the parent in his or her native language or other mode of communication; (b) the parent understands the content of the notice; and (c) there is written evidence that the school district met these requirements.

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## WRITTEN REPORT OF THE ARD MEETING

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### **19 TAC § 89.1050**

Committee Deliberations are the way the school district memorializes the discussions that take place during the ARD meeting. The required pieces of the meeting are documented in the ARD paperwork via EmpoWEr, and the Committee Deliberations assist with an understanding of the process and document how the ARD committee made the decisions. They also include information that may not be otherwise addressed on the ARD paperwork. The documentation should be factual. If the parent has concerns, those concerns, along with the campus' response should be addressed and noted in the deliberations. If the parent disagrees with the Committee Deliberations, it should be noted in the Committee Deliberations. If the parent makes a formal request to amend the record of the meeting (deliberations), the district must follow the local policy for parent request to amend records, found in FL Local (See Section 8, Records Requests).

The parent can provide additional information (e.g., notes, writings, etc.). However, the ARD Committee should document where the official Committee Deliberations end and the parent's additions begin. Additional parent documents should be uploaded with the signed ARD paperwork in EmpoWEr.

FBISD may use the IEP and the deliberations or minutes as part of the PWN so long as the document(s) the parent or guardian receives meet all the requirements of prior written notice. U.S. Department of Education [71 Fed. Reg. 46691 (August 14, 2006)]. The deliberations and/or the Prior Written Notice may be used to establish how the District is providing a FAPE to a student and collaborating with a parent or to document other factors relevant to a student's IEP.

IDEA does not require that the District include additional information in a student's IEP beyond what is expressly required under 20 USC § 1414; 34 CFR § 300.320 (d)(1). By way of example and not limitation, a student's IEP does not need to include—

- The identity of specific teachers or specific educational methodology. *Letter to Hall*, 21 IDELR 58 (OSERS 1994).
- Extracurricular activities unrelated to the student's IEP. *Letter to Anonymous*, 17 IDELR 180 (OSEP 1990).
- Services that are unrelated to the student's special education program. *Letter to Montano*, 18 IDELR 1232 (OSEP 1992).

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An ARD Agenda should be utilized for all Annual ARD meetings. The agenda will assist the ARD committee with the sequence of the meeting. The following information provides additional guidance regarding the ARD Agenda:

## **Introduction and Purpose**

- Explain purpose of the ARD, verify 5-day notice was received and/or parent waived
- Introduce participants and their roles-use first and last names (clarify spelling if necessary)
- Review agenda and outcomes
- Review decision-making process, ground rules, define consensus for the committee and clarify it is not a voting process with majority rules
- Ask parent if there is anything they would like to add (i.e., questions about process, other information)

## **Review Evaluation and Establish Eligibility for Special Education and Related Services**

- Review any new evaluation data (includes information from school district and from parent such as private testing, etc.)
- Is a re-evaluation needed?
- Is student eligible to continue services.
- Determine eligibility-it is important to confirm the correct eligibility is on PAGE 2 of paperwork and that it matches the last FIE accepted by the ARDC

## **Present Levels of Academic Achievement and Functional Performance**

### *34 CFR § 300.320(a)(1)*

The ARDC must provide a statement of the child's Present Levels of Academic Achievement and Functional Performance (PLAAFP). The PLAAFP is a statement of a student's present level of academic (social, behavioral, communication, health, and transition) achievement and functional performance. A PLAAFP describes how the student's disability affects his/her involvement and progress in the general education curriculum (or how the disability affects a preschool child's participation in appropriate activities). A PLAAFP states the following information about the student:

1. Impact of Disability Statement – clear statement of how the disability affects involvement and progress in the same curriculum as non-disabled students with a clear consistency between the FIE and the PLAAFP
2. Progress Statement – evidence of change in performance over last year, along with a review or summary of the previous year's IEP.
3. Accommodations and Modifications – student performance with accommodations and/or modifications is reported as well as performance without.
4. Variety of information from a variety of sources – includes parent and student information to give a complete and accurate picture

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5. Measurable and observable baseline data – used to track progress, along with consistent tools to measure progress
- Discuss Transition Planning
  - Review achievement on previous years' short-term goals and objectives (academic and behavior)-a copy of the updated goals and objectives must be presented at the ARD meeting and attached to the ARD paperwork.
  - Discuss specific needs in:
    - Language (second language learners as their needs relate to their IEP)
    - Communication
    - Physical
    - Behavioral (includes behavioral data, attendance, discussion of need for supplements – FBA, BIP)
    - Academic/Developmental – discuss areas in which student's disability significantly interferes
  - Review current grades and current credits (if applicable)
  - Review District and/or State Assessment and Ren360 results/Unique assessment information
  - Prevocational/Vocational (include CTE information here)
  - Review the need for assistive technology devices and services
  - Discuss the recommendation for ESYS due to regression/recoupment/maintenance of critical skills  
Make sure the parent has provided input in enhancing the education of their student at some point during this discussion (documented in deliberations)

## **Establish Goals and Objectives**

*34 CFR § 300.320(a)(2)*

What is it that we want the child to know, understand, and be able to do a year from now?

- Present proposed goals and objectives
- Discuss supplementary aids and services
- Accommodations
- Supplementary Aids and Services
- Discuss Accelerated Instruction needs, if applicable (HB4545 supplemental tutoring needs based on STAAR)
- Determine State Assessment and need for accommodations
- Determination of types of District-Wide Assessments and need for accommodations
- Complete LPAC Supplement (if applicable) and discuss justifications

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## **Determine Appropriate Services & Placement**

In what placement in the least restrictive environment can the goals and objectives be implemented appropriately? During this process all consensus members of the ARD should give input.

- Discuss services to be provided (don't forget to follow up on the ESY needs if appropriate)
- Consider the least restrictive environment
- Discuss justification for removal from general education environment (Stetson Form 2, ICS logs, etc.)
- Finalize schedule of services and determine placement

## **Closing ARD**

- Provide assurances
  - Read Committee Deliberations
  - Confirm agreements, including signatures
  - Develop action plan for follow-up if necessary
  - Distribute paperwork
  - Thank all parties for attending
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## PARENT RIGHTS/PARTICIPATION

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### ***Parent Participation***

***19 TAC § 89.1050(d); TEC §§ 26.0081, 29.005; 34 CFR §§ 300.322, 300.501; 20 USC § 1414(d)(1)(B)(i)***

The District must take steps to ensure that one or both parents of a child with a disability are present at each ARD meeting or are afforded the opportunity to participate, including:

1. Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and
2. Scheduling the meeting at a mutually agreed-upon time and place.
  - A meeting does not include:
    - Informal or unscheduled conversations involving the LEA personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision; or

### **Preparatory provisions Other Methods to Ensure Parent Participation**

If neither parent can attend the ARD meeting, the District must use other methods to ensure parent participation such as:

1. Individual or conference telephone calls, or
2. Virtual Platforms that include audio and/or video collaboration

### **Parent’s Guide to the Admission, Review, and Dismissal (ARD) Process**

*TEC § 26.0081*The District must provide the parent the Parent’s Guide to the Admission, Review, and Dismissal Process:

1. As soon as practicable after a referral for possible special education services, but at least 5 school days before the initial ARD meeting, and
2. At any other time on reasonable request of the child’s parent.

A [copy of the guide](#) can be located on the Texas Education Agency's website as well as the FBISD Special Education website.

In addition, the [TEA Overview of Special Education for Parents](#) must be provided to the parent at the initial referral meeting for a FIIE, and if the LEA provides a Prior Written Notice of Refusal, and when a student who is not identified is sent to the DAEP and upon return from the DAEP.

### **Information Provided to Parents**

***34 CFR §§ 300.322; 300.501(b)(2); 19 TAC §§89.1050(d), 89.1055(j); 20 USC § 1417(e)***

1. The District must provide the parents with written notice of an ARD meeting at least 5 school days before the meeting unless the parents agree to a shorter timeframe. The notice must:
  - a. Indicate the purpose, time, and location of the meeting and who will be in attendance, and

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- b. Inform the parents of the provisions relating to the participation of other discretionary members or individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate. These members must be included on the ARD Notice. Examples of discretionary members may be the school nurse, counselor, ARD Facilitator, Related Services personnel, etc.
- c. Beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the ARDC, the notice must also indicate:
  - i. That a purpose of the meeting will be the consideration of the postsecondary goals and transition services for the child,
  - ii. That the agency will invite the student, and
  - iii. Any other agency that will be invited to send a representative with the consent of the parents or adult student.

## **Conducting an IEP Meeting without a Parent in Attendance**

*34 CFR §§ 300.322(d), 300.501(c)(4)*

A meeting may be conducted without a parent in attendance if Fort Bend ISD is unable to encourage parents that they should attend. The District must keep a record of its attempts to arrange a mutually agreed-upon time and place such as:

- Detailed records of telephone calls made or attempted and the results of those calls indicated in the contact log in EmpoWEr,
- Copies of correspondence sent to the parent and any responses received, and
- Detailed records of visits made to the parent’s home or place of employment and the results of those visits.

In certain cases, a letter may be sent after 3 attempts to schedule the ARD meeting. This letter summarizes the attempts made and when the ARD is scheduled. The parent is encouraged to attend but if unable to, then the ARD will be held, and the information will be mailed to the parent via certified U.S. Mail.

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## Use of Interpreters or Other Action

### *34 CFR § 300.322(e)*

The District must take all reasonable actions necessary to ensure that the parent understands the proceedings of the ARD meeting including arranging for an interpreter for parents who are deaf or hard of hearing or whose native language is a language other than English, to ensure parent understanding when a parent is unable to meaningfully participate in the ARD process.

When obtaining informed consent and reviewing procedural safeguards, it is imperative that the evaluator properly informs and documents that the parent fully understands the information and is declining the use of an interpreter in their native language. Documentation would occur on the consent form and further explained in the text box below indicating that the parent understands and declines the need for an interpreter.

When scheduling ARD meetings, the CCC/ARD Facilitator/Evaluator must indicate on the Parent/Guardian Acknowledgement Form in the Comments Text Box that the parent fully understands the information and is declining the use of an interpreter in their native language.

## Parent Copy of Child's IEP

### *34 CFR § 300.322(f); TEC § 29.005(d); 19 TAC 89.1050(i)*

The District must give the parent a copy of the child's IEP at no cost to the parent. **The parent should receive a copy of the ARD documents as soon as possible, but no later than 5 school days after the ARD.**

## Copy of Child's IEP when Parent is Unable to Speak English

If the child's parent is unable to speak English, the District must:

1. Provide the parent with a written copy or audio recording of the child's IEP translated into Spanish if Spanish is the parent's native language, or
2. Make a good faith effort to provide the parent with a written copy or audio recording of the child's IEP translated into the parent's native language if the parent's native language is a language other than Spanish.
3. When translating a student's IEP, all the text in the student's IEP shall be accurately translated, resulting in a comparable rendition of the IEP in English and not a partial translation or summary [19 TEX. ADMIN. CODE § 89.1050(i)(1)].
4. The term "native language" means the language normally used by the parent or guardian [20 U.S.C. § 1401(20)]. Emergent Bilingual (EB) is equivalent to Limited English Proficient (LEP) and English Learner (EL) in the special education context [ 34 C.F.R. § 300.27].

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## Parent Participation in Meetings

Each ARD committee shall endeavor to ensure that a student’s parent or guardian is included in the process of developing a student’s IEP. *Buser v. Corpus Christi Indep. Sch. Dist.*, 51 F.3d 490 (5th Cir. 1995); *White v. Ascension Parish*, 343 F.3d 373 (5th Cir. 2013) (IDEA requirements with respect to parental input are met “[a]bsent any evidence of bad faith exclusion of the parents or refusal to listen to or consider” parental input); 19 TEX. ADMIN. CODE § 89.1050(e); 34 C.F.R. § 300.503.

1. Provide parents or guardians notice of all ARD committee meetings no later than 5 school days prior to each meeting (unless the parents or guardians agree to a shorter timeframe) [19 TEX. ADMIN. CODE § 89.1050(d)]. In addition to the date and time of the meeting, each meeting notice shall include a list of all meeting participants known at the time the notice is provided to the parent or guardian, a brief description of the purpose of the meeting, and the mode of participation (e.g., in-person or via tele- or video conferencing).
2. A meeting for which parental notice is required does not include informal or unscheduled conversations involving District personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision. A meeting also does not include preparatory activities that District personnel engage in to develop a proposal or response to a parent or guardian proposal that will be discussed at a later ARD committee meeting [34 C.F.R. § 300.501(b)(3)].
3. **Ensure and document receipt by the parent or guardian of a copy of the procedural safeguards notice** at least once a year, and -
  - Upon initial referral or parental request for evaluation.
  - Upon the first occurrence of the filing of a due process hearing complaint.
  - Following any disciplinary action requiring a manifestation determination review.<sup>22</sup>
  - As soon as practicable after the student is referred to determine the student’s eligibility for admission into special education.
  - At any other time on reasonable request of the student’s parent or guardian.

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4. **Ensure that any education records, as defined by the District’s [FL\(LOCAL\)](#) policy, requested by a parent or guardian of a student with a disability may be inspected and reviewed** by a parent or guardian or the parent or guardian’s representative (with informed written consent of the parent or guardian)—
  - Before any ARD committee meeting.
  - Before any mediation session or resolution session that is part of a special education due process hearing request.
  - Without unnecessary delay but in no case more than 45 days [34 C.F.R. § 300.613].

Copies of educational records may be provided in accordance with the District’s [FL\(LOCAL\)](#) policy. Fees may be charged for those copies so long as the fee does not effectively prevent the parent or guardian from exercising their right to inspect and review the requested records [34 C.F.R. § 300.617. (The District may not charge a fee to search for or to retrieve the educational records.)

## **Parent Involvement in Placement Decisions**

1. The Fort Bend ISD must ensure that a parent of each child with a disability is a member of any group that makes decisions on the educational placement of the parent's child.
2. If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their child, the Fort Bend ISD must use other methods to ensure their participation, including individual or conference telephone calls, or video conferencing.
3. A placement decision may be made by the ARD Committee without the involvement of a parent if Fort Bend ISD is unable to obtain the parent’s participation in the decision. In this case, Fort Bend ISD must have a record of its attempt to ensure their involvement. In this case, a letter may be sent after 3 attempts to schedule the ARD meeting. This letter summarizes the attempts made and when the ARD is scheduled. The parent is encouraged to attend but if unable to, then the ARD will be held, and the information will be mailed to the parent via certified U.S. Mail.
4. Informed written consent by the parent is required before a student’s initial placement into special education and provided services.

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## **Responding to a Parent Request for Private Placement When there is a Disagreement Regarding FAPE**

If the parents or guardians of a student with a disability, who previously attended the District, enroll the student in a private preschool, elementary school, or secondary school without the consent of or referral by the District, a court or a hearing officer may require the District to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the District had not made FAPE available to the student in a timely manner prior to that enrollment, and that the private placement is appropriate. The cost of reimbursement may be reduced or denied:

- if, at the most recent ARD committee meeting that the parents or guardians attended prior to removal of the student from the District, the parents or guardian did not inform the ARD committee that they were rejecting the placement proposed by the District to provide FAPE to the student, including stating their concerns and their intent to enroll the student in a private school at public expense;
- if at least 10 District business days (including any holidays that occur on a business day) prior to the removal of the student from the District, the parents or guardians did not give written notice to the District that they were withdrawing the student and seeking reimbursement from the District for the cost of the private school placement;
- if, prior to the parents' or guardians' removal of the student from the District, the District informed the parents or guardians, through the notice requirements described in these Operating Procedures, of its intent to evaluate the student (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the student available for the evaluation, or
- if a hearing officer or judge finds that the parents acted unreasonably.<sup>23</sup>

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<sup>23</sup> *School Comm. of Burlington v. Department of Educ. of Mass.*, 471 U.S. 359, 369 (1985); see also, 34 C.F.R. 300.148(c); *Forest Grove Sch. Dist. v. T.A.*, 557 U.S. 230, 129 S. Ct. 2484, 2496 (2009)

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## **Parent Attorney at ARD meeting**

A parent has a right to bring an attorney to an ARD meeting. However, if an attorney will be present, the District will also need to have legal representation.

The following procedures are recommended if a parent notifies the campus that they will bring an attorney to the ARD:

1. Campus evaluator/CCC/DH/ARD Facilitator must notify the Program Manager for the program in which the student is currently receiving services and review any concerns the parent has expressed.
2. The Program Manager will notify the appropriate Director of Special Education regarding the situation including any concerns the parent has provided to the school, along with the name of the parent attorney and contact information if possible.
3. The Director will contact the Executive Director to discuss the need for the District's legal representation to attend the ARD meeting. A staffing should be scheduled prior to the ARD to include identified special education central office staff (Program Managers, Assistant Directors, etc.), campus staff who will attend the ARD along with the District's legal representation as appropriate.

## **Parent Advocate at ARD meeting**

A parent has a right to bring an advocate to an ARD meeting.

The following procedures are recommended if a parent notifies the campus that they will bring an advocate to the ARD:

1. Campus evaluator/CCC/ARD Facilitator must notify the Program Manager for the program in which the student is currently receiving services and review any concerns the parent has expressed.
2. A staffing should be scheduled prior to the ARD to include the appropriate central office staff (Program Manager, Program Specialist, Assistant Director, Lead LSSP/SLP/Diag). During the staffing, the proposed ARD dates and central office attendance at ARD will be discussed.

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## Age of Majority

*19 TAC § 89.1049; TEC §29.017; 34 CFR § 300.320(c)*

### Transfer of Rights at Age of Majority: IEP Statement

1. At least one year before a student with a disability reaches 18 years of age, the student's IEP must include a statement that the student has been informed that unless the student's parent or other individual has been granted guardianship of the student, all rights granted to the parent under the Individuals with Disabilities Education Act (IDEA), other than the right to receive any notice required under IDEA, will transfer to the student upon reaching age 18.
2. *After the student reaches the age of 18, Fort Bend ISD shall provide any notice required under the IDEA to both the adult student and to the parent.*
3. The student's IEP shall also state that the student has been provided information and resources regarding guardianship, alternatives to guardianship, including a supported decision-making agreement and other supports and services that may enable the student to live independently.

### Transfer of Parental Rights at Age of Majority

*34 CFR §§ 99.31(8), 99.5(a), 300.520(a), 300.625(b), (c); 19 TAC § 89.1049(b), (e); TEC § 29.017(b); 20 USC 1415(m)(1)*

When a child with a disability reaches 18 years old (except for a child who has been determined to be incompetent under state law):

1. All rights under the IDEA transfer from the parent to the adult student (except that the District must provide any notice required under the IDEA to both the adult student and the parents), and
2. All rights under the Family Education Rights and Privacy Act (FERPA) transfer from the parent to the adult student (except that consent is not required to disclose information to the parent of an adult student if the student is a dependent student, or another exception applies regarding when consent is not required to disclose information).

An adult student who holds rights under the IDEA is not prohibited from executing a valid power of attorney.

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## Notification of the Transfer of Rights

*34 CFR §300.520(a)(3); TEC § 29.017(c); 19 TAC § 89.1049(c); 20 § USC 1415(m)(1)(C)*

Fort Bend ISD must notify in writing the adult student and parent of the transfer of rights at the time the student reaches the age of 18. This notice must include:

1. A statement that parental rights have transferred to the adult student, and
2. Provide contact information for the parties to use in obtaining additional information.

The notification of the transfer of rights need not contain the elements of Prior Written Notice, and this notification is separate and distinct from the requirement that the student's IEP include a statement relating to the transfer of parental rights beginning at least one year before the student reaches the age of 18.

## Right to Notice Following a Transfer of Rights

*34 CFR § 300.520(a)(1)(i); 19 TAC § 89.1049(a), (d); TEC § 29.017(a); 20 USC § 1415(m)(1)(A)*

While the District must provide any notice required by the IDEA to both the adult student and parent following a transfer of rights:

1. Prior Written Notice of an ARD meeting does not constitute an invitation to, or create a right for, the parent to attend the meeting, and
2. Prior Written Notice given to an adult student and parent does not create a right for the parent to consent or participate in the proposal or refusal to which the notice relates.

However, the adult student or Fort Bend ISD may invite individuals who have knowledge or special expertise regarding the student, including the parent.

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## MEMBERSHIP OF THE ARD COMMITTEE

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**34 CFR §§ 300.156, 300.321; 19 TAC § 89.1050 (c); 19 TAC §§ 75.1023(d)(1), 89.1050, 89.1230(b), 89.1131, 101.1003(b), 101.1005(a)**

The following members should be included in each ARD meeting:

1. The parents of the child with a disability or adult student,
2. Not less than one general education teacher of the child (if the child is, or may be, participating in the general education environment):
  - a. who is a general education teacher responsible for implementing a portion of the child's IEP, and
  - b. who, as a member of the ARDC, to the extent appropriate, participates in the development, review, and revision of the IEP, including the determination of appropriate positive behavioral interventions and supports and other strategies for the child and supplementary aids and services, program modifications, and supports for school personnel.
3. Not less than one special education teacher of the child, or where appropriate, not less than one special education provider of the child who is ***appropriately certified or licensed***,
4. Local Education Agency (LEA) Representation – (the LEA's Representative may be the Director of Special Education or campus designee, or a campus administrator acting on behalf of the District. The choice of the representative is at the discretion of the District, so long as the District's representative meets these criteria.)
  - a. who is qualified to provide, or supervise the provision of, specially designed instruction,
  - b. who is knowledgeable about the general education curriculum, and
  - c. who is knowledgeable about the availability of resources of the LEA.
5. Assessment Staff:
  - a. If the ARD committee will be reviewing a FIE, an individual who can interpret the instructional implications of evaluation results, such as a Licensed Specialist in School Psychology (LSSP) or an Educational Diagnostician or Speech Language Pathologist will represent Assessment during the ARD.
  - b. If no formal Evaluation will be reviewed, the appropriate "Assessment" person may be the Campus Administrator or Special Education Teacher (i.e. *who is able to interpret assessment, such as diagnostic assessment, Brigance, etc.*)
6. At the discretion of the parent or Fort Bend ISD, other individuals who have knowledge or special expertise regarding the child, including:
  - a. Related services personnel as appropriate.
  - b. In the case of a child who has previously served under the Early Childhood Intervention (ECI) program, at the request of the parent, by invitation to the initial ARD meeting, the ECI service coordinator or other representatives of the ECY system to assist with the smooth transition of services.
7. The child with a disability, whenever appropriate and when the purpose of the meeting will be consideration of transition services (If the child does not attend, the District must take other steps to ensure that the child's interests and preferences are considered.),

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8. The ARD committee shall also include the following additional participants, as appropriate:
  - a. With the consent of the parents or a child who has reached the age of majority, a representative of any participating agency that is likely to be responsible for providing or paying for transition services, and
  - b. A teacher who is certified in the education of children who are deaf/hard of hearing for the child with a suspected or documented hearing loss, including suspected or documented deaf blindness,
  - c. A teacher who is certified in the education of children with visual impairments for the child with a suspected or documented visual impairment including suspected or documented deaf blindness,
  - d. When determining participation in state and district-wide assessments for an English language learner, a member of the language proficiency assessment committee (LPAC) to address the child's needs, and
  - e. When considering initial or continued placement of the child in Career and Technical Education (CTE), a representative from CTE preferably the teacher.

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## Consent to Excuse Member from Attending ARD Committee Meeting

*34 CFR § 300.321(e); 20 USC § 1414(d)(1)(C)(ii)*

A required member is not required to attend an ARD committee meeting (in whole or in part) if the member's area of the curriculum or related services is not being modified or discussed in the meeting, and the following conditions are satisfied:

1. The parent and the District agree in writing that:
  - a. The member's attendance is not necessary, and
  - b. The member's area of the curriculum or related services is not being modified or discussed in the meeting.
2. The Excusal is documented on the Consent to Excuse ARD Committee Member(s) found in EmpoWER within the Notice of IEP Meeting.

When a required member's area of the curriculum or related services is being modified or discussed in the meeting, the required member may be excused from attending an ARD committee meeting (in whole or in part) if the following conditions are satisfied:

1. The parent and the LEA consent to excuse the member from the ARD meeting,
2. The parent's consent is in writing, and
3. The committee member submits input into the development of the IEP in writing to the parent and the ARD committee prior to the meeting. FBISD Special Education Department will provide a form the teacher must use to report information to the parent.
4. The excusal is documented on the Consent to Excuse ARD Committee Member(s) found in EmpoWER within the Notice of IEP Meeting and the input from the member being excused is documented within the ARD Committee Minutes.

The excusal process may be utilized in certain situations. The Attendance and Excusal procedures do not have to be followed for the following ARDC members:

1. The parent,
2. The child with a disability, and
3. Other individuals who have knowledge or special expertise regarding the child who attend the ARD at the discretion of the parent or the LEA.

**The District prefers that the excusal process does not occur at the annual ARD, or for any other ARD meeting unless prior approval is obtained by the appropriate Assistant Director of Special Education. It is important that all required members attend the student's ARD meeting.**

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## ARD MEETINGS

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### **Initial ARD**

*TEC § 29.004 and 29.005*

An Initial ARD meeting must be held within 30 calendar days of the completed initial evaluation unless the district receives written consent for the Full Individual Evaluation at least 35 but less than 45 school days before the last instructional day of the school year. The evaluation must be completed, and the written report provided to the parent or legal guardian not later than June 30 of that year. The student's ARD shall meet not later than the 15<sup>th</sup> school day of the following school year to review the evaluation.

If the parent is non-responsive to communication regarding the Initial ARD, notice of the ARD should be sent and the Initial ARD held without the parent within the required timeframe. A letter must be sent after 3 attempts to schedule the ARD meeting. This letter summarizes the attempts made and when the ARD is scheduled. The parent is encouraged to attend, but if unable to, then the ARD will be held, and the information will be mailed to the parent via certified U.S. Mail. The school district should develop the IEP (which includes goals objectives, programming, placement, and services) and then send a copy of the Initial ARD to the parent.

Consent for Initial Placement form must be signed by the parent prior to Special Education services being implemented. It is important to remember that the parent must give consent prior to services beginning. If the parent does not sign consent for services, the CCC/ARD Facilitator is to contact the Program Manager of Evaluation for guidance.

### **Annual ARD**

Each student with a disability must have an ARD meeting within one year of the last Annual ARD date. An Annual ARD meeting may be held prior to the previous year's Annual ARD date but must not be held after the Annual ARD date of the previous year. *Please note: if the parent is unresponsive to the 3 attempts to schedule, with documentation to support the attempts, the ARD is to be held prior to the Annual ARD date. The CCC/ARD Facilitator should send a copy of the locked ARD home and include a note that should the parent have concerns or questions, a Review/Brief ARD can be held to further discuss.*

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## Re-evaluation Planning ARD

### **34 CFR § 300.324**

Fort Bend ISD does not utilize a Re-evaluation Planning ARD but rather uses the SCORE process to discuss and plan for the re-evaluation process. Please see Section 1 of these Special Education Administrative Procedures for specifics on planning for a re-evaluation (SCORE meeting process which is completed with IEP members but outside of the ARD meeting). *It is critical to remember when the re-evaluation plan is completed via the SCORE process, and consent is obtained, the re-evaluation should begin immediately.*

## Review/Brief ARD

A Review/Brief ARD meeting is an ARD meeting held throughout the year to make changes to the Annual ARD. The following are some examples of when Review/Brief ARD meetings should be held:

- A member of the ARD/IEP team requests an ARD meeting to discuss concerns (this includes the parent/adult student).
- The student is not making progress and/or is not on track to master the Annual IEP goals.
- The student has mastered Annual IEP goals.
- Academic/Behavior IEP goal(s) and objectives need to be addressed, modified, etc.
- Student placement needs to be addressed.
- ESY was not discussed during the Annual and needs to be addressed prior to summer.
- Changes to State Assessment need to be addressed.
- Student has increased attendance problems.
- Other reasons as appropriate for the ARD committee to address.

Whenever a Review/Brief ARD is needed the following documents must be completed and addressed within the ARD:

- Eligibility page
- Area that is being addressed
- Schedule of Services page for current and next year
- LRE
- Assurances and Signature page
- Deliberations

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## **ARD vs. Amendment to ARD/IEP**

IDEA streamlines the ARD process by adding a provision to the law. Under Section 614(d)(3)(D), the ***District and parents*** may agree not to convene an ARD meeting for purposes of making changes to the child’s program once the annual/anniversary ARD meeting has been held. Instead, they may develop a written document to modify or amend the current IEP/ARD. The parent must be provided with the Prior Written Notice of Change along with the Amended IEP document within 5 days of the completion of the Amendment to the ARD. Upon request, a parent or guardian shall be provided with a revised copy of the IEP with the amendments incorporated.<sup>24</sup>

The following process should be followed for any Amendment to the ARD that is completed:

- Complete the Amendment to the ARD within EmpoWER
- Document within the amendment (deliberations) that the parent is in agreement with the changes to the IEP and what those changes are
- Document all parent contact related to the amendment in the contact log in SE and upload any documentation received into the history tab in EmpoWER

Fort Bend ISD will utilize Amendments to the ARD for certain situations. The following is an analysis document for Fort Bend ISD which will help you determine if the action being considered can be addressed by amending the ARD or if a Review/Brief ARD must be held.

If you have a question about the procedure or would like to request an exception to the rule, please contact the appropriate Director of Special Education.

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<sup>24</sup> 34 C.F.R. § 300.324(a)(6)

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## ARD vs. Amendment to ARD/IEP Analysis

ISSUE/ITEM	ARD	Amendment
<b>IEP/MODIFICATIONS/SERVICE</b>		
<ul style="list-style-type: none"> <li>Changes in Present Level of Academic Achievement and Functional Performance (PLAAPF); If this is changed by amendment, the IEP goals and objectives must be reviewed and updated as well (see below).</li> </ul>		√
<ul style="list-style-type: none"> <li>Add/Edit/Delete measurable short-term objectives which <b>will not</b> result in a change in service delivery hours and/or placement (general education/special education and/or related services)</li> </ul>		√
<ul style="list-style-type: none"> <li>Add/Edit/Delete measurable annual goals and/or short-term objectives which <b>will</b> result in a change in service delivery hours and/or placement (general education/special education and/or related services.)</li> </ul>	√	
<ul style="list-style-type: none"> <li>Add/Edit/Delete instructional accommodations and/or supplementary aids and services which <b>will not</b> result in a change in service delivery hours and/or placement).</li> </ul>		√

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<ul style="list-style-type: none"> <li>Develop IEP goals/objectives thirty (30) school days following a Temporary Placement ARD</li> </ul>	√	
<ul style="list-style-type: none"> <li>Change in existing technology devices and/or services needed to implement a student’s IEP which <b>will not</b> result in a change in service delivery hours and/or placement.</li> </ul>		√
<ul style="list-style-type: none"> <li>Changes in related services (type and/or services hours - except Transportation)</li> </ul>	√	
<b>PLACEMENT</b>		
<ul style="list-style-type: none"> <li>Any change in placement (i.e., General Ed/ICS to Resource, BSS to Resource, SAILS to ABC, etc.)</li> </ul>	√	
<b>ASSESSMENT</b>		
<ul style="list-style-type: none"> <li>Any change in type of State Assessment administered to student</li> </ul>	√	
<ul style="list-style-type: none"> <li>Modify/adjust/add/delete accommodations to State Assessment</li> </ul>		√
<b>ESY</b>		
<ul style="list-style-type: none"> <li>Consider the need for ESY</li> </ul>	√	
<b>BEHAVIOR INTERVENTION PLAN (BIP)</b>		
<ul style="list-style-type: none"> <li>Add/Edit/Delete BIP objectives which <b>will not</b> result in a change in service delivery hours and/or placement (general education/special education and/or related services)</li> </ul>		√
<ul style="list-style-type: none"> <li>Add/Edit/Delete BIP goals/objectives which <b>will</b> result in a change in service delivery hours and/or placement (general education/special education and/or related services)</li> </ul>	√	
<b>ELIGIBILITY</b>		
<ul style="list-style-type: none"> <li>Any change in Eligibility (add or remove)</li> </ul>	√	
<b>GRADUATION</b>		
<ul style="list-style-type: none"> <li>Change in Graduation Plan Option</li> </ul>	√	
<b>PERSONAL CARE SERVICES (PCS)</b>		
To describe Personal Care Services in more detail if there are already IEP Goals and Objectives in Annual ARD		√
To add Personal Care Services (this would be the same as adding related services or IEP services)	√	

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There may be circumstances in which an ARD was locked with an error, and an Amendment ARD may be appropriate to correct the error. Please contact the Program Specialist for Compliance for permission to proceed with an Amendment in these circumstances.

## **Dismissal ARD**

### ***34 CFR §§ 300.305, 300.304-300.311***

If a student is re-evaluated and no longer meets eligibility as a student with a disability, an ARD meeting must be held to consider the recommendation of the Full Individual Evaluation prior to dismissing the student from Special Education services.

## **Graduation**

The ARDC makes the determination regarding the Graduation Program Option or Graduation Plan for a student with a disability. This process begins for a student at the Annual ARD during 8<sup>th</sup> grade as the ARD committee determines appropriate IEP goals and objectives and courses for the 9<sup>th</sup> grade year. At least each school year at the Annual ARD, the Graduation Plan should be reviewed. When an ARD committee determines that a student requires modification(s) to the curriculum in a required course(s) for state credit on the Foundation High School Program, the student will also be required to successfully complete his/her IEP and meet additional criteria to determine that the student has employability skills and/or access to services outside of the school district. Additional requirements are specified below.

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## Graduation Requirements

### *19 T.A.C. § 89.1070*

(a) Graduation with a regular high school diploma under subsections (b)(1), (b)(2)(D), (g)(1), (g)(2), (g)(3), or (g)(4)(D) of this section terminates a student's eligibility for special education services under this subchapter and Part B of the Individuals with Disabilities Education Act and entitlement to the benefits of the Foundation School Program, as provided in Texas Education Code (TEC), §42.003(a).

(b) A student entering Grade 9 in the 2014-2015 school year and thereafter who receives special education services may graduate and be awarded a regular high school diploma if the student meets one of the following conditions.

(1) The student has demonstrated mastery of the required state standards (or District standards if greater) in Chapters 110-118, 126-128, and 130 of this title and satisfactorily completed credit requirements for graduation under the Foundation High School Program specified in §74.12 of this title (relating to Foundation High School Program) applicable to students in general education as well as satisfactory performance as established in the TEC, Chapter 39, on the required state assessments, unless the student's admission, review, and dismissal (ARD) committee has determined that satisfactory performance on the required state assessments is not necessary for graduation.

(2) The student has demonstrated mastery of the required state standards (or District standards if greater) in Chapters 110-118, 126-128, and 130 of this title and satisfactorily completed credit requirements for graduation under the Foundation High School Program specified in §74.12 of this title through courses, one or more of which contain modified curriculum that is aligned to the standards applicable to students in general education, as well as satisfactory performance as established in the TEC, Chapter 39, on the required state assessments, unless the student's ARD committee has determined that satisfactory performance on the required state assessments is not necessary for graduation. The student must also successfully complete the student's individualized education program (IEP) and meet one of the following conditions.

(A) Consistent with the IEP, the student has obtained full-time employment, based on the student's abilities and local employment opportunities, in addition to mastering sufficient self-help skills to enable the student to maintain the employment without direct and ongoing educational support of the local school district.

(B) Consistent with the IEP, the student has demonstrated mastery of specific employability skills and self-help skills that do not require direct ongoing educational support of the local school district.

(C) The student has access to services that are not within the legal responsibility of public education or employment or educational options for which the student has been prepared by the academic program.

(D) The student no longer meets age eligibility requirements.

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(c) A student receiving special education services may earn an endorsement under §74.13 of this title (relating to Endorsements) if the student:

- (1) satisfactorily completes the requirements for graduation under the Foundation High School Program specified in §74.12 of this title as well as the additional credit requirements in mathematics, science, and elective courses as specified in §74.13(e) of this title with or without modified curriculum,
- (2) satisfactorily completes the courses required for the endorsement under §74.13(f) of this title without any modified curriculum, and
- (3) performs satisfactorily as established in the TEC, Chapter 39, on the required state assessments.

(d) Notwithstanding subsection (c)(3) of this section, a student receiving special education services classified in Grade 11 or 12 during the 2014-2015, 2015-2016, or 2016-2017 school year who has taken each of the state assessments required by Chapter 101, Subchapter CC, of this title (relating to Commissioner's Rules Concerning Implementation of the Academic Content Areas Testing Program) or Subchapter DD of this title (relating to Commissioner's Rules Concerning Substitute Assessments for Graduation) but failed to achieve satisfactory performance on no more than two of the assessments is eligible to receive an endorsement if the student has met the requirements in subsection (c)(1) and (2) of this section.

(e) In order for a student receiving special education services to use a course to satisfy both a requirement under the Foundation High School Program specified in §74.12 of this title and a requirement for an endorsement under §74.13 of this title, the student must satisfactorily complete the course without any modified curriculum.

(f) A student receiving special education services who entered Grade 9 before the 2014-2015 school year may graduate and be awarded a regular high school diploma if the student meets one of the following conditions.

- (1) The student has demonstrated mastery of the required state standards (or district standards if greater) in Chapters 110-117, 126-128, and 130 of this title and satisfactorily completed credit requirements for graduation (under the recommended or distinguished achievement high school programs in Chapter 74, Subchapter F, of this title (relating to Graduation Requirements, Beginning with School Year 2007-2008) or Chapter 74, Subchapter G, of this title (relating to Graduation Requirements, Beginning with School Year 2012-2013)), as applicable, including satisfactory performance as established in the TEC, Chapter 39, on the required state assessments.

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(2) Notwithstanding paragraph (1) of this subsection, as the TEC, §28.0258 and §39.025(a-2), modify the state assessment requirements applicable to students in general education, a student receiving special education services who is classified in Grade 11 or 12 may graduate under the recommended or distinguished achievement high school program, as applicable, if the student has taken each of the state assessments required by Chapter 101, Subchapter CC, of this title (relating to Commissioner's Rules Concerning Implementation of the Academic Content Areas Testing Program) or Subchapter DD of this title (relating to Commissioner's Rules Concerning Substitute Assessments for Graduation) but failed to achieve satisfactory performance on no more than two of the assessments and has met all other applicable graduation requirements in paragraph (1) of this subsection.

(3) The student has demonstrated mastery of the required state standards (or district standards if greater) in Chapters 110-117, 126-128, and 130 of this title and satisfactorily completed credit requirements for graduation (under the minimum high school program in Chapter 74, Subchapter F or G, of this title), as applicable, including participation in required state assessments. The student's ARD committee will determine whether satisfactory performance on the required state assessments is necessary for graduation.

(4) The student has demonstrated mastery of the required state standards (or district standards if greater) in Chapters 110-117, 126-128, and 130 of this title through courses, one or more of which contain modified content that is aligned to the standards required under the minimum high school program in Chapter 74, Subchapter F or G, of this title, as applicable, as well as the satisfactorily completed credit requirements under the minimum high school program, including participation in required state assessments. The student's ARD committee will determine whether satisfactory performance on the required state assessments is necessary for graduation. The student graduating under this subsection must also successfully complete the student's IEP and meet one of the following conditions.

(A) Consistent with the IEP, the student has obtained full-time employment, based on the student's abilities and local employment opportunities, in addition to mastering sufficient self-help skills to enable the student to maintain the employment without direct and ongoing educational support of the local school district. Questions for the ARD committee to consider if a student is graduating under this subsection:

- *What is the student's postsecondary goal in the areas of employment, education/training, and independent living (if applicable)?*
- *What are the disability related needs of the student relative to their transition plan and their postsecondary goals for transition?*
- *What courses, if any, has the student completed that have prepared him/her with the employment skills and/or self-help skills necessary to obtain or retain a job?*
- *What jobs (paid or unpaid) has the student held during high school?*
- *Is the student currently employed? If so, where and for how long?*

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- *Is the student successful in this job(s)? How do you know?*
- *Did the student require any support from special education to obtain or retain the job?*
- *If so, who will the student contact once they graduate from high school to access the same type of support to retain their job or obtain a new job?*
- *If so, is the student already in contact with this person/agency?*

(B) Consistent with the IEP, the student has demonstrated mastery of specific employability skills and self-help skills that do not require direct ongoing educational support of the local school district.

Questions for the ARD committee to consider if a student is graduating under this subsection:

- *What is the student's postsecondary goal in the areas of: employment, education/training, and independent living (if applicable)?*
- *What are the disability related needs of the student relative to their transition plan and their postsecondary goals for transition?*
- *What courses, if any, has the student completed that have prepared them with the employment skills and/or self-help skills necessary to obtain or retain a job?*
- *What jobs (paid or unpaid) has the student held during high school?*
- *Is the student currently employed? If so, where and for how long?*
- *Is the student successful in this job(s)? How do you know?*
- *Did the student require any support from special education to obtain or retain the job?*
- *If so, who will the student contact once they graduate from high school to access the same type of support to retain their job or obtain a new job?*
- *If so, is the student already in contact with this person/agency?*
- *If the student has never held a job or been competitively employed, what courses has the student taken that have prepared them to obtain or retain a job (as identified in their postsecondary employment goal), including courses that have provided instruction for self-help skills that the student would need in order to be successful in that job (based on their individual disability-related needs in the PLAAFP)?*
- *Was the student successful in these courses? How do you know (i.e., IEP goal was created, and the student mastered the goal)?*

(C) The student has access to services that are not within the legal responsibility of public education or employment or educational options for which the student has been prepared by the academic program.

Questions for the ARD committee to consider if a student is graduating under this subsection:

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- *What is the student’s postsecondary goal in the areas of: employment, education/training, and independent living (if applicable)?*
- *What are the disability related needs of the student relative to their transition plan and their postsecondary goals for transition?*
- *What courses, if any, has the student completed that have prepared them with the employment skills and/or self-help skills necessary to obtain or retain a job?*
- *What jobs (paid or unpaid) has the student held during high school?*
- *Is the student currently employed? If so, where and for how long?*
- *Is the student successful in this job(s)? How do you know?*
- *Did the student require any support from special education to obtain or retain the job?*
- *If so, who will the student contact once they graduate from high school to access the same type of support to obtain or maintain a new job or support in a postsecondary education program?*
- *If so, is the student already in contact and receiving services with this person/agency?*
- *If not, what should be the next steps for the student to complete to access this support or service?*

(D) The student no longer meets age eligibility requirements.

Questions for the ARD committee to consider if a student is graduating under this subsection:

- *Is this student currently 22? If so, they will not be eligible for services through special education during the next school year.*
- *Will this student turn 22 on or before September 1 of next year? If so, they will not be eligible for services through special education during the next school year.*

(g) All students graduating under this section must be provided with a summary of academic achievement and functional performance as described in 34 Code of Federal Regulations (CFR), §300.305(e)(3). This summary must consider, as appropriate, the views of the parent and student and written recommendations from adult service agencies on how to assist the student in meeting postsecondary goals. An evaluation as required by 34 CFR, §300.305(e)(1), must be included as part of the summary for a student graduating under subsections (b)(3)(A), (B), or (C) or (f)(4)(A), (B), or (C) of this section.

*A student who receives special education services and has completed four years of high school but has not met the requirements of his/her IEP, may participate in graduation ceremonies, and receive a certificate of attendance. Even if the student participates in graduation complete the IEP and earn his/her high school diploma. However, the student will only be allowed to participate in one graduation ceremony.*

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(i) Employability and self-help skills referenced under subsections (b)(3) and (f)(4) of this section are those skills directly related to the preparation of students for employment, including general skills necessary to obtain or retain employment.

(j) For students who receive a diploma according to subsections (b)(2); (b)(3) (A), (B), or (C); or (f)(4)(A), (B), or (C) of this section, the ARD committee must determine needed educational services upon the request of the student or parent to resume services, as long as the student meets the age eligibility requirements.

(k) For purposes of this section, modified curriculum and modified content refer to any reduction of the amount or complexity of the required knowledge and skills in Chapters 110-117, 126-128, and 130 of this title. Substitutions that are specifically authorized in statute or rule must not be considered modified curriculum or modified content.

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## Students Transferring into District

### **19 T.A.C. § 89.1050**

The Texas Education Agency adopted an amendment to §89.1050, concerning the admission, review, and dismissal (ARD) committee. The adopted amendment provides clarification regarding students who register in a new school district during the summer months, as well as students who transfer to a new district during the school year. The revised procedures can be found below.

Students who transfer into the District, from either another school district in the state of Texas or another state within the United States and who have an IEP in effect and meet eligibility requirements recognized by TEA, must receive comparable services, as required under 34 C.F.R. § 300.323 (e) and (f). The district must make reasonable attempt to “verify” student services within 5 days of the enrollment. In accordance with amendments to TEC §89.1050, subsection (j) effective July 14, 2023, the term “verify” is clarified to indicate the district has received written verification (obtained records) that the campus will use to provide comparable services. Once received, the district will complete the *Verification of IEP* document within EmpoWEr. On the date of verification, per change to subsection (j) 1, the district must complete the student’s annual ARD within **20 days** of verification (a change from 30 days). No Transfer ARD is conducted.

If the District cannot “verify” student services within 5 days of enrolling, the campus will follow the traditional Transfer ARD process. At the Transfer ARD within 5 days of enrolling, the District will provide the student’s services with information gathered through consultation with the student’s parent(s). In this case, the District will attempt to obtain consent to evaluate, and the annual ARD and evaluation will be held within 30 days of the Transfer ARD if the student is transferring from within the state of Texas. Out of state transfer students, who require a new evaluation to establish eligibility, as outlined by TEA, will continue to follow initial evaluation timelines (see Section 1).

For students who enroll during the summer, regardless of the location (in-state or out-of-state) of prior public school, the same process as above will be followed. However, the *Verification of IEP* or the Transfer ARD must be held prior to the first day of school.

**\*\*Additional technical information for completing the *Verification of IEP* in EmpoWEr is included in Section 8 of the Administrative Procedures.**

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## SPECIFIC AREAS TO ADDRESS DURING THE ARD MEETING

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### **Accelerated Instruction and Intensive Program of Instruction**

**TEC §28.0211, §28.0217, TEC §28.0213**

*HB 1416 passed in the 88<sup>th</sup> Regular Legislative Session, modified accelerated instruction, supplemental instruction, and accelerated education plan requirements beginning with assessments administered during the 2023 spring semester. TEC 28.0217 (accelerated instruction for high school students) is repealed, beginning with the 2023-2024 school year. However, accelerated instruction requirements for EOCs are still required, as HB 1416 moves the requirements of TEC 28.0217 into TEC 28.0211 (accelerated instruction; modified teacher assignment).*

### **Accelerated Learning Committees**

HB 1416 eliminates the requirement to establish accelerated learning committees for students who do not perform satisfactorily on the 3rd, 5th, or 8th grade mathematics or reading STAAR and related requirements of the accelerated learning committee to convene under certain circumstances.

### **ARD Committee**

HB 1416 eliminates the requirement that the ARD committee meet to determine how the student will participate in AI. However, the bill requires ARD committees to review the student's participation and progress in AI, SI, or an AEP at the student's next annual ARD and allows parents to request or districts to schedule an additional ARD meeting if a committee member believes that the student's IEP needs to be modified. If the district refuses to convene an ARD requested by the parent, the district must provide the parent with written notice explaining the reason for the refusal.

### **Other Provisions**

HB 1416 eliminates separate law relating to required AI for high school students but incorporates EOCs into the accelerated instruction law. HB 1416 also allows the commissioner to adopt rules for required reporting necessary to support student transfers (TBD).

HB 1416 requires districts to ensure their curricular and instructional systems provide instruction to all students that is consistently aligned to the TEKS and that strategically and timely addresses student deficiencies in the TEKS.

### **Accelerated Instruction**

Districts must provide notice (TEA will develop a model notice) to parents of students to whom AI applies that the student is not performing on grade level in the applicable subject area. The notice must be provided at a parent-teacher conference or, if not possible, by another means.

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## Under HB 1416, AI:

- Is required each time a student does not perform satisfactorily on Grades 3-8 STAAR or STAAR Spanish, or an EOC (Algebra I, Biology, English I, English II, and US History).
- Does not apply to students:
  - Taking STAAR Alt 2, substitute assessments (SAT/ACT, AP exams), or optional assessments
  - Retained at a grade level for the school year in which the AI requirements would otherwise apply.
- As previously required under HB 4545, must be provided in the subsequent summer or school year and includes:
  - Assigning the student to a master, exemplary, or recognized teacher under the district's local optional teacher designation system (Teacher Incentive Allotment) in the subsequent school year; OR
  - Providing the student supplemental instruction (SI, see next section).
- Exception: If a student who attends school in a homebound or other off-campus instructional arrangement, including at a residential treatment campus or state hospital, is unable to participate in AI due to the student's condition, the district may determine that the student be provided AI only when the student is in an on-campus setting. If the student's condition prevents the student from attending school in an on-campus setting for the school year in which their AI is required, the district is not required to provide the AI for the student for that school year.
- Exception: HB 1416 allows the commissioner to waive AI requirements for a district for each school year in which at least 60% of students who received AI in the year immediately preceding the previous year perform satisfactorily in the previous year on the applicable assessment instrument in each subject in which they previously performed below satisfactorily. In making this determination, the commissioner shall:
  - Consider student performance on assessment instruments in each subject separately.
  - By rule (TBD), provide that a school district may not qualify for a waiver if students who are receiving special education services or who are educationally disadvantaged are overrepresented among the students who received AI in the district and did not move to satisfactory performance from the year immediately preceding the previous year to the previous year.
  - Publish a list of school districts that qualify for the waiver not later than the beginning of each school year.

## HB 1416 allows districts to:

- Use a service provider to provide AI or SI to students that is not on the commissioner's approved list of providers if the district can demonstrate that use of the provider results in measurable improvement in student outcomes.
- Transportation shall be provided to students if the accelerated program occur outside the regular school hours (because the district does operate a transportation system).

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## **Supplemental Instruction. Under HB 1416, SI must be provided:**

- During the subsequent summer or school year to each student for no less than 15 hours or 30 hours for a student whose performance is significantly below satisfactory, pending commissioner rule (TBD).
- No less than once per week, unless provided fully during the summer, pending commissioner rule to account for school holidays or shortened school weeks (TBD).
- To a student individually or in a group of no more than four, unless each parent of students in the group agrees to a larger group.
- Exception: A school district is not required to provide SI to a student in more than two subject areas per school year. If SI requirements apply for the student in more than two subject areas, the district shall prioritize SI in mathematics, reading, Algebra I, English I, or English II, as applicable.
- Exception: Parent or guardian modification or opt-out.
- A parent or guardian of a student to whom SI requirements apply or who was administered a BOY assessment aligned to the TEKS may elect to submit a written request to a campus administrator to modify or remove the SI requirement.
- A school district may not encourage or direct parents to submit a written request.
- Exception: TEA must approve one or more automated, computerized, or other augmented methods for providing SI that can be used in lieu of some or all of the individual or group instruction. The agency can only approve products evidenced to be more effective than group or individual instruction. Commissioner will adopt rules to implement the approval and use of these products (TBD).

## **Accelerated Education Plan.**

Under HB 1416, the AEP is required for students who do not perform satisfactorily on STAAR, STAAR Spanish, or an EOC for two or more consecutive years in the same subject area.

Students for whom an AEP applies must be assigned an appropriately certified teacher for each school year and subject covered by the AEP, unless parent requests assignment to another teacher or commissioner waives this requirement. Districts must make a good faith effort to provide the parent or guardian of the student who whom the AEP applies with a parent-teacher conference at the beginning and end of the subsequent school year and provide:

- The model notice developed by TEA (TBD, previously mentioned).
- An explanation of the AI the student is entitled to, the AEP that must be developed for the student, and how the parent can participate in developing the AEP.

The AEP:

- Must be developed by the start of the subsequent school year.
- Provide the necessary AI to enable the student to perform at grade level or course level by the conclusion of the school year.
- Must identify the reason the student did not perform satisfactorily.

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- Must require the student to be provided with at least 30 hours of SI for each consecutive school year that the student did not perform satisfactorily on the assessment in the applicable subject area.
- Must be documented in writing and provided to the parent.
- May require, as appropriate to ensure satisfactory performance at the next administration of the assessment, that the district expand the SI available to the student, assign the student to a specific teacher better able to provide AI, and provide any other additional resources to the student.

[FAQs HB 1416 \(88R\)](#)

[Additional information about Accelerated Instruction Requirements can be found on the TEA website.](#)

## **Personal Graduation Plan**

*TEC § 28.0212 and 28.02121*

For non-disabled students, a Personal Graduation plan must be completed for each student enrolled in middle or high school who:

1. Does not perform satisfactorily on their state assessments or
2. Is not likely to receive a high school diploma before the fifth school year following the student's enrollment in grade level nine as determined by the district.

For students receiving Special Education services, the ARD/IEP serves as the Personal Graduation Plan.

## **Adapted Physical Education (AdPE)**

1. All students referred for Adapted Physical Education (ADPE) evaluation must have an identified disability.
2. ADPE services are provided upon consideration of a current evaluation and written report.
3. If ADPE services are provided, the goals and/or objectives will be agreed upon by the ARD Committee.
4. Parents will receive progress reports toward the ADPE goals/objectives in the same timeframe as nondisabled students, unless the student's IEP requires more frequent reporting.
5. ADPE is not designed to replace regular PE, but to provide access to students whose physical limitations undermine their ability to participate in Physical Education.

For more information about Adapted Physical Education, see the same-named area in Section 3 of the Special Education Administrative Procedures.

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## **Assistive Technology (AT)**

*34 CFR §§ 300.5, 300.6, 300.105, 300.324(a)(2)(v)*

When developing a child’s IEP, the ARDC must consider the tools or strategies required for a student to be more independent or to demonstrate measurable progress regarding goals, objectives, or classroom tasks.

## **Legal/Federal Definitions**

As defined in the Individuals with Disabilities Education Improvement Act of 2004 (IDEA 2004), “Assistive Technology are tools and/or strategies used to help support academic goals within the Individualized Education Program (IEP)”.

## **Assistive Technology Device**

An Assistive Technology Device is “any item, piece of equipment or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of children with disabilities.”

Assistive Technology as a device does not include a medical device that is surgically implanted (e.g., cochlear implant), or the replacement of such a device. However, this does not limit the responsibility of the Local Education Agency to provide monitoring and maintenance of the external equipment to maintain a student’s health, safety, and educational goals, if written in the IEP. Therefore, support for use of the implanted device could be provided by the Assistive Technology department. As a general matter, schools are not responsible for providing personal devices such as eyeglasses, hearing aids, or braces, that a child with a disability requires regardless of whether he/she is attending school.

## **Assistive Technology Service**

IDEA 2004 defines an Assistive Technology Service as “any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device” and includes, but is not limited to:

1. The evaluation of the needs of the child, including a functional evaluation of the child in the child’s customary environment,
2. Purchasing, leasing, or otherwise providing for the acquisition of ATDs for the child,
3. Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing ATDs
4. Coordinating and using other therapies, interventions, or services with ATDs, such as those associated with existing education and rehabilitation plans and programs,
5. Training or technical assistance for the child or, where appropriate, the family of the child, and
6. Training or technical assistance for professionals, including individuals providing education and rehabilitation services, employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of the child.

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## Procedures Aligned with Federal/Legal Requirements

1. Consider Assistive Technology needs for every student with a disability who qualifies for special education services within the student’s Full Individual Evaluation and in all subsequent re-evaluations or specialty evaluations (including functional and related service evaluations).
2. Consider/discuss Assistive Technology needs for every special education student at **every** IEP/ARD meeting. The need for AT must be discussed regardless of the student’s prior needs/recommendations as the student’s goals and needs may change. Every IEP/ARD committee must address the four sections of the AT Supplement based on the Texas Four Step Model provided by T.E.A. The Texas Four Step Model is a process for ARD committees to use in the development, review, and revision of every IEP.
  - a. Review current data and additional information from the previous IEP year.
  - b. Identify the areas in which the student is experiencing difficulty completing tasks or meeting IEP goals.
  - c. If student has not required AT in the past, determine whether AT devices and/or services are required at this time. If student is currently using Assistive Technology, specify AT being utilized and the effectiveness of that tool.
  - d. Document the AT Consideration outcome including a rationale for the decision in the recommendation section of the Supplement. If AT is being recommended/utilized, indicate on the PLAAFP section of the ARD document and monitor effectiveness.
3. Any changes or concerns regarding a student’s use of assistive technology must be discussed in a staffing before the ARD. When a change is recommended, the following options may be considered:
  - a. Level 1- No Tech/Low Tech tools: These are the tools that should be considered first. These tools are provided by and implemented by the campus, with training and support available by district staff as needed. No formal evaluation is required to put these in place. Refer to the Assistive Technology Consideration Guide (See Appendix) related to the area of concern identified in the AT Supplement.
  - b. Level 2- Mid Tech tools: If it is determined that Level 1 tools are not sufficient in supporting the needs and/or goals of the student, Level 2 should be considered. These tools are provided by the district but implemented by the campus staff/related service providers. No formal evaluation is required to put these tools in place. Refer to the Assistive Technology Consideration Guide (see Appendix) related to the area of concern identified in the AT Supplement. To obtain a Mid Tech device and/or training, fill out the AT Guidance Request Form. At that time, a District AT Specialist will determine appropriate next steps.
  - c. Level 3- High Tech tools: If Level 1 and 2 tools have been considered and found to be not appropriate or sufficient, the campus completes the AT Guidance Request Form (<https://forms.office.com/r/x2SZx6ZK0y>). At that time, the District AT team will reach out to the campus to schedule a staffing. If staffing yields a recommendation for a formal AT evaluation, a member of the campus evaluation staff will obtain consent for the evaluation.

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4. It is up to the ARDC to recommend appropriate AT devices/equipment. If a parent chooses to provide personal AT equipment for their student, the ARDC must discuss whether the personal equipment is required for a FAPE. If the personal equipment is not required, the parent may still send the equipment, but the school district is not required to implement or maintain the equipment. Please see the Student Handbook for more information regarding: Use of Mobile Devices, Including Smart Phones (Student Handbook) and Disclaimers for Bringing Your Own Device (BYOD) (Student Handbook).

## **Assistive Technology Equipment Check-Out Procedures**

Low-Tech equipment should be currently available at the campus level. Teachers in most specialized programs have access to either Boardmaker Plus or SymbolStix software for creating visual supports and Low-Tech communication materials for students. If your campus does not have a specialized program, but needs access to the software, contact the District AT Department for assistance.

Mid-Tech level devices/equipment may require a trial period of use. If the equipment is not available, it may need to be ordered. Contact the District AT Specialists to request devices for trials and Mid-Tech recommendations made through FIEs and AT Staffings. The devices/equipment will be checked out or ordered in the student's name.

High Tech devices/equipment will be provided following acceptance of the recommendations made in an AT evaluation by the ARD committee. The devices/equipment will be checked out in the student's name through the campus.

## **Deaf/Hard of Hearing (DHH)**

***TEC §§ 29.301, 29.303, 30.004; 19 TAC §89.1050; 34 CFR § 300.324(a)(2); 20 USC § 1414(d)(3)(B)(iv); TSD Admissions FAQs***

The District shall ensure that all children with an eligibility of Deaf and Hard of Hearing (DHH) have an education in which the child's unique communication mode is respected, used, and developed to an appropriate level of proficiency.

For a student with eligibility of DHH, the ARD committee must consider:

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

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## (34 Code of Federal Regulations (CFR) §300.324(a)(2))

DHH students may receive special education services through a variety of service delivery models. Many students are appropriately serviced on their home campus with special education services; other students may need additional instructional support from a Teacher of the Deaf and Hard of Hearing. For students who need additional Deaf Education services, FBISD participates in the Brazoria-Fort Bend Regional Day School Program for the Deaf (RDSPD). Students receiving direct services via the Brazoria-Fort Bend RDSPD receive services according to a continuum based on the unique needs of the student. Continuum of services for DHH students include the following:

1. Consult only (Indirect service): These are students who do not receive direct instruction from a certified Teacher of the Deaf. However, RDSPD teachers may provide indirect services to the campus teaching staff by providing support, such as setting up a communication system, providing sign language resources, or suggesting strategies for a better listening environment in the classroom. All DHH students will have a monitoring RDSPD teacher who will provide their name and contact information and a *Support Packet for Teachers Working with Deaf and Hard of Hearing Students* at the beginning of each school year. Additional consultation may be requested at any time by direct contact with the RDSPD teacher or RDSPD office at 281-634-1497. If a student receiving Consult services needs an Assistive Listening Device (ALD), it is the responsibility of the home district to provide this device.
2. Consult only (Direct service): These students receive direct services from a certified Teacher of the Deaf for fewer than 45 minutes per week. This service should be documented in the Related Services section of the student's IEP. Students receiving direct services from the RDSPD must have an IEP goal which will be addressed during their sessions with the Teacher of the Deaf. If a student receiving Consult services needs an ALD, it is the responsibility of the home district to provide this device.
3. Itinerant (Direct service): These are students who receive at least *45 minutes a week of direct instruction* from a certified Teacher of the Deaf at their home campus. Any services less than 45 minutes a week are considered Consult services. In addition, if an itinerant DHH student has an ALD (such as an FM system), the ALD is provided by the RDSPD. Personal amplification or listening devices (including hearing aids, cochlear implants, and bone-anchored hearing aids (BAHA)) are provided by the parent/guardian. ARD meetings for students receiving itinerant services are held at the campus the student attends and are facilitated by the campus-based staff members.
4. Cluster Site-Based (Direct service): These students participate in the RDSPD at one of three campuses in FBISD: Settlers Way Elementary, First Colony Middle School, or Dulles High School. Cluster site-based students require daily instruction from a certified Teacher of the Deaf due to their significant language and communication deficits resulting from their hearing loss. These ARD meetings are facilitated by the FBISD CCC/ARD Facilitator or RDSPD Diagnostician with RDSPD representatives in attendance.

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The criteria for placement into the Brazoria-Fort Bend RDSPD are for a student to meet DHH eligibility, have language and/or academic delays due to hearing loss, and have an educational need for instruction from a Teacher of the Deaf. A student is considered a member of the RDSPD when they receive direct services from a Teacher of the Deaf, either itinerantly or on an FBISD site campus location, for more than 45 minutes per week. Students who receive service for less than 45 minutes per week are not considered members of the RDSPD.

All ARDs for DHH students (regardless of level of service) legally must have a Teacher of the Deaf present (as mandated under 19 TAC §89.1050). To request that a Teacher of the Deaf to attend an ARD meeting, contact the RDSPD Office Clerk at 281-634-1497 at least two weeks prior to the scheduled ARD.

A request for consultation may be made at any time through the RDSPD office or directly with the RDSPD teacher assigned to the student. A consultation may be warranted when a DHH student who is not receiving direct RDSPD services may need direct services or may need recommendations for accommodations or modifications.

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## Procedures during the ARD process for a DHH student

- Schedule of Services-
  - a. Consult students: These services should be listed under "Related Services" with the allotted amount of time if time is specified for consult. It should be notated whether these services are direct or indirect. A description of the DHH services should be provided to the ARD facilitator by the RDSPD teacher or representative and recorded in the "Deliberations" section of the ARD paperwork.
  - b. Itinerant students: These services will be listed under "Instructional Services" with the allotted amount of time. In addition, please note in the Deliberations section of the ARD that "Direct instruction from the Regional Day School Program for the Deaf will be provided." ALDs should be listed as an AT device; however, a personal listening device, such as a hearing aid or cochlear implant, should not be considered AT because they are not provided by the school district. The RDSPD teacher assigned to the student will recommend a *Campus Plan for Listening Devices*, so there is a plan for who, where, and how equipment will be taken care of during the school day.
  - c. Cluster Site-Based (Direct service): These services will be listed under "Instructional Services" with the allotted amount of time. In addition, please note in the deliberations section of the ARD that "Direct instruction from the Regional Day School Program for the Deaf will be provided".
- Texas School for the Deaf (TSD) Information – It is a state requirement to give this information at the initial placement ARD and at least once annually to all students with a DHH eligibility. The information is available in EmpoWER and should be presented by the special education case manager, CCC, ARD Facilitator, or by the RDSPD representative who attends the ARD meeting.
- Communication Needs Supplement for Deaf and Hard of Hearing- DHH Supplement – This required supplement is completed for all DHH students and is part of EmpoWER. The RDSPD representative who attends the ARD can assist special education staff with completing the form.
- RDSPD Referral Supplement– This is a required form at the initial placement ARD and at each Annual ARD for all students receiving direct DHH services, such as itinerant or cluster site-based instruction from a Teacher of the Deaf. The form is provided in EmpoWER and can be presented by the special education case manager, CCC or ARD Facilitator, or by the RDSPD representative who attends the ARD meeting. The RDSPD representative who attends the ARD can assist special education staff with completing the form.

Initial and transfer ARD/IEP meetings will be held at and conducted by the student's zoned campus with RDSPD staff members in attendance.

For additional information regarding the RDSPD program, please refer to Section V of the Special Education Administrative Procedures. Additional information regarding the evaluation process for students with an eligibility of DHH can be found in Section 1 of the Special Education Administrative Procedures.

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## Autism (AU) Supplement

### *19 TAC § 89.1055(e)(6)*

An Autism Supplement must be completed for any student in Fort Bend ISD who receives services under the eligibility category of Autism. The Autism Supplement has several strategies that must be considered by the ARD committee. The AU supplement must be completed at each Annual ARD at a minimum.

The classroom teacher should collaborate with other staff members to complete the supplement which will be reviewed at the ARD meeting.

Below are the 11 strategies that are outlined on the Autism Supplement and must be considered, based on peer-reviewed, research-based educational programming practices to the extent practicable and, when needed, addressed in the IEP:

1. **Extended educational programming** (for example: extended day and/or extended school year services that consider the duration of programs/settings based on assessment of behavior, social skills, communication, academics, and self-help skills)
2. **Daily schedules** reflecting minimal unstructured time and active engagement in learning activities (for example: lunch, snack, and recess periods that provide flexibility within routines; adapt to individual skill levels; and assist with schedule changes, such as changes involving substitute teachers and pep rallies)
3. **In-home and community-based training** or viable alternatives that assist the student with acquisition of social/behavioral skills (for example: strategies that facilitate maintenance and generalization of such skills from home to school, school to home, home to community, and school to community)
4. **Positive behavior support** strategies based on relevant information, for example:
  - a. Antecedent manipulation, replacement behaviors, reinforcement strategies, and data-based decisions, and
  - b. A Behavior Intervention Plan developed from a Functional Behavioral Assessment that uses current data related to target behaviors and addresses behavioral programming across home, school, and community-based settings
6. Beginning at any age, **futures planning** for integrated living, work, community, and educational environments that considers skills necessary to function in current and post-secondary environments
7. **Parent/family training and support**, provided by qualified personnel with experience in autism spectrum disorders (ASD), that, for example:
  - a. provides a family with skills necessary for a child to succeed in the home/community setting,
  - b. includes information regarding resources (for example: parent support groups, workshops, videos, conferences, and materials designed to increase parent knowledge of specific teaching/management techniques related to the child's curriculum), and

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- c. facilitates parental carryover of in-home training (for example: strategies for behavior management and developing structured home environments and/or communication training so that parents are active participants in promoting the continuity of interventions across all settings)
8. Suitable **staff-to-student ratio** appropriate to identified activities and as needed to achieve social/behavioral progress based on the child's developmental and learning level (acquisition, fluency, maintenance, generalization) that encourages work towards individual independence as determined by, for example:
  - a. adaptive behavior evaluation results,
  - b. behavioral accommodation needs across settings, and
  - c. transitions within the school day
9. **Communication interventions**, including language forms and functions that enhance effective communication across settings (for example: augmentative, incidental, and naturalistic teaching)
10. **Social skills** supports and strategies based on social skills assessment/curriculum and provided across settings (for example: trained peer facilitators (e.g., circle of friends), video modeling, social stories, and role playing)
11. **Professional educator/staff support** (for example: training provided to personnel who work with the student to assure the correct implementation of techniques and strategies described in the IEP), and
12. **Teaching strategies** based on peer reviewed, research-based practices for students with ASD (for example: those associated with discrete-trial training, visual supports, applied behavior analysis, structured learning, augmentative communication, or social skills training).

If the ARDC determines that services are not needed in one or more of the outlined areas, the IEP and Autism Supplement must include a statement to that effect and the basis upon which the ARDC made that determination.

Those strategies deemed necessary and appropriate for the student may be incorporated throughout the IEP and/or described in a supplement.

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## Extended School Year Services (ESYS)

**34 CFR § 300.106; 19 TAC §§ 89.1055**

Extended School Year Services (ESYS) is an Individualized Education Program (IEP) for children with disabilities that are provided to students beyond the regular school year. ESYS must be considered and addressed at every student’s annual ARD meeting. The need for ESYS must be discussed on an individual basis by the child’s ARD Committee from formal and/or informal evaluations provided by the Assessment Team, Special Education Staff and/ or the parents. The documentation must demonstrate that in one or more critical areas addressed in the current IEP goals and objectives, the child has exhibited, or may be expected to exhibit severe or substantial regression in critical skill area(s) that cannot be recouped within a reasonable period of time or that need to be maintained beyond the regular school year. Severe or substantial regression means that the student has been, or will be, unable to maintain one or more acquired critical skills in the absence of ESYS services [19 TEX. ADMIN. CODE § 89.1065; *Alamo Heights ISD v. State Board of Ed.*, 790 F2d. 1153 (5th Cir. 1986)] (severe or substantial regression required for ESYS).

In considering students with disabilities for ESYS, Fort Bend ISD does not limit ESYS to specific categories of disabilities or unilaterally limit the type, amount, or duration of ESYS. The Assessment Team and/or the Special Education Staff establish a general timeframe for ESYS each year. However, the ARD Committee determines the ESYS timeframe to meet the individual needs of the student. It is important to remember that ARD committee determinations regarding ESYS services are prospective in nature and not intended to make up for past denials of FAPE, if any [OSEP, Part B Implementation of IDEA Provision of Services in the Current COVID-19 Environment Q&A Document. September 28, 2020]. If the annual ARD is held in the fall semester of the school year, then it **may** be necessary to delay the decision about ESYS until later in the school year (due to limited documentation). If this is the case, then another ARD must be held to revisit this issue.

Fort Bend ISD uses the following process to provide Extended School Year Services (ESYS) to its students:

1. The need for ESYS must be documented on the ESYS Decision Making Guide, which will be updated and sent out each school year. The documentation shall demonstrate that in one or more critical areas addressed in the current individualized education program (IEP) objectives, the student has exhibited, or reasonably may be expected to exhibit, severe or substantial regression that cannot be recouped within a reasonable period of time or the maintenance of those critical skills that extend beyond the regular school year.
2. Severe or substantial regression means that the student has been, or will be, unable to maintain one or more acquired critical skills in the absence of ESYS.

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3. The reasonable period for recoupment of acquired critical skills shall be determined based on needs identified in each student's IEP. If the loss of acquired critical skills would be particularly severe or substantial, or if such loss results, or reasonably may be expected to result, in immediate physical harm to the student or to others, ESYS may be justified without consideration of the period of time for recoupment of such skills. In any case, the period for recoupment shall not exceed eight weeks.
4. A skill is critical when the loss of that skill results, or is reasonably expected to result, in any of the following occurrences during the first eight weeks of the next regular school year:
  - a. placement in a more restrictive 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 skill 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.
5. If a student demonstrates the need for ESYS, the ARD committee must decide on the appropriate IEP goals and objectives the student will work on during the determined ESYS. The determination of IEP goals and objectives for ESYS must be identified in an ARD meeting.
6. Goals for students recommended for ESYS should come from their current IEP. These goals should be identified as those being critical to a student's academic, behavioral, or functional development. This may include skills that may have been mastered during the school year, but without ESYS participation during the summer, the student would suffer regression in that particular area.

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## ESY ARD Meeting

As part of the ARD meeting held to consider ESY Services, the following components must be discussed and documented:

1. *ESYS Supplement*

If the student meets the requirements and there is a valid need for ESY services, then an ARD must be held (if it was not determined at the annual ARD). The ESYS ARD Supplement must be completed in its entirety in Empower during the ARD and included in the IEP. The ESYS IEP goals and objectives must be reviewed as indicated on the supplement. The schedule of services must be completed based on the agreed upon goals/objectives that will be addressed during ESY. If ESY is recommended however the parent declines, check the box to indicate the parent's decision and note the decision in the ARD deliberations.

2. *Documentation of Regression/Recoupment*

If the recommendation for ESYS is based upon regression/recoupment data the ard committee must complete the regression/recoupment form to provide data regarding pre-break performance baseline and information regarding the number of weeks needed for recoupment.

3. *ESYS IEP Goals & Objectives*

If the student meets the ESYS recommendation requirements, then the committee needs to identify those goals in which the student has shown either regression (which has been noted on the regression/recoupment form) or is a critical skill on the student's IEP. **The ARD Committee deliberations must specify the time and duration for ESYS instructional and/or related services.** The ESYS IEPs must be indicated in the dropdown text box located within the ESYS supplement.

4. *Transportation Supplement*

If the student will be receiving specialized transportation during ESYS, then it must be indicated in Empower by checking the box to indicate Transportation is needed for ESY, and the transportation supplement must be completed during an ARD. If a parent has declined specialized transportation during the regular school year, but the ARD committee determines that there will be a need for this service during ESYS, then an ARD must be held to add this service. It should be noted in the deliberations that this service will only be for the duration of ESYS. In addition, a Transportation Supplement must be completed and submitted along with the other ESYS paperwork. All information must be updated and confirmed before submitting the form. For more information about the Fort Bend ISD Special Transportation process, please see the self-named area in Section 3 of this Special Education Administration Procedures.

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Once an ARD has been held to make the recommendation for ESY and all paperwork has been completed, the ESY recommendations must be submitted to the Program Manager overseeing the program in which the student receives services. All ESY documents must be locked. A copy of the ESY information will be submitted to the Assistant Director overseeing the ESY program.

## **ESYS Guidance**

*The ESY services to include the time and duration should be noted on the ESY Supplement and documented clearly in the deliberations. For example - “The ARD committee has determined that the student needs, and ESY will be provided, 4 hours per day, 3 days per week, for 4 weeks with no more than a 2 consecutive week break during the summer of ESY services to maintain the current level of academic and/or functional performance of critical skill areas as described on the ESY goals/objectives approved by the ARD committee.”*

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## **Extracurricular/ Non-academic Activities**

***TEC § 33.081; 34 CFR §§ 300.107, 300.117***

- The ARD committee shall consider if any accommodations are necessary for a student to participate in extracurricular/nonacademic activities. This accommodation should be documented in the IEP. In addition, at the Annual ARD, the committee should discuss the student's interest in participating in extracurricular/nonacademic activities, discuss the requirements for participation (try outs, etc.), and determine if there are barriers that are prohibiting the student from having the opportunity to participate.
- The ARD committee should not place the student into specific extracurricular/nonacademic activities. Students receiving special education services must follow similar entrance criteria that non-disabled students must follow to participate in extracurricular/nonacademic activities. However, the ARD committee may determine accommodations that are required should he/she meet participation requirements.
- All students receiving special education services must be afforded the same opportunities to participate in extracurricular/non-academic activities as their non-disabled peers. Accommodations must be reasonably provided to the student to remove the barrier(s) of their disability. This includes providing communication to parents of students served with special education services regarding extracurricular/non-academic activities in the same/similar manner and timeframe as their non-disabled peers.

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## Functional Behavior Assessment (FBA)

If the student is not identified as receiving special education services, the Student Support Team (SST) should meet to review the concerns and follow the guidance provided within the Responsive Instruction (RI) manual.

**If the student is served with special education services and is displaying behavior that is interfering with learning of self or others and does not have a current Behavior IEP/BIP, the following procedures apply:**

1. Concerns are brought to the student’s case manager.
2. The case manager will:
  - a. Review these procedures with the teacher/administrator bringing the concern
  - b. Explain the data collection process
  - c. Provide and review forms for data collection
  - d. Discuss informal behavior plans or strategies utilized and how to collect data on student response
  - e. Assist the teacher, as needed with the data collection
  - f. Inform the CCC/ARD Facilitator/Department Head that there are behavioral concerns and determine what information has been provided to the school staff
3. The case manager will monitor the data collection process for approximately two (2) weeks.
4. If the student’s behavior improves without the need for a formal Behavior IEP/Behavior Intervention Plan, no further action is needed. The case manager will keep the documents in the student’s working/teacher folder.
5. If through the data collection and informal behavior plan process the student’s behavior improves with the implementation of a behavior plan and that plan is needed for the behaviors to be maintained, continue with step number 7 regarding the staffing process.
6. If the behavior does not improve, the case manager will ask the CCC/ARD Facilitator/Department Head to schedule a staffing.
7. The staffing must include the teacher, case manager, and LSSP assigned to the campus. The campus administrators must be invited, but their attendance is optional.
8. At the staffing, the LSSP, or member of the Behavior Response Team (BRT) will take the lead and review all concerns and discuss the process of conducting a Functional Behavior Assessment to support the development of Behavior IEP and Behavior Intervention Plan.
9. The LSSP, or member of the Behavior Response Team (BRT) will be responsible for conducting a Functional Behavior Assessment.
10. The LSSP should schedule a SCORE meeting to determine the need for additional evaluation. A SCORE meeting is a planning meeting held outside the ARD process to consider the scope of the evaluation. The SCORE meeting process includes consulting the teachers, parent, and other staff members involved with the student.
11. If the SCORE meeting determines that additional evaluation is needed, the Notice of Evaluation will be given to the parent and consent obtained. *It is recommended that an ARD committee*

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*meeting is held to discuss the need to develop additional interventions and supports until the FBA can be completed.*

12. Once the consent is obtained, the LSSP or member of the Behavior Response Team (BRT) will conduct the FBA.
13. Upon completion, the LSSP or member of the Behavior Response Team (BRT) will contact the CCC/ARD Facilitator/Department Head to schedule a staffing and ARD to review the new evaluation and present the FBA and draft BIP/Behavior goal(s).

**If the student is served with special education services and is displaying behavior that is interfering with learning of self or others and does have a current Behavior IEP/BIP, the following procedures apply:**

1. Concerns are brought to the student's case manager.
2. The case manager will:
  - a. Review these procedures with the teacher/administrator bringing the concern
  - b. Review the current Behavior IEP and BIP and answer any questions regarding the implementation
  - c. Explain the data collection process
  - d. Provide and review forms for data collection if the teacher does not have them
  - e. Assist the teacher as needed with the data collection
  - f. Inform the CCC/ARD Facilitator/Department Head that there are behavioral concerns and what information has been provided to the school staff.
3. The case manager will monitor the data collection process for approximately two (2) weeks.
4. If the student's behavior improves without the need for changes to the BIP, no further action is needed. The case manager will keep the documents in the student's working/teacher folder.
5. If the behavior does not improve, the case manager will ask the CCC/ARD Facilitator/Department Head to schedule a staffing.
6. The CCC/ARD Facilitator/Department Head will schedule a staffing. The staffing must include the teacher, case manager, and LSSP assigned to the campus. The campus administrators must be invited, but their attendance is optional.
7. At the staffing, the LSSP will take the lead and review all concerns and documentation.
8. The LSSP will review the last FBA conducted, review data and determine if the Behavior goal(s) and BIP need to be changed based on the data or if a new FBA should be recommended.
9. If a FBA is not required at this time, proposed changes to the behavior goal(s) and BIP should be discussed, and an ARD meeting should be held to consider proposed changes. Note\*\* If the student does not respond to a new Behavior IEP/BIP within 4 weeks of the ARD accepting the changes, the LSSP should be contacted to complete a new FBA.

***House Bill 785 signed by the Governor on June 4, 2021 and became effectively immediately includes additional requirements for Functional Behavior Assessments when the District takes disciplinary action that results in a change of placement. See Section 7, Manifestation Determination Review.***

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## Implementation of the IEP

### **34 CFR § 300.323; 34 CFR § 300.323**

After the IEP is written and a placement is determined, the Case Manager shall coordinate with the student’s special and general education teachers and related service providers to ensure the student is provided the special education and related services identified in the IEP.<sup>25</sup> The Case Manager shall make the student’s IEP accessible to each regular education teacher, special education teacher, related service provider, and any other service provider who is responsible for its implementation.<sup>26</sup> Additionally, the Case Manager shall inform each general education teacher, special education teacher, related service provider, and any other service provider who is responsible for the implementation of the student’s IEP, of each of her or his specific responsibilities related to implementation of the student’s IEP and the specific accommodations, modifications, and supports that must be provided for the student as identified in the IEP.<sup>27</sup>

Each Department Head/Case Manager shall ensure that each teacher who provides instruction to a student with disabilities:

- has access to the student's current IEP,
- is informed of the teacher's specific responsibilities related to implementation of the IEP, such as goals and objectives,
- is informed of needed accommodations, modifications, and supports for the student that must be provided for the student in accordance with the IEP, and
- has an opportunity to request assistance regarding implementation of the student's IEP.<sup>28</sup>
- ***Is informed that the accommodations, modifications, and supports for the student noted in the ARD should be followed and additional accommodations, modifications, and supports should not be provided to the student more than they would be provided for any other student in the class. Providing these additional supports is considered noncompliant according to the Texas Education Agency (TEA).***
  - *For example, if the student has extra time on his/her late assignments up to one day noted in the ARD, the student should not be provided more than one day to turn in late assignments if no other students are allowed to turn in late assignments beyond one day.*

Each Department Head/Case Manager shall develop a process to be used by a teacher who instructs a student with a disability in a regular classroom setting to:

- request a review of the student's IEP, and
- provide input in the development of the student's IEP.

Each CCC/ARD Facilitator/Department Head shall timely respond to the teacher's request and provide for notification to the student's parent or guardian of the teacher’s response.<sup>29</sup>

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<sup>25</sup> 34 CFR § 300.323(c)

<sup>26</sup> 34 CFR § 300.323(d)

<sup>27</sup> *Id.*

<sup>28</sup> 19 TEX. ADMIN. CODE § 89.1075(c)

<sup>29</sup> 19 TEX. ADMIN. CODE § 89.1075(d)

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## Annual or Review/Brief ARD meetings

Throughout the year, the teacher and case manager monitor the implementation and effectiveness of the BIP and Behavior IEP. Data should be collected on the behaviors addressed in the BIP/Behavior IEP, as well as on the interventions implemented and results of implementation.

In preparing for the ARD meeting, the teacher will review the mastery criteria listed on the Behavior IEP and consult with the LSSP if needed. If the student has mastered the annual Goal for the BIP/Behavior IEP, the ARD committee should decide whether the child should

- Continue with a BIP/Behavior goal but increase the mastery criteria, or
- Discontinue the BIP/Behavior IEP altogether.

If the BIP/Behavior IEP needs minor changes, the Special Education teacher can write the proposed edits into EmpoWER, and the proposed BIP/Behavior IEP must be considered at the ARD. If the BIP/Behavior IEP requires major changes or the student is not mastering the Behavior IEP goal, the LSSP must become involved and consider the need for a new FBA (see Functional Behavior Assessment procedures in this section of the Special Education Administrative Procedures).

*Beginning with the 2021-22 school year, per the passing of **HB785**, if a BIP is included as part of a student's IEP, the BIP must be reviewed by the ARD committee annually, and more frequently if appropriate to address the following:*

- *Changes in a student's circumstances that may impact behavior*
  - *Placement of student in a different educational setting*
  - *Increase or persistence in disciplinary actions taken regarding the student for similar types of behavioral incidents*
  - *Pattern of unexcused absences*
  - *Unauthorized unsupervised departure from an educational setting (elopement)*
- *Safety of the student or others*

*\*Note, FBISD has established these expectations regarding the annual review of a BIP. However, closer scrutiny and attention to the changes mentioned above should be addressed timely within the annual ARD period if necessary.*

*If the Special Education teacher/Case Manager requires assistance with the revision of the Behavior IEP/BIP and the LSSP is not available, the Program Manager for Evaluation should be contacted to determine appropriate central office staff to assist the teacher.*

## Additional Information

What if an ARD meeting is held and a Behavior IEP/BIP is requested, but no data has been collected?

The ARD committee should discuss that a FBA should be completed prior to the Behavior IEP/BIP being written. The data collection phase is necessary prior to developing a Behavior IEP/BIP. The ARD committee may consider the development of an interim Behavior Intervention Plan until the FBA can be completed.

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## Grading and Reporting

### *TEC § 28.022*

While students who receive special education services are required to have annual individualized education program (IEP) goals, these goals are not a substitute for the grading of assignments linked to the general curriculum. Instead, IEP goals identify specific areas of need in which a student will receive specially designed instruction to access and progress in the general curriculum. Rather than substituting for or supplanting the general curriculum, IEP goals help a student access and progress in the general curriculum.

The ARD committee is responsible for making decisions surrounding grading practices for students with disabilities. ARD committees must base grading considerations and decisions on individual student needs. Day-to-day decisions by classroom teachers pertaining to grading should reflect the ARD committee’s choices for accommodations, modifications, IEP goals, progress monitoring, and grading.

ARD committees must ensure that accommodations and modifications included in the IEP are effective for the student. Accommodations and modifications should assist students in accessing and progressing in the general curriculum and in meeting his/her IEP goals. Effective implementation of the student’s IEP should result in the ability to demonstrate understanding through passing grades. Please note, students served with special education services should not be “passed” only because of their special education status.

Educators involved in the decision-making process should react quickly to low grades that might indicate a student is struggling to access or make progress in the general education curriculum. When there is concern that the current supports and supplementary aids and services are no longer effective for a student, an ARD committee meeting may need to take place. The ARD committee must revise the IEP as appropriate to address a student’s lack of expected progress toward the annual goals and in the general education curriculum.

Each student who receives special education services will receive both an IEP progress report which indicates progress on IEP goals and objectives and a report card/progress report which shows progress in accessing the grade level curriculum in the Fort Bend ISD format. Updated IEP goals & objectives should be disseminated in conjunction with FBISD grade reporting.

1. The grading of a student identified with special education services served in a general education classroom is based upon the ARD committee recommendations for, if any, modification of TEKS and other accommodations of pacing, methods, and materials needed. When accommodations and/or modifications have been agreed upon by the ARD committee, the IEP team is responsible for the following (in Fort Bend ISD the special education case manager assigned to the student served with special education services is responsible):
  - a. Informing the general education teacher of the recommended accommodations/modifications and ensuring accommodations/modifications are implemented,

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- b. Providing information concerning the student’s achievement levels, learning style, and behavioral needs,
  - c. Offering assistance to the general education teacher on a scheduled basis, as recommended by the ARD committee, and
  - d. Documenting contacts with the general education teacher, parent, and student, as determined by the ARD committee.
2. When the special education teacher serves as the teacher of record, the teacher should utilize a lesson plan which reflects the goals as stated on the IEP. Grades should evolve from the goals with supporting documentation of how the grade was determined.
3. When the general education teacher serves as the teacher of record, with students receiving special education services, the teacher will develop lesson plans which reflect the accommodations/modifications as stated in the IEP. Grades should evolve from the adaptations outlined in the IEP with supporting documentation of how the grade was determined (work samples reflecting evidence of applied accommodations/modifications).
4. Numerical grades or standardized grading indicators (as appropriate) will be recorded for each subject area in Skyward.
5. If a student identified with special education services is not progressing adequately toward goal mastery or curriculum access, the ARD committee must convene to discuss the student’s needs and make recommendations to help the student achieve success. Progress monitoring of both grades and goal/objective mastery must be conducted by the student’s instructional team during each 9-week grading period. If the student continues to exhibit a lack of progress, a staffing should be held to discuss the lack of progress and determine appropriate next steps for the student (see section below for further information).
6. If the student has excessive absences, an ARD committee should meet to discuss why the student is not attending school, the appropriateness of the IEP, need for additional testing, and compulsory attendance, as appropriate.
7. On occasion, the ARD committee will recommend that a specific subject be taught in a combination general education/special education instructional arrangement. The special education student’s grade, in this situation, may be determined proportionately by the general and special education teachers who provide the instruction, as determined by the ARD committee.
8. Unless the ARD committee designates otherwise, when a student is receiving homebound services, the general classroom teacher will be responsible for grading all assignments and recording grades on the report card and permanent record for all subject areas.

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## Educators' Grading Responsibilities in the General Education Setting for Students with Disabilities

General Educator	Special Educator
<ul style="list-style-type: none"> <li>• Maintains knowledge of the accommodations/modifications to be implemented in the IEP.</li> <li>• Partners with special educators to determine appropriate implementation of accommodations and modifications for specific content standards.</li> <li>• Implements any accommodations/modifications through development of appropriate assignments and assessments per the student's IEP.</li> <li>• Maintains documentation (according to LEA policy) of the provision of special education services to students as specified in each student's respective IEP.</li> <li>• Responsible for final grade determination for assignments and overall course/class (unless otherwise specified by the ARD committee).</li> <li>• Responsible for ensuring accurate reporting of grades.</li> <li>• Provides fair assessments that allow students an equal opportunity to demonstrate what they know (Bauer and Brown 2001).</li> <li>• Responsible for asking for a review of IEP through a staffing or ARD meeting if concerns/questions exist regarding student's IEP and/or lack of expected progress toward the annual goals and in the general education curriculum.</li> </ul>	<ul style="list-style-type: none"> <li>• Ensures general educator is aware of any individual student IEP-directed accommodations and/or modifications, including goals/objectives related to the content/course.</li> <li>• Assists in incorporating IEP- required accommodations and/or modifications into lesson plans.</li> <li>• May assist in final grade determination for both assignments and overall course/ class, as determined by the student's IEP.</li> <li>• Designs process/forms for collection of data on student progress on IEP goals/objectives.</li> <li>• May assist in grading assignments/tests.</li> <li>• May assist with recording and/ or reporting of grades.</li> <li>• Responsible for asking for a review of IEP if concerns/ questions exist regarding student's IEP and/or lack of expected progress toward the annual goals and in the general education curriculum, where appropriate.</li> </ul>
<p style="text-align: center;"><b>Classroom Paraprofessional</b></p> <ul style="list-style-type: none"> <li>• Provides any information requested by teacher(s) for consideration of grading.</li> <li>• Assists in preparation of materials as needed to implement accommodations/modifications.</li> <li>• Assists in documenting provided accommodations/modifications.</li> <li>• Implements supports under the direction of teacher(s).</li> <li>• May assist in grading objective assignments/tests (i.e. multiple choice, fill in the blank, etc.).</li> <li>• May assist in collection of data on student mastery of material using criteria/checklist developed by general or special educator.</li> </ul>	

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## Documentation of Conference to Review Lack of Expected Progress

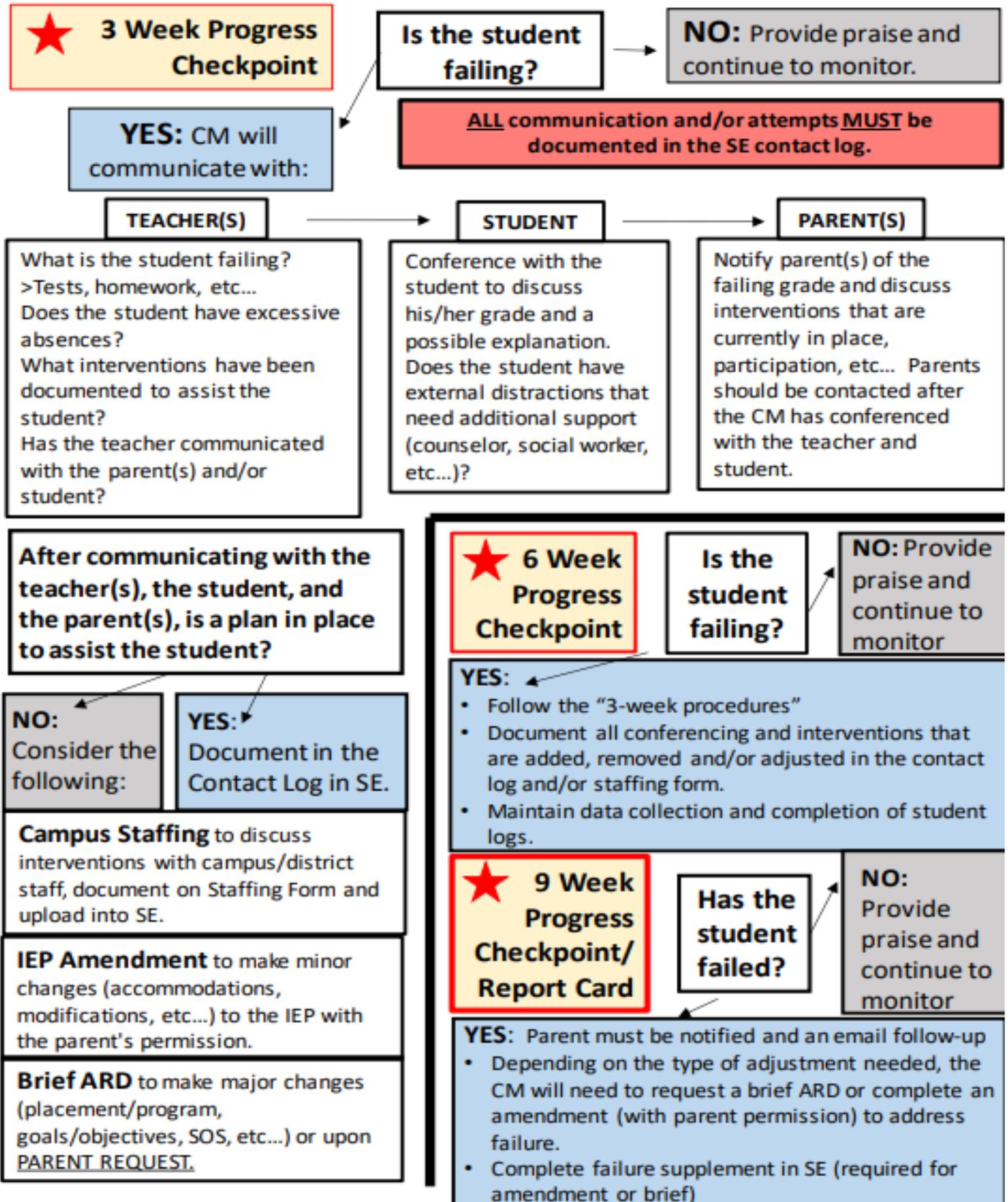
An ARD committee meeting or staffing is required to address a student’s lack of expected progress on his/her goals and objectives or within the general curriculum. The following procedure must be followed to determine the need for an ARD committee meeting.

1. At the end of each grading period, the special education case manager will review progress reports and/or report cards of all students on their caseloads.
2. If a student is making a grade of less than 70 for a nine-week period, the case manager will schedule a staffing with the following personnel to review the student’s progress.
  - a. Parent (This is optional for staffing. However, communication with the parent is necessary to inform of the lack of progress and should occur when student is underperforming in class. The teacher of record should contact the parent.)
  - b. Student (This is optional for staffing. However, communication with the student is necessary to inform of the lack of progress and should occur when student is underperforming in class by the teacher of record.)
  - c. General Education teacher(s) who have indicated the student is not being successful in class
  - d. Speech pathologist, if applicable, or other pertinent related staff member
  - e. Campus administrator

The [Case Manager Progress Monitor Guide](#) provides information on how to *closely monitor the student’s progress*. *A copy of the flowchart can be found below.*

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## Case Manager (CM) Progress Monitor Guide



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## Emergent Bilingual (EB) [formerly Limited English Proficient (LEP)]

*TAC §89.1226, 34 CFR 300.324(a)(2)(ii)-(iv)*

*Effective 9/1/2021, per SB2066, students who were formerly identified as Limited English Proficient (LEP) will now be identified as students who are Emergent Bilingual (EB). The bill emphasized a more collaborative effort between the ARD and LPAC committees in determining the plans for students for whom English is not their first language. In addition, the term “exited” when referring to students who have met the criteria outlined in their plan and no longer need the additional language services, will be referred to as “reclassified”.*

Below is a replication of the Guidelines for Identification of Reclassification of EB students with Disabilities: LPAC/Special Education Collaboration Team Document

### Introduction

This document has been developed as a guide for identification and exit of EB students with disabilities.

It represents the interpretation of Subchapter BB of the 19 Texas Administrative Code (TAC).

This guide provides the most current revision of the Texas Administrative Code that includes three additions to state law:

1. LPAC & ARD Collaboration
2. Identification of EB students
3. Exiting of EB students

### Identification & Reclassification of EB Students

Previously, the LPAC was solely responsible for identifying and reclassifying EB students. With the changes made to the TAC, the LPAC and ARD committee will collaborate to identify students as EB and to reclassify students from the bilingual and ESL programs. Sections from the TAC have been provided below regarding EB students with disabilities:

#### *19 TAC§89.1226 Testing and Classification of Students*

*(f)For entry into a bilingual education or English as a Second Language (ESL) program, a student shall be identified as Emergent Bilingual using the following criteria:*

*(4) The Admission, Review, and Dismissal (ARD) committee, in conjunction with the Language Proficiency Assessment Committee (LPAC) shall determine an appropriate assessment instrument and designated level of performance for indicating Emergent Bilingual as required under subsection (d) of this section for students for whom those tests would be inappropriate as part of the Individualized Education Program (IEP). The decision for entry into a bilingual education or English as a Second Language (ESL) program shall be determined by the ARD committee in conjunction with the LPAC in accordance with §89.1220(g) of this title (relating to LPAC).*

*(k)The ARD committee, in conjunction with the LPAC shall determine an appropriate assessment instrument and performance standard requirement for reclassification under subsection (h) of this for students for whom those tests would be inappropriate as part of the IEP. The decision to*

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*reclassify a student who receives both special education and special language services from the bilingual education or ESL program is determined by the ARD committee in conjunction with the LPAC in accordance with applicable provisions of subsection (h) of this section.*

As a result of the above changes to state law, members of the ARD committee need to be aware of current educational research as it pertains to students who are EB; while the members of the LPAC need to have basic knowledge of disabilities and how these disabilities can impact students' linguistics needs as second language learners.

## **“ARD COMMITTEE IN CONJUNCTION WITH THE LANGUAGE PROFICIENCY COMMITTEE” (ARD Committee/LPAC)**

State law specifies that the ARD committee “in conjunction with” LPAC determines an appropriate assessment instrument and performance standard requirement for entry and exit of EB eligibility for students with disabilities being served in special education. What is meant by “the ARD committee in conjunction with the LPAC”? TEA stated in the February 6, 2008 TETN that the “ARD in conjunction with LPAC” responsibilities could be accomplished in an informal meeting of key ARD and key LPAC members, and that the results of the informal meeting must be documented in some fashion. If a school district decides to have informal meetings to determine an appropriate assessment instrument and designated level of performance for EB identification and reclassification of students who are served in special education, then the results of the meeting must be forwarded and discussed in both the ARD meeting and the LPAC meeting.

In the ARD/LPAC meeting, the consensus members of the ARD committee make the final decision on issues of special education services, although the input of all ARD/LPAC team members should be invited and taken into consideration. The entire ARD/LPAC team, however, sets the criteria for EB identification and reclassification, as well as determines if the EB entry and reclassification criteria have been successfully met.

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## Fort Bend ISD ARD/LPAC Collaboration Model

### Campus ARD/LPAC Collaboration Team

As noted above, TEA allows school districts to determine which members of the ARD and LPAC are key members. Fort Bend ISD procedure defines the “ARD/LPAC Collaboration Team” as the key members and will include a minimum of three members:

1. Campus Administrator (member of both ARD and LPAC committees)
2. Special Education Case Manager (member of ARD committee)
3. LPAC Representative (member of LPAC committee)

### Informal Meeting (Staffing)

At a student’s staffing, the responsibilities of the ARD/LPAC collaboration team are as follows:

- Discuss identification for EB services
- Recommend entry and/or reclassification criteria
- Document ARD/LPAC Collaboration Team recommendations on the *ARD/LPAC Collaboration* form. This staffing form is only used to document recommendations for the ARD/LPAC committee and should be kept in the LPAC folder. This form does not go in the student’s state audit folder.

### ARD Meeting

At a student’s ARD meeting, the responsibilities of the ARD/LPAC collaboration team members are as follows:

- Discuss identification for EB services
- Recommend or approve entry and reclassification criteria
- Present ARD/LPAC collaboration recommendations
- Make program decision based on language of instruction (Bilingual Education or English as a Second Language)
- Monitor progress of student
- At end of year, determine if reclassification criteria have been met as documented on ARD/LPAC EB supplement form.
- If the established modified reclassification criteria have been met, a BRIEF ARD or an amendment must be held.

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## **Identification of EB Students**

State law requires that any student with a language other than English on the Home Language Survey must be tested for English proficiency. Upon initial enrollment all students must have a Home Language Survey (HLS) completed in their student record (HLS are only completed once, so the original or a copy of original should be included in the student record). The HLS shall be administered to each student new to the district and to students previously enrolled who were not surveyed in the past. If the HLS indicates a language other than English, testing must be initiated to determine English proficiency

All students who are being tested for English proficiency must be assessed in the following areas:

- Listening (grades PK-12)
- Speaking (grades PK-12)
- Reading (grades 2-12)
- Writing (grades 2-12)

## **Reclassifying Special Education/EB Students**

EB reclassification criteria for students with disabilities should follow as closely as possible the state and local reclassification criteria yet take into consideration the student's disability. For students whose disability would not require a change in the criteria and for students who can be reasonably expected to meet it, the EB Fort Bend ISD reclassification criteria should be utilized and not modified.

In rare cases, an EB student receiving special education services may qualify to be reclassified using modified criteria permitted under TAC 89.1225(k), which special considerations to an EB student for whom assessments and/or standards under TAC 89.1225 (h) are not appropriate because of the nature of a student's particular condition. Students considered for special reclassification criteria under TAC 89.1225(k) should only be those designated to take STAAR Alt 2 as determined by the ARD committee in conjunction with the LPAC.

Students should only be reclassified from the bilingual or ESL program at the end of the school year.

## **ARD/LPAC Supplement**

LPAC Supplement must be completed at the student's Annual ARD meeting and at the ARD that is held after the student meets regular modified reclassification criteria.

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## ARD/LPAC Collaboration Team Staffing and ARD Process

Whenever the ARD/LPAC collaboration team members meet to collaborate in the interest of the student, they should consider information regarding the cognitive and linguistic abilities, as well as the affective needs, of the student. These joint meetings may occur not only to facilitate a student entry into and reclassification, but also to review progress, determine linguistic accommodations and discuss other issues related to the student’s Individualized Education Plan (IEP). Recommendations from these collaborative efforts must be presented at ARD committee meetings to ensure that the appropriate considerations regarding the second language acquisition in English are addressed in the development of the student’s IEP. Decisions relating to services that impact second language acquisition must also be documented by the LPAC.

The [TEA LPAC and ARD Committee Collaboration document](#) includes additional information and resources regarding identification and reclassification of Dual-Identified students.

## Frequently Asked Questions

1. *After an ARD is held for a student receiving Special Education services who has met the criteria for reclassification from EB and the LPAC meets to reclassify the student, does there need to be a LPAC representative at the student’s ARD meeting?*

No. Once the student has been reclassified, the LPAC will monitor the student for two years according to the Commission Rules guidelines. There is no need for LPAC representative at the ARD once the student has been reclassified.

2. *We understand that the modified reclassification criteria must be set in an ARD PRIOR to State Assessment. Does this include TELPAS?*

Yes. TELPAS is part of the State Assessment for students with disabilities who are also identified as EB. Therefore, if there is consideration to modify the reclassification criteria, this ARD/LPAC Collaboration team meeting and ARD to review the modified reclassification criteria all must be held prior to the beginning of the TELPAS window.

3. *The Special Ed/EB process indicates that once the state assessment scores are received, an ARD must be held to review the scores and determine if the modified EB criteria was met and to discuss the plan to remove student from EB services. After the ARD meeting, an LPAC meeting must occur to review the ARD recommendation and formally reclassify the student. The LPAC procedures note that this should occur at the end of the year.*
4. *How do we handle the situation if an ARD is not held prior to summer dismissal due to scheduling difficulties?*

If the ARD and LPAC meetings are not completed at the end of the year, they should be scheduled prior to the first day of instruction during the next year. They can be reclassified at the beginning of the year under these circumstances. It is recommended

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that if there are a lot of students that will need ARDs and LPAC meetings at the end of the year, focus on the students who will be transitioning to a new campus first (4<sup>th</sup>, 6<sup>th</sup>, and 8<sup>th</sup> graders).

5. *Should every student who is receiving Special Education services and has “Spanish” checked on the Home Language Survey have an ARD/LPAC EB Supplement form in LPAC folder?*

Yes, though for most students as the reclassification criteria is not being recommended for modification, there will only be one box on the supplement checked for reclassification which states that the student will follow the state mandated EB reclassification criteria.

6. *Should LPAC/ARD Collaboration meetings take place before a PPCD/ECSE student is ever labeled as EB? (i.e., 3-year-olds who are tested when they turn 4)*

Yes, for those students who are evaluated at the Intake Center (3-year-olds) and will be turning 4 prior to September 1, an ARD/LPAC Collaboration team meeting should take place prior to an ARD meeting. If language testing is not conducted at the time of the initial evaluation, language testing must be completed upon the student’s enrollment in FBISD. An ARD/LPAC Collaboration Team meeting should take place to review the language testing results. Based upon the ARD/LPAC Collaboration Team Meeting an ARD may be needed if changes are recommended to the student’s current programming.

7. *What happens if the student does not meet the anticipated reclassification criteria, do we have to conduct another ARD/LPAC collaboration meeting and ARD?*

If a student with a disability does not meet State Assessment expectations, then an ARD meeting must be scheduled to consider additional interventions, changes to IEP, etc. Therefore, during the ARD meeting to discuss the student’s failure on the State Assessment, the previous ARD/LPAC EB supplement should be reviewed along with any previously set modified criteria. If the ARD committee determines there is a need to change the modified criteria, then a new ARD/LPAC EB supplement should be completed. If no changes are determined to be needed, then a new ARD/LPAC EB supplement does not have to be completed until the next annual ARD.

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## Least Restrictive Environment (LRE)

### Access to Facilities

#### *34 CFR § 104.21*

The District shall ensure that no qualified individual with a disability shall, because the District's facilities are inaccessible to or unusable by individuals with disabilities, be excluded from participation in, or be denied the benefits of the services, programs, and activities of the District or be subject to discrimination. The District shall operate each program, service, or activity so that when viewed in its entirety, it is readily accessible to and usable by individuals with disabilities. The District is not, however, required to make each existing facility or every part of a facility accessible to and usable by individuals with disabilities.

### Compliance

Campus or District compliance with these requirements may be achieved by, but shall not be limited to:

1. Redesigning equipment
2. Reassigning classes or other services to accessible classrooms or facilities within the building
3. Assigning aides to qualified individuals with disabilities
4. Visiting an individual's home
5. Delivering services at alternate accessible locations either at the campus or in another District facility
6. Constructing new facilities that comply with the law
7. Utilizing any other methods that would result in making services, programs, and activities accessible to individuals with disabilities

Written documentation that students have accessibility may be achieved by ARD/IEP documents and/or campus and District plans. Please contact the appropriate Special Education Program Manager for additional assistance.

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## Placement

### **34 CFR §§300.115 - 300.120**

Fort Bend ISD will, to the maximum extent appropriate, ensure that children with disabilities are educated with children who are nondisabled Special classes, separate schooling, or other removal of children with disabilities from the regular environment occurs only if the nature of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.<sup>30</sup> Once a student's IEP is fully developed, the student's ARD committee shall consider, and the student's IEP shall document, a placement determination based upon the individual needs of the particular student and the appropriate and least restrictive educational environment in which the IEP can be implemented. When making a placement decision, the ARD committee considers a continuum of alternative placements.

What does it mean to have a continuum of placement options for students? The District shall make available a continuum of alternative placements listed in the definition of special education under 34 C.F.R. § 300.38 (e.g., instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions), and make provision for supplementary services to be provided in conjunction with placement in the general education setting to facilitate such placement.<sup>31</sup> The IEP, evaluations, and other relevant data guide the ARD committee in making placement decisions.

Residential Treatment Centers (RTCs) or private residential programs are included in the continuum of placements.<sup>32</sup> The District is not required to place a student in a private residential program unless such placement is necessary to provide special education and related services. For a residential placement to be appropriate under the IDEA, the placement must be (1) essential in order for the student to receive a meaningful educational benefit, and (2) primarily oriented toward enabling the student to obtain an education. The District is not required to bear the costs of private residential services that are primarily aimed at treating a student's medical difficulties or enabling the student to participate in non-educational activities.<sup>33 34</sup>

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<sup>30</sup> 34 CFR § 300.114 (a)

<sup>31</sup> 34 C.F.R. § 300.115(b); 34 C.F.R. § 300.115(b); 19 TEX. ADMIN CODE §89.63

<sup>32</sup> 34 C.F.R. § 300.115

<sup>33</sup> *Richardson ISD v. Michael Z*, 580 F.3d 286 (5<sup>th</sup> Cir. 2009); 34 C.F.R. § 300.104

<sup>34</sup> Tex. Ed. Code § 29.008; Tex. Ed. Code § 29.012; 19 TEX. ADMIN. CODE § 89.61; [TEA's Residential Treatment Center \(RTC\) application process](#); 34 C.F.R. § 300.325(a)

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## LRE Questions appropriate for the ARD Committee

### 34 CFR §§300.114 - 300.116

The following are points for discussion and documentation as an ARD committee determines the appropriateness of the Least Restrictive Environment for a student with disabilities and a potential move to a more restrictive setting. {Based on *Daniel R.R. v. State Board of Education*, 874 F.2d 1036 (5th Cir. 1989)}

1. Can education in the general classroom, with the use of supplementary aids and services, be achieved satisfactorily for the student?
  - a. Has the Fort Bend ISD taken steps to accommodate the student with disabilities in the general classroom?
    - i. Did the District provide supplementary aids and services?
    - ii. Did the District provide accommodations?
  - b. Are the services provided sufficient or token gestures?
    - i. The District does not have to provide every conceivable supplementary aid or service.
    - ii. IDEA 2004 (Individuals with Disabilities Education Act) does not require general education teachers to devote all or most of their time to one student with a disability.
    - iii. IDEA 2004 does not require that general education teachers modify the general education program beyond recognition.
    - iv. General education teachers are not required to modify the general education curriculum to the extent that the student with disabilities is not required to learn any of the skills normally taught in general education.
  - c. Will the student receive an educational benefit from general education?
    - i. Can the student grasp the TEKS curriculum elements of the general education curriculum?
    - ii. Consider and document the nature and severity of the student's disability in relation to receiving educational benefit from general education.
  - d. Examine the student's overall educational experience in the mainstreamed environment, balancing the benefits of general and special education for each individual student.
    - i. What effect does the presence of the student with disabilities have on the general classroom environment and thus on the education that the other students are receiving?
    - ii. Discuss and document any disruptions in the classroom.
    - iii. Does the student require so much of the teacher's attention that the teacher will have to ignore the other students' needs to attend to the student with disabilities?
2. If education in a general classroom cannot be achieved satisfactorily, determine whether the student has been mainstreamed to the maximum extent appropriate for that student.

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- a. Determine if all academic and non-academic classes in general education with nondisabled peers has been considered or tried.
- b. Determine if mainstreaming for lunch, recess, or other times has been considered.

## **State Assessment Decision-Making Procedures for Students with Disabilities**

### ***19 TAC § 89.1055(b), 34 CFR § 300.305***

The Texas Student Assessment Program seeks to include as many students as possible in STAAR while providing alternate assessments for students whose academic achievement and progress cannot be measured appropriately with STAAR.

STAAR Alternate 2 End of Course assessments have specific participation requirements that must be carefully considered before recommending these assessments. The ARD committee cannot recommend an alternate assessment if the student does not meet the participation requirements. The participation requirements describe the type of grade-level instruction in the TEKS (accessed through prerequisite skills) that a student should be receiving to participate in an alternate assessment.

When making assessment decisions, the members of the ARD committee must weigh the benefits of rigorous and challenging expectations with the possibilities of success, given each student’s individual strengths, needs, instruction, and accommodations. The academic instructional decisions made by the ARD committee and documented in the IEP must always guide assessment decisions.

House Bill (HB) 3261, enacted by the 87th Texas Legislature in 2021, requires state assessments to be administered online by the 2022–2023 school year. Online administration allows students to receive accommodations like those they get in the classroom, provides faster test results, improves test operations, and allows new non-multiple-choice questions.

House Bill (HB) 1225, enacted by the 88th Texas Legislature in 2023, made changes to the administration of certain required assessment instruments in paper format.

Effective Date: Immediately, applies beginning with the 2023-2024 school year.

Districts are authorized to accept a request from a parent, guardian, or teacher in the applicable subject area for an administration of a paper-format assessment instrument for a student. The request for a paper format assessment must be submitted to the school district no later than September 15th for any fall assessments and no later than December 1st for any spring assessments. A school district is prohibited from administering paper format assessments to more than three percent of its student population, but this number does not include students with a paper format assessment designated on their IEP. Upon receipt of requests over three percent of students enrolled, a school district is required to accept requests in the order received until three percent is reached.

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All students enrolled in grades 3-11 are to participate in state assessment for the subject areas required at the appropriate enrolled grade. In Texas, that assessment is the STAAR (State of Texas Assessments of Academic Readiness) for students in grades 3-8, End-of-Course (EOC) assessments for high school students. Please note that students who take an alternative assessment will take the STAAR Alternate 2 in all grade levels and subject areas. The ARDC must determine if the student can take the standard assessments or the alternate form of the assessment.

## **Types of STAAR Assessments**

### *STAAR*

Measures a student’s mastery of the state-mandated curriculum, the Texas Essential Knowledge and Skills (TEKS).

### *STAAR Online*

A general assessment administered online with accommodations integrated into the online system, designed for students with disabilities who meet the eligibility requirements.

### *STAAR-Alternate 2*

STAAR Alternate is an alternate assessment based on academic standards and is designed for students with significant cognitive disabilities receiving special education services. Additionally, the students must meet participation requirements. STAAR Alternate 2 was developed to meet federal requirements of both the Elementary and Secondary Act (ESEA) and the Individuals with Disabilities Education Act (IDEA). ESEA requires that all students be assessed in specific grades and subjects throughout their academic career, whereas IDEA requires that students with disabilities have access to the same standards as their non-disabled peers and be included in statewide assessments. STAAR Alternate 2, which was redesigned because of state legislation passed in 2013, is a standardized assessment administered individually to each eligible student.

### *STAAR Alternate 2 End of Course Exams (SAEOC)*

For students enrolled in grades 9-12, the ARD committee will determine which of the STAAR Alternate End of Course (SAEOC) exams required for the graduation.

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## TELPAS

The Texas English Language Proficiency Assessment System (TELPAS) is designed to assess the progress that Emergent Bilingual (EB)/Limited English Proficient (LEP) students make in learning the English language. TELPAS measures English language proficiency in the following domains:

- Grades K–1 reading, listening, speaking, and writing
- Grades 2–12 reading, listening, speaking, and writing

### *TELPAS Alternate*

The TEA has developed the TELPAS Alternate assessment to meet the federal requirements mandated under *Every Student Succeeds Act* (ESSA), which requires states to administer an alternate English language proficiency (ELP) assessment for English learners (ELs) with the most significant cognitive disabilities who cannot participate in the general ELP assessment, even with allowable accommodations.

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## **FBISD Procedure**

### **Annual ARD**

Student participation in state assessment must be considered at every Annual ARD. The state assessment participation requirements provided by TEA should be followed in the decision-making process:

### **Review ARD**

Student participation in state assessment should be reviewed at any Review ARD to confirm that the recommended assessment continues to be appropriate. If the purpose of the Review ARD is to reconsider the student's participation in state assessment, the same decision-making process should be followed as those for the Annual ARD.

### **Prior to the ARD**

Prior to the ARD meeting in which State Assessment Decisions will be determined:

- For each student receiving special education services in Grades 3 and above, the case manager should gather as much information about accommodations for testing to present to the ARD committee.

### **During the ARD**

#### **PLAAFPs**

The PLAAFP should clearly document the results of previous year's state assessments as well as document accommodations found to be effective.

### **State Assessment Page**

Each subject area is to be addressed for state and district assessments for the current and next school years. Accommodations also need to be addressed for each subject area on the state assessment pages. For more information, see the SE Manager User Guide found on the EmpoWEr homepage. It is not necessary to also describe the accommodations in the committee deliberations. Additionally,

- Eligibility statements should describe how the student meets TEA's qualifying criteria.
- Each subject area in which accommodations are required must be addressed.
- For the accommodation of Oral Administration, you must describe how this is to be implemented – either totally in its entirety or partially upon student request.
- For the accommodation of Supplemental Aids, you must list the specific item for each subject area (e.g., Math = multiplication chart; English = blank graphic organizer, Mnemonic devices, etc.)

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## Participation Requirements for Alternative Assessments

Prior to reviewing the eligibility criteria for STAAR Alternate 2, the admission, review, and dismissal (ARD) committee must understand all assessment options, including the characteristics of each assessment and the potential implications of each assessment choice.

STAAR Alternate 2 is a statewide assessment for students with the most significant cognitive disabilities. STAAR Alternate 2 may only be considered if the student’s disability includes **intellectual functioning and adaptive behavior deficits that primarily and significantly affect the student’s ability to plan, comprehend, reason, and apply social and practical skills in everyday life**. Admission, review, and dismissal (ARD) committees may decide that a student’s knowledge and skills can best be assessed with STAAR Alternate 2 if the student meets all of the following participation criteria. The student:

- Has a significant cognitive deficit as documented in the student’s FIE.
- Requires specialized, extensive supports to access the grade-level curriculum and environment.
- Requires intensive, individualized instruction in all instructional settings.
- Accesses and participates in the grade-level TEKS through prerequisite skills.
- The decision to administer the STAAR Alternate 2 assessment is based on the student’s significant cognitive disability and NOT any other factors such as the student’s racial or economic background, English learner status, excessive or extended absences, location of service delivery, anticipated disruptive behavior or emotional distress, or any other such factors.

Additional information and resources regarding STAAR Alternate 2 Test Administration can be found on the [TEA Website](#).

The Texas Education Agency's alternate assessment participation requirements form, if one is made available to school districts, must be included in the student's IEP to document the statement required under this subsection.

## ARD Committee Deliberations

This section should highlight the state assessment discussions that were held during the ARD (previous test taken and score student received, accommodations routinely given in instruction and effectiveness, review of the State-approved accommodations and STAAR Alternate 2 Assurances. All the items should have been discussed and documented in prior ARD pages so the Committee Deliberations may just summarize these and add any additional conversations that ARD committee had regarding the State Assessment decision-making process. Therefore, it is not necessary to list each test and/or accommodation recommended in the committee deliberations.

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## TELPAS

When a student receiving special education services is Emergent Bilingual (EB)/Limited English Proficient (LEP), the ARDC must work in conjunction with the LPAC to ensure that issues related to both the student’s disability and language proficiency are carefully considered when assessment decisions are made. TELPAS assessments should be considered for all ELs receiving special education. Reclassification is considered on a case-by-case basis in collaboration with the ARDC and the LPAC. Standard EB/LEP reclassification criteria can be waived, and alternate criteria set in some circumstances, primarily in the case of severe cognitive disability. The following assessments should be considered:

- K-1: Holistically scored assessments in speaking, listening, reading, and writing are available. These assessments are administered by a qualified TELPAS rater based on student observations and work samples. Each domain is considered separately and documentation of the justification for not participating in any of the four domains is included on both the form provided by the EmpoWEr system and in the ARD Committee deliberations section of the ARD. The ARDC and LPAC should collaborate on the appropriate measures for all EB/LEP students regardless of determined disability(ies).
- Gr. 2-12: Assessments include holistically scored speaking, listening, and writing assessments rated by a qualified TELPAS rater from observations and writing samples. Students take the TELPAS Reading test either in a paper or online format. TELPAS reading tests for grades 2–12 are designed to determine where ELLs are on the continuum of English language reading proficiency and to measure their growth from year to year. The instrument starts with an initial understanding of high-frequency English words and phrases and culminates with the ability to read and understand texts similar to those written for English-proficient students. Each domain should be considered separately with justification documented when one or more domains is not assessed. Students taking STAAR should be assessed in all four domains using the appropriate allowed accommodations for TELPAS.

## FitnessGram Assessment

The FitnessGram Assessment measures three components of health-related physical fitness that have been identified as important to overall health and function. There are six areas that are tested. The ARD committee must address each area. The FitnessGram must be addressed for students in grades 3-12. If a student is receiving Adapted Physical Education services, the AdPE teacher will make recommendations to the ARD committee regarding the student’s ability or inability to participate in the six areas to be assessed.

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## Determining State Assessment for Transfer Students

### In-State

For students previously enrolled in a Texas Public School, contact the previous school to confirm which form of the state assessment was taken, the student's performance, and/or the assessment that was recommended. Make assessment recommendations during the 30-day Transfer Placement period based on previous testing and performance, or recommendations from the previous school. If assessment information is not available from the previous school, the Fort Bend ISD Assessment Department can access information from the state assessment data center with the student's PEIMS number (Social Security number or state ID number), name, and date of birth. Students considered EB/LEP must be assessed on TELPAS unless the student has been reclassified. Confirm participation in TELPAS and/or reclassification with the previous district. Both STAAR and TELPAS decisions should be considered at the Placement ARD.

### Out of State

Contact the previous school to:

- Confirm that the student was assessed
- Confirm subject areas assessed
- Ask if that assessment was the general assessment or an alternate assessment. To clarify what type of assessment was administered, it may be necessary to describe the Texas assessments and ask if the assessments are similar.
- Ask if the student received regular, modified, or an alternative curriculum. If the student received a modified or alternative curriculum, find out if the state assessment was designed specifically as an alternate assessment or if alternate norms were applied to the general assessment.
- Ask about performance.
- If the student is EB/LEP, confirm testing and performance measures used in the state to determine level of English acquisition and at what level the student is performing.

Make assessment decisions for the Transfer ARD based on information provided about previous assessments and the type of curriculum on which the student was instructed. For additional guidance, contact your Special Education Program Manager/Specialist.

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## Supplementary Aids and Services – Accommodations

**34 CFR §§ 300.42, 300.320(a)(4); 19 TAC 89.1050(a)(1); 28 C.F.R. 35.104**

Supplementary Aids and Services are “aids, services, and other supports provided in General Education classes, other educational-related settings, and in extracurricular and non-academic settings, to enable children with disabilities to be educated with non-disabled children to the maximum extent appropriate.”

Examples of supplementary aids and services:

- a. Qualified interpreters, note-takers, transcription services, written materials, assistive listening systems, and other effective methods for making aurally delivered materials available to individuals who are Deaf/Hard of Hearing, and student-specific aides.
- b. Qualified readers, taped texts, audio recordings, Braille materials, large print materials, or other effective methods for making visually delivered materials available to individuals with visual impairments
- c. Acquisition or modification of equipment or devices

These supplemental aids/services should be identified as what the aid is (i.e., “service animal”, “transcription services”, “large-print materials”, etc.) and should include details in the notes section as to what/how the aid/service is to be implemented.

The Full Individual Evaluation and ARD process identify the appropriate supplementary aids and services students require to be educated with non-disabled children to the maximum extent appropriate.

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## **Student-Specific/1:1 Aide or Paraprofessional**

The ARD committee determines a student’s required supplementary aids and services. To the extent practicable, supplementary aids and services, special education, and related services must be based on peer-reviewed research. Accommodations and/or modifications determined during the ARD should be those that the student must have on a regular basis in order to access and make progress in the general education curriculum. The ARD Committee considers any request by a parent for a specific supplementary aid and/or service such as service dogs, tape recorders, note-takers, and any other specific requests. Any decision to discontinue a supplementary aid should be based on data that demonstrates the student does not make progress in the general education curriculum when the supplementary aid is used.

The ARDC must determine and include in the child’s IEP:

1. The projected date for the beginning of the services and modifications,
2. The anticipated frequency of those services and modifications, and
3. The anticipated duration of those services and modifications.

Prior to holding an ARD Meeting to discuss a student-specific aide, the campus should contact the appropriate Program Manager to review all data to ensure that Least Restrictive Environment is being followed.

The discussion of a student-specific aide should be documented in the ARD Deliberations. If a student-specific aide is determined to be necessary for a student to access and make progress in the general education curriculum, the service should be documented on the *Determination of Services* page within EmpoWEr under supplemental services. Factors to consider include individual student needs, class size, staff-to-student ratio, and need for student support to demonstrate educational progress. Some of the most common reasons for this type of support include:

1. Protection/safety of the student,
2. Physical assistance/needs throughout day,
3. Instructional support,
4. Transition, and
5. Reducing student anxiety.

In the event a student-specific aide is provided to a student, the campus should develop a contingency plan for when the student-specific aide is absent.

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## REQUEST STUDENT-SPECIFIC AIDE

Decisions regarding the use of a student-specific aide (1:1), as with any other service, should be made on an individual basis and addressed by the ARD committee.

To ensure LRE, the following steps should be taken prior to making a recommendation to the ARD committee:

1. The CCC, ARD Facilitator, or Department Head gathers data to support the need for additional support.
2. The CCC, ARD Facilitator, or Department Head contacts the appropriate Program Manager who supervises the student's program and services to schedule a staffing.
3. The Special Education Program Manager will attend the staffing, review all data, and conduct an observation of the student.
4. After the data gathering process is completed, the Special Education Program Manager will make a recommendation to be considered by the ARD committee.
5. If the ARD committee determines that a student-specific aide is needed, data supporting this decision and its effect on the Least Restrictive Environment should be documented in the ARD meeting minutes, as well as the Determination of Services page of the IEP meeting. ***\*Note: a student-specific aide should be required for the entirety of the time the student is at school and not only for a period of time. This should only be considered when there are personal care services that are required that cannot be provided by staff already assigned to the program/campus. The need for the student-specific aide should be reviewed and considered at each annual ARD meeting.***

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## Documenting Student-Specific Aides in EmpoWER

If the ARD committee determines the need for a student-specific aide, the campus will need to hold an ARD meeting to document the decision on the Determination of Services page of the IEP meeting.

On the Determination of Services page:

- ❖ Enter “Student-Specific Aide” in the Supplementary Aids and Services section.
- ❖ Type = Additional Aids/Support” – Detail need for student-specific aide for assistance with personal care services and mobility support in all classes.
  - ”Aid/Service to be provided – Description of support to include frequency/duration and purpose. *Example: “1:1 Student-Specific Aide to be provided 5 days/wk 375 minutes/day*

On the Consideration of Least Restrictive Environment page:

- ❖ Include the data and documentation used to support the need for a student-specific aide in the “Benefits and/or Harmful Effects” section.

In the ARD Deliberations:

- ❖ Include the discussion about the need for the aide
- ❖ Discuss and report on the data to justify the decision for the additional support
- ❖ Document the effect on LRE
- ❖ Record the amount of time needed for the student-specific aide. This should mirror the documentation listed on the Determination of Services page

Documentation of student-specific aide is needed for various reasons, such as:

- ❖ Reports from SE
- ❖ Determining campus staff needed for all services
- ❖ Medicaid billing
- ❖ Student need of support

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## Audio Recording<sup>35</sup>

Federal law does not prohibit a parent or school official from recording ARD meetings. State departments of education or school districts can require, prohibit, limit, or regulate the use of recording devices at an ARD meeting.

An audio recording of the student's IEP translated into Spanish or the parent's native language, means that all the content in the student's IEP in English is orally translated into the target language and recorded with an audio device. The only meetings the campus must record are any ARD meetings that use an interpreter's assistance. The campus will provide the parent with an audio recording of the ARD committee meeting at which the parent was assisted by an interpreter. Any translated ARD meetings must be uploaded into the student's electronic folder upon completion of the ARD meeting.

**If the meeting is not being translated and the parent/guardian requests that the meeting be recorded, the Campus Compliance Coordinator, ARD Facilitator, or LEA will inform the parent/guardian that they may record the meeting. If the parent/guardian decides to record, they should inform the whole committee that they will be recording. *If a parent/guardian chooses to record the meeting the District is not required to record the meeting. In the event the District does not record the meeting, the parent/guardian will be informed.***

***If the District does record the meeting, it is suggested to record on a digital recorder and not via TEAMS audio/ video due to the size of the recording. If a digital recording is used, it must be uploaded into the student's electronic file as it is an educational record.***

## Service Animals

### **28 C.F.R. §35.104**

Requests for the Use of Service Animals by Enrolled Students, Under the ADA Section 504

## PURPOSE

The purpose of these procedures is to establish guidelines for the use of service animals by students in the Fort Bend Independent School District, including school buildings, vehicles, and other property. These procedures will be used to assist Fort Bend ISD personnel in handling requests for service animals, including directing parents' requests to the proper individuals within Fort Bend ISD, and advising parents of their rights under the relevant laws. For additional information regarding Service Animals, please refer to Fort Bend ISD Board Policy FBA (LEGAL).

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<sup>35</sup> *Ltr to Anonymous*, 40 IDELR 70 (OSEP 2003). Part B does not address the use of audio or video recording devices at IEP meetings, and no other Federal statute either authorizes or prohibits the recording of an IEP meeting by either a parent or a school official. Therefore, an SEA or public agency has the option to require, prohibit, limit, or otherwise regulate the use of recording devices at IEP meetings. If a public agency has a policy that prohibits or limits the use of recording devices at IEP meetings, that policy must provide for exceptions if they are necessary to ensure that the parent understands the IEP or the IEP process or to implement other parental rights guaranteed under Part B. An SEA or school district that adopts a rule regulating the tape recording of IEP meetings also should ensure that it is uniformly applied.

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## **FEDERAL LAWS CONCERNING SERVICE ANIMALS IN SCHOOLS**

### Individuals with Disabilities in Education Act

Under the Individuals with Disabilities in Education Act (“IDEA”), eligible students are entitled to a free, appropriate public education (“FAPE”). The parent may request that an ARD committee consider whether the use of a service animal is necessary for the student to receive a FAPE. If the ARD Committee determines that the student can be provided FAPE without the use of the animal, the animal does not become a related service or support under a student’s IEP.

### Americans with Disabilities Act and Section 504 of the Rehabilitation Act

Under the Americans with Disabilities Act (“ADA”) and Section 504 of the Rehabilitation Act (Section 504), schools are generally required to allow a disabled individual to be accompanied by a service animal, so long as the animal meets the ADA definition of “service animal,” the animal is under the control of its handler, is housebroken, and does not pose a direct threat to the health and/or safety of others. Exclusion of an animal could be discrimination based on disability. The ADA requires public entities to appoint a person to handle claims of disability discrimination, the Section 504 Coordinator (See Board Policy FB and FFH). Additionally, the Section 504 committee should convene to apply the ADA guidelines and determine if additional accommodations are needed for access or for an equal educational opportunity.

For students who are eligible under Section 504 and have a Section 504 accommodation plan, a Section 504 committee should convene to review the plan to ensure the child continues to have equal educational opportunity and to consider reasonable accommodations. Additionally, the Section 504 committee should convene to apply the ADA guidelines and determine if additional accommodations are needed for access or for an equal educational opportunity.

## **DEFINITION OF SERVICE ANIMAL**

Service animals are defined by the ADA as any dog or miniature horse that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. The work or tasks performed must be directly related to the individual’s disability. The crime deterrent effects of an animal’s presence and the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purposes of this definition. 28 C.F.R. §35.104. A service animal is not a pet.

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## PROCEDURES/REQUIREMENTS for Students

Use of service animals by a student with a disability is subject to the following procedures and requirements:

A. Application for Use of Service Animal –Parents/Adult students must submit a request, *Service Animal Documentation and Medical Information Sheet* found in the Appendix of Section IV of the Special Education Administrative Procedures) for the use of service animals to the Executive Director, Student Support Services, who is the District 504 Coordinator. The campus administrator or CCC/ARD Facilitator must notify the Executive Director of Student Support Services of the request. Requests for the use of service animals on School District property must, whenever possible, be made no less than fifteen (15) business days prior to the proposed use of the service animal. The animal may be required to demonstrate that it is a trained service animal by performing the functions identified by the owner/user that are intended to mitigate the impact of a disability.

B. Determination of Whether Animal is a Service Animal - Applications for use of Service Animal will be reviewed by the District 504 Coordinator. The District 504 Coordinator will determine if the animal meets the definition of service animal under the ADA. If the animal meets the definition of service animal and there are no grounds to remove the animal, the student will be allowed to use the animal on campus. All applications for use of the service animal on School District property will be considered on a case-by-case basis. Subject to the IDEA and Section 504, approval of the use of the service animal is subject to periodic review, revision, or revocation by the District. At a minimum, the request for a service animal will be reviewed annually. The request for use of the service animal must be renewed annually, prior to the start of each subsequent school year. In addition, the request must be renewed whenever the student changes schools or when the student desires to use a different service animal.

C. Service animals necessary for FAPE - If the student is eligible for special education services under the IDEA, an ARD committee must be scheduled, and the student's ARD committee will determine if the animal is necessary for FAPE. The use of a service animal is a methodology. If the student's needs can be met by a method other than the use of a service animal, such as with assistive technology or adult support, the service animal is not necessary for FAPE. The need for a service animal is subject to periodic review and revision by the ARD committee. At a minimum, the student's IEP and the need for a service animal will be reviewed annually. A service animal will not be included as part of a student's IEP unless the ARD committee determines the animal is necessary for a FAPE.

D. Agreement for Use of Service Animal - If the animal meets the definition of a service animal, the parent must sign and return the *Agreement for Use of the Service Animal*, (Found in Appendix) prior to the service animal being introduced into the schools setting. Fort Bend ISD requests, but does not require, that Service Animals wear an orange collar and a leash or a vest at all times that identifies it as a service animal to students and staff.

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E. Exclusion of Service Animal – Under the Americans with Disabilities Act, a service animal may be excluded if: 1) it is out of the handler’s control and the handler cannot take effective steps to control the animal; 2) the animal is not housebroken; 3) the animal poses a direct threat to the health or safety of others; or 4) the animal’s presence or behavior fundamentally alters the nature of the School District’s service, program, or activity.

F. Responsibility for Service Animal

- a. It is the responsibility of the student who uses a service animal pursuant to this procedure to provide proper handling of the service animal. The service animal must be under the control of the handler at all times. The school district is not responsible for the care or supervision of the animal. Any cost incurred to handle the service animal will be the responsibility of the adult student or parent of the student who uses the service animal. The school nurse will be consulted by school administration regarding any known allergies among the school population. Any measures needed to minimize contact between any allergic students and the service animal will be identified by the school administration and followed by the handler.
- b. The service animal shall have a harness, leash, or other tether unless either: (a) the handler is unable because of a disability to use a harness, leash, or other tether; or (b) the use of such device would interfere with the service animal’s safe, effective performance of work or tasks. In such circumstances, the service animal must be under the handler’s control through another effective means such as voice control or signals. The handler will be responsible for ensuring the service animal is provided any food and water needed by the animal and regular outside time to relieve itself in a designated place, including proper disposal of waste. Any food provided at the school must be contained in sealable containers. The service animal will not be allowed on school furnishings unless it is required for performance of its work or task. It is the handler’s responsibility to inform others that the animal is a service animal and should not be petted, bothered, harassed or fed.
- c. The adult student or the student's parents/guardians are liable for any damage to school or personal property and any injuries to individuals caused by the service animal. The District and its employees shall be held harmless in the event that the animal damages property or causes harm to any individual.

G. The District may, at its discretion, require that the student/parent requesting the use of a service animal complete the steps of this procedure, as often as reasonable so that the District may ensure the safety of patrons and the continued need for the service animal to the student.

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H. Prior to the introduction of the service animal into the school, relevant campus staff will create a plan with the student and the student’s parent to integrate an approved service animal into the classroom and school environment and to meet the animal’s basic needs during the school day. The plan will consider appropriate training for school staff, emergency evacuation and disaster response, and any other activities or conditions appropriate for the learning environment.

I. To the extent that use of a service animal is not a related service addressed in an IEP or Section 504 plan, an integration plan does not constitute a service or accommodation under the IDEA or Section 504.

J. The introduction of a service animal into the school setting may result in medical issues among other students and/or employees. Should such issues arise, the District will resolve those issues by considering the needs of all persons involved. The student’s schedule may be altered, or other appropriate action taken in order to accommodate the document needs of all students and staff on the campus.

K. Fort Bend Independent School District follows all applicable laws and regulations to protect the health and safety of the students and employees of Fort Bend ISD. Texas law pertaining to the treatment of animals shall apply. See Tex. Penal Code Chapter 42 and Tex. Human Res. Code Chapter 121.

## **COMPLAINT PROCEDURES**

Fort Bend Independent School District provides training to staff to ensure compliance with the ADA and Section 504 regarding requests for service animals. Any individual who believes that he/she is being denied access to buildings or programs, or discriminated against based on disability, should immediately inform the District 504 Coordinator, Deena Hill at 281-634-1143. Any disputes or complaints by any person involving service animals should be made in writing to the District 504 Coordinator. Some disputes may be subject to the grievance procedures outlined by School Board Policy and/or in the Student Handbook.

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## Service Animal Procedure Checklist (Internal Use)

- Attachment 1 and Attachment 2 (optional) Submitted to \_\_\_\_\_ (Campus name), on \_\_\_\_\_ (Date)
- Attachment 1 reviewed by Campus Principal
- Attachment 1 and 2 reviewed by 504 Coordinator/Division Specialist or designee
- Attachment 1 and Attachment 2 (if applicable) Reviewed by ARD Committee
- ARD Committee Decision
  - Required for FAPE \_\_\_\_\_
  - Not required for FAPE \_\_\_\_\_
- Final Approval if not Required for FAPE
  - 504 Coordinator \_\_\_\_\_
  - Date of Approval \_\_\_\_\_
- Forward Approval to
  - Campus Principal
  - Executive Director, Student Support Services
- Campus Admin will create a plan for the integration of approved service animal

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## Transition Planning

**34 CFR 300.43(a), (b); 34 CFR 300.320(b), 20 USC § 1401(34) (A), TEC, §29.011 and §29.0111, §89.1055(h)**

Transition planning is a process designed to facilitate a student’s movement from school to post-school activities and assist students with disabilities to achieve their postsecondary goals in the areas of education, employment, and adult services, independent living, or community participation. Through transition planning, annual goals and a coordinated set of activities focusing on both academic and functional skills are established to facilitate progress towards a student’s postsecondary goals.

Transition will address transition for each student receiving special education services prior to the age of 14, or in 7<sup>th</sup> grade, whichever comes first.

## Transition Process

1. A consent letter for permission to invite an agency is sent home for the parent to sign prior to the ARD meeting addressing transition. The *Consent: Transition Services* form in EmpoWEr must be signed by the parent/adult student prior to the ARD Notice being sent home, if the third-party agency will be invited to the ARD.
2. Age-appropriate transition assessment must be completed for each student. This should include student assessment (interest survey, ability assessment, data collected by teachers), parent input via parent survey or questioner, and teacher input via teacher survey or questioner. If additional assessments are needed, the case manager will contact the Transition Teacher for additional resources. In addition to the parent, teacher, and student surveys, transition assessments should vary from one year to the next.

The ARD committee must consider and, if appropriate, address the following issues in the IEP as part of the Transition Process:

1. appropriate student involvement in the student's transition to life outside the public school system,
2. if the student is younger than 18 years of age, appropriate involvement in the student's transition by the student's parents and other persons invited to participate by:
  - a. the student's parents; or
  - b. the school district in which the student is enrolled,
3. if the student is at least 18 years of age, involvement in the student's transition and future by the student's parents and other persons, if the parent or other person:
  - a. is invited to participate by the student or the school district in which the student is enrolled, or
  - b. has the student's consent to participate pursuant to a supported decision-making agreement under Texas Estates Code, Chapter 1357,
4. appropriate postsecondary education options, including preparation for postsecondary level coursework,
5. an appropriate functional vocational evaluation,

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6. appropriate employment goals and objectives,
7. if the student is at least 18 years of age, the availability of age-appropriate instructional environments, including community settings or environments that prepare the student for postsecondary education or training, competitive integrated employment, or independent living, in coordination with the student's transition goals and objectives,
8. appropriate independent living goals and objectives,
9. appropriate circumstances for facilitating a referral of a student or the student's parents to a governmental agency for services or public benefits, including a referral to a governmental agency to place the student on a waiting list for public benefits available to the student such as a waiver program established under the Social Security Act (42 U.S.C. Section 1396n(c)), §1915(c), and
10. the use and availability of appropriate:
  - a. supplementary aids, services, curricula, and other opportunities to assist the student in developing decision-making skills, and
  - b. supports and services to foster the student's independence and self-determination, including a supported decision-making agreement under Texas Estates Code, Chapter 1357.

The IEP must also include the following and be reviewed/updated annually:

1. appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills, and
2. the transition services, including courses of study (4-year plan), needed to assist the student in reaching the postsecondary goals developed under paragraph (1) of this subsection.

The case manager will complete the transition process for their case managed students by collaborating with the student, student's counselor, and consulting with the Transition teacher. The Transition teacher will work with the student, teacher, and parents to guide the transition plan. The transition teacher also will ensure that the plan includes services that will reasonably enable the student to meet his/her postsecondary goals. This is known as a Coordinated Set of Activities, which include activities in the areas of instruction, related services, community experience, development of employment, acquisition of daily living skills, and functional vocational assessment (if applicable).

- The Transition Teacher is the campus resource person who can assist the ARD Facilitator with the transition planning process for the assigned high school and for feeder middle schools.
- As the resource person, the Transition Teacher can assist the ARD Facilitator with training for high school and middle school staff relative to the transition planning process and the completion of all required forms.
- Both the Transition Teachers and ARD Facilitators can ensure campus staff are informed of any change in policies and procedures concerning transition planning or services.
- After the case manager completes the transition components the Transition Teacher can review it before the ARD committee meets.

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For questions regarding post-secondary transitions, including the transition from education to employment, for students receiving special education services, contact the Districts transition and employment designee: Alexis Greer, Assistant Director of Special Education, at 281-634-1143. Additional information can be found on the District Website at <https://www.fortbendisd.com/Page/1212>

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## Visual Impairment Including Blindness (VI)

**34 CFR § 300.324(a)(2)(iii); TEC § 30.002**

For a child who is blind or is visually impaired, after an evaluation of the child’s reading and writing skills, needs, and appropriate reading and writing media, including an evaluation of the child’s future needs for instruction in braille or the use of braille, the ARDC must either:

1. Provide for reading and writing instruction in braille and the use of braille, or
2. Determine that instruction in braille or the use of braille is not appropriate.

Before placing a child with a Visual Impairment (VI) in a classroom setting, or within a reasonable period after placement, the LEA must provide:

1. Evaluation of the impairment, and
2. Instruction in an expanded core curriculum, which is required for the child to succeed in classroom settings and derive lasting, practical benefits from the education by the LEA, including instruction in:
  - a. Compensatory skills, such as braille and concept development, and other skills needed to access the rest of the curriculum,
  - b. Orientation and mobility,
  - c. Social interaction skills,
  - d. Career planning,
  - e. Assistive technology, including optical devices,
  - f. Independent living skills,
  - g. Recreation and leisure enjoyment,
  - h. Self-determination, and
  - i. Sensory efficiency.

For a student with a Visual Impairment, the ARDC must develop an IEP that:

1. Provides a detailed description of the arrangements made to provide the child with an evaluation of the impairment and instruction in the expanded core curriculum required for children with visual impairments,
2. Sets forth the plans and arrangements made for contacts with and continuing services to the child beyond regular school hours to ensure the child receives the instruction required for children with visual impairments, and
3. Reflects that the child has been provided a detailed explanation of the various service resources available in the community and throughout the state.

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When developing an IEP for a student with a vision impairment, the Texas Education Agency's criteria provides:

1. Proficiency in reading and writing is a significant indicator of the child's satisfactory educational progress. The IEP for a student with a visual impairment must include instruction in braille and the use of braille unless the student's ARD committee determines and documents that braille is not an appropriate literacy medium for the student. The committee's determination must be based on an evaluation of the student's appropriate literacy media and literacy skills and the student's current and future instructional needs.
2. Each person assisting in the development of the IEP for a student with a visual impairment shall receive information describing the benefits of braille instruction; and
3. Braille instruction may be used in combination with other special education services appropriate to the child's educational needs; and shall be provided by a teacher certified to teach students with visual impairments; and

The District must provide each parent with the state-adopted form that contains written information about programs offered by state institutions.

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## GENERAL EDUCATION TEACHER INPUT

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### **Opportunity for General Education Teachers to Request Assistance**

The immediate person for support to the General Education teacher is the identified Special Education Case Manager. Each campus has a Special Education Case Management System to support and monitor implementation of each student's IEP.

### **General Education Teacher Opportunity to Provide Input to the ARD Committee**

General education and special education teachers should collaborate on progress and areas of concern in preparation for the ARD meeting. However, the special education case manager should gather information regarding student performance and progress from all the student's general education teachers prior to:

1. An initial ARD committee meeting,
2. Evaluation Planning meeting or SCORE, if appropriate,
3. Annual ARD meeting, or
4. A brief ARD meeting considering other areas such as behavior, failures, etc.

### **Process for Requesting for Further Consideration of Student's IEP - General Education Teacher**

It is the responsibility of the special education case manager to support and assist the general education teacher in understanding the student's disability and IEP. When a general education teacher has concerns about the student's educational program, the special education case manager should:

1. Make an appointment with the general education teacher to discuss the general education teacher's concern
2. Listen carefully to each issue raised by the general education teacher; be sure he/she has a clear understanding of the student's educational competencies and needs. Often the general education teacher with a concern is not present in the ARD committee meeting and has not seen the evaluation information and may not fully understand the student's strengths and weaknesses.
3. Collaboratively brainstorm possible solutions and alternatives which could be used, being careful to pay close attention to the ARD committee decisions on placement, accommodations, etc. Areas for support include pacing, methods, materials, etc.
4. Keep notes of the issues and solutions to be tried and the person responsible for trying each solution, and the timeline.

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5. Set the next date and time to get together to discuss any progress toward the general education teachers concern after he/she has implemented the solutions from the meeting. The special education teacher should always follow-up. Possible ways special education could support the general education teacher are listed above. Don't hesitate to offer specific suggestions as ways to help the teacher.
6. Involvement of the Principal: If steps above do not improve the situation, the Principal or Assistant Principal should be notified (if they have not already been involved). The following steps should be followed if a solution did not occur:
  - a. The special education case manager should inform the administrator of the steps taken above.
  - b. The administrator will determine any further resources to involve in resolving the situation. The diagnostician, program manager, or special education assistant director, or director may be included in problem solving.
  - c. The administrator may call a meeting with the parties involved or may offer suggestions to the general education teacher or may determine an ARD meeting is necessary to address the issues.
7. At any time during the process above, an ARD committee meeting may be requested by the General Education teacher.

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## SPECIAL EDUCATION TEACHER - SERVICE PROVIDER RESPONSIBILITIES

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### ARD Meetings

The special education teacher is responsible for the following in the ARD process (if there are multiple special education teachers involved, the special education case manager should ensure these steps are completed):

#### Prior to the ARD

1. Draft the Present Levels of Academic Achievement and Functional Performance (PLAAFP) in the EmpoWER system. If there are multiple special education teachers involved, the Special Education Case manager should gather information from all teachers and input the PLAAFPs. The critical part of the PLAAFP section is to ensure that the ARD committee has meaningful and current data to assist in writing appropriate IEP goals and objectives.
2. Prepare the draft IEP measurable annual goals in the software system, based on appropriate evaluation (remember the general education teacher(s) to the extent appropriate, should participate in the development, review, and revision of the student's IEP).
3. **Send draft IEP PLAAFP, accommodations, and goals/objectives to the parent at least one week prior to ARD meeting (if there are multiple special education teachers involved, the special education case manager should coordinate this effort).**
4. Use the information in the State Assessment area in Section 4 of the Special Education Administration Procedures to decide upon a recommendation for all applicable state assessments required for the student's grade level. Even if the recommendation is that the student will not take the state assessment, a recommendation should be prepared along with relative data to support the recommendation.
5. Decide which academic and supplementary supports will be recommended to the ARD Committee. This recommendation should be prepared along with relative data to support the recommendation.

#### During the ARD

Special education teachers play an active role throughout the ARD meeting and should be prepared to discuss the student's strengths, current progress, and any concerns. If the special education teacher is also the case manager for the student, additional responsibilities are listed in the next section specific to case management.

***Additional information regarding special education teacher responsibilities are in Section 5, Instructional Service Delivery Models. Section 5 includes program specific special education teacher responsibilities.***

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## SPECIAL EDUCATION TEACHER/SERVICE PROVIDER AND CASE MANAGEMENT

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Special Education Case Management is a process in which an identified staff member is responsible for ensuring services and supports are in place and provided as determined by the student's ARD/IEP committee and acts as a liaison between the student's teachers and parents. Typically, the case manager is a special education teacher unless a student is served with speech services only and then the speech therapist serves as the case manager.

It is the responsibility of the campus principal to ensure each student served with special education services is assigned a case manager. There should be careful consideration as to how to assign students to case managers. Case managers should either teach or provide some support throughout the day, to the students on their caseload. If this is not possible, case managers should have the ability to see a student on their caseload at least one time per week.

If a case manager teaches in a program (ABC, BSS, CLASS, ECSE, FLASH, Resource, SAILS, ATS), their caseload should reflect students in that program. As a campus, each special education teacher should be assigned to a content/grade level so general education teachers have a specialized person for consultation. Where/whenever possible, special education teachers should have access and opportunity to collaborate with their general education colleagues in PLC meetings.

- Elementary Level – campus administrator collaborates with CCC
- Secondary Level – special education department head in collaboration with administration

### Special Education Case Manager Duties

- Monitor student progress: for students who are failing or in danger of failing, schedule staffing to discuss lack of progress and if necessary, request ARD meeting to adjust supports/services
  - Monitor regularly – avoid waiting until the class has been failed or student has dropped too far behind
- Assist with the implementation of the students' Individual Education Plans (IEP) – discuss plan with teachers to check for understanding of accommodations and/or modifications and follow up to ensure implementation is occurring
- Assist teachers with appropriate documentation of services (Accommodations/In-Class Support logs, BIP implementation, etc.)
- Upload into EmpoWEr all documentation forms for students on their caseload
- Update in EmpoWEr and send home Progress Reports on IEP goals and objectives each nine weeks with report card
- Communicate and collaborate with teachers who instruct students with disabilities
- Act as the point of contact for parents of students with disabilities – introduce at beginning of year and have regular communication regarding progress or lack thereof.

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## Prior to Beginning of School Year

- Review all current paperwork for the students on their caseload prior to the school year and prepare all In-Class Support and Accommodations forms for teachers and service providers.
- For any students on their caseload who are eligible for SHARS billing for Personal Care Services, set up Onward Caseload Management
- Make sure all school personnel who are directly involved with the students on their caseloads, receive a copy of the Teacher Bundle in EmpoWER. This bundle includes the following information:
  - Schedule of Services
  - Classroom and State Assessment Accommodations
  - Behavioral Intervention Plan (when appropriate)
  - Goals and Objectives pages
  - Autism Supplement (when appropriate)
  - Personal Care Services Supplement (when appropriate)

***Not only should case managers provide the teachers and other service providers (related services, paraprofessionals, bus drivers, etc.) with pertinent IEP information (accommodations, BIPs), but they must also ensure the staff understands how to provide the services and supports.***

- All school personnel who receive accommodations/modifications pages and/or BIPs MUST sign an **Acknowledgment of Receipt** Form indicating they have received the appropriate information. An email receipt with acknowledgment of the student information may suffice in lieu of the traditional paper form. However, this does not preclude the case manager from meeting directly with the teacher(s) to explain supports and services the student receives.
- Remember the accommodations/modifications, BIPs, and goals and objectives pages are confidential and should not be distributed without a cover page. If given electronically, select “confidential.” Best practice is to discuss the information with the teacher at the time of receipt. If not, a follow-up meeting should take place.
- Once the student schedules are available, check to make sure the student’s schedule matches the ARD Schedule of Services page. If there is a discrepancy, notify the CCC, ARD Facilitator or Department Head.
- Review the student’s IEP Goals and Objectives to ensure EVERY student has at least ONE goal.
- Introduce self to each of the students on the case manage list. Provide contact information (how can they find you, room number, and conference period). Schedule a time for the transition survey OR give them the survey to complete. (SECONDARY)
- Send home a case manager letter to parents. (ELEMENTARY/SECONDARY) Include transition surveys. (SECONDARY)

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- Design communication system that allows regular communication/collaboration with the General Education teacher. Contact the classroom teacher at least one time per week to touch base with the student/teachers (if the teacher does not have the student in their class)
- Each teacher should be assigned to a content area/grade level (General Education teacher should have a Special Education teacher for consultation) and make every attempt/effort to attend PLC meetings for content area/grade level.
- Design a communication system that allows regular communication with the parent regarding progress/lack of progress on IEP, preparing for Annual ARD, concerns brought by parent relating to ARD/IEP, etc.

## Ongoing Responsibilities

- Document communication (parents, teachers, students) in EmpoWEr contacts
- Maintain and review In-Class Support and Accommodations forms (gather from appropriate general education teacher at end of grading periods)
- Upload all In-Class Support and Accommodations forms into EmpoWEr for students on caseload by the end of each 9 weeks. Turn in the In-Class Support and Accommodations forms to CCC/Department Head.
- For any students on their caseload who are eligible for SHARS billing for Personal Care Services (PCS), documentation must be entered regarding PCS **WEEKLY**
- IEP Progress updates must be sent home (at the end of each reporting period with report card)
- For any student whose schedule changes per ARD during the year,
  - Once the student schedules are available, check to make sure the schedule matches the ARD Schedule of Services page. If there is a discrepancy, notify the ARD Facilitator or Department Head.
  - Distribute (and check for understanding) appropriate paperwork to all school personnel who are directly involved with the students.
  - ALL school personnel who receive accommodations/modifications pages and/or BIPs, **MUST** sign an **Acknowledgment of Receipt** form indicating they have received the appropriate information (or email read receipt).

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## Supporting the ARD Process

### ARD Preparation

At the start of the year, case managers should create a report from EmpoWER that delineates when all the annual ARDs are due for students on their caseload. The notification of the actual date of the ARD will come from an Outlook invitation, generally from the campus CCC (elementary) or ARD Facilitator (secondary).

Annual ARD meetings must take place at least once per year, on or before the date of the last annual ARD. There are times that an ARD needs to take place outside of the annual. It is the case manager's responsibility to request those meetings. When a student's PLAAFP changes and results in a change of services, schedule, etc., an ARD should be held. If a student experiences a lack of expected progress, the case manager is required to request a staffing, which may result in the need for a brief ARD.

To prepare for the Annual ARD 2-3 weeks prior to the annual, case managers should

- Complete the Universal Screener for updated academic levels
- Request feedback from general education teachers
- Contact the parent(s)/guardian(s)/adult student to gain their input
- Meet with counselor to confirm credits, graduation plan and 4-year plan (SECONDARY)
- Meet with the student to discuss current accommodations and modifications, transition services and course selection for upcoming the year (SECONDARY)

Once all the above is collected, the case manager should start to prepare ARD documents in EmpoWER. Case managers are responsible for drafting the PLAAFP, IEP goals and objectives, Behavior Intervention Plans (in collaboration with LSSP if necessary), accommodations, supplements (as appropriate), and for SECONDARY case managers this includes transition information and coordinated set of activities. All items should be drafted in EmpoWER at least 5 days prior to the date of the meeting. The drafted accommodations, goals and objectives should be sent home in advance for parent input.

The day of the ARD, case managers should attend with the following material ready to review:

- Teacher input
- Transition information (SECONDARY)
- Progress updates on current goals/objectives
- Draft of the PLAAFP
- Draft goals/objectives/accommodations
- A printed copy of discipline record, attendance, grades, current schedule

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## During the ARD

Case managers should play an active role throughout the ARD meeting and should be prepared to discuss all the above. If a case manager is not prepared for the ARD, the CCC/ARD Facilitator/Campus Administrator may decide to cancel the meeting.

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## Addressing Concerns Relating to the IEP/ARD not being implemented

If a special education case manager (or other service provider/staff member) discovers that ARD/IEP services have not been provided or receives an allegation from a parent that a student's ARD/IEP is not being implemented, the following steps should be taken:

1. Contact the parent and gain an understanding of the full scope of the concern (what services the parent alleges are not being provided, identification of service provider(s) involved, how long have services have allegedly not been provided, etc.)
2. Contact the service provider(s) involved to share the allegations and check for understanding of services implemented
3. Notify the campus principal and the Special Education Program Manager over student's program about the parent allegations and/or information regarding the IEP/ARD not being implemented. *This notification must occur within 5 school days of the concerns being reported to the case manager.*
4. Program Manager to notify the appropriate Assistant Director regarding the allegations.
5. Assistant Director and campus principal will investigate the allegations and develop a plan as appropriate to the findings. The following data will be reviewed during the investigation:
  - a. Review IEP and documentation logs
  - b. Determine if services/supports were provided. If they were not, develop a draft action plan
  - c. The action plan should clarify when the principal or the principal's designee will contact the parent to discuss the findings of the investigation
6. Assistant Director will collaborate with the campus principal to discuss the proposed action plan, to include the scheduling of a staffing and ARD meeting.
7. Schedule ARD meeting to review the proposed action plan and determine if compensatory services are required
8. Assistant Director to notify the Director of Special Education of the proposed action plan

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## FAQs Related to Case Management

***Who is responsible for collecting progress-monitoring data for students served in a general education setting?***

Each student is assigned a case manager. The case manager is responsible for collecting all documents related to progress to include data logs/charts, accommodation logs, etc. at the end of each progressing reporting period (9 weeks). All logs should be uploaded into EmpoWEr at the end of each 9 weeks unless monitored within Onward Caseload Management.

***If a student is in general education setting all day, what happens if there are multiple implementers on a goal? Who is responsible for documenting the progress on goals and objectives?***

All implementers should collaborate to discuss the implementation of the IEP and how documentation will be collected. The special education case manager assigned to the student is ultimately responsible for gathering all data logs and updating progress on the IEP into EmpoWEr at the end of each progressing reporting period (9 weeks).

***If a student is in a special education setting, what happens if there are multiple implementers on a goal? Who is responsible for documenting the progress on goals and objectives?***

All implementers should collaborate to discuss the implementation of the IEP and how documentation will be collected. The special education case manager assigned to the student is ultimately responsible for gathering all data forms and updating progress on the IEP into EmpoWEr at the end of each progressing reporting period (9 weeks).

***Who is responsible for gathering data/documentation logs from paraprofessionals that provide support to students in the general education setting?***

The case manager is responsible for collecting all documents related to progress to include data forms/charts, accommodation logs etc. from the paraprofessional at the end of each progressing reporting period (9 weeks). The case manager needs to collaborate with the general education teacher prior to updating IEP progress in EmpoWEr .

***Who is responsible for gathering data/documentation logs from paraprofessionals that provide support to students in the special education setting (resource, specialized program)?***

The case manager is responsible for collecting all documents related to progress to include data forms/charts, accommodation logs, etc. from the paraprofessional at the end of each progressing reporting period (9 weeks).

The case manager needs to collaborate with the any other special education teachers to gather all data prior to updating IEP progress in EmpoWEr .

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## Compensatory Services

Compensatory services may come in many forms. For students under 21, compensatory services may mean either “current compensatory education” or “future compensatory education.” For students after the age of 21, compensatory services usually means extending the student’s full educational services for a specific amount of time beyond his or her 22<sup>nd</sup> birthday.

Fort Bend ISD utilizes the qualitative approach to addressing compensatory services. The qualitative approach is a flexible calculation of how many hours of compensatory services are required to place the student in the same position he or she would have been in if the district did not violate the IDEA. It uses an individualized, fact-specific determination of the amount of “reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place.”

The questions asked in determining the amount in this approach

- (1) What are the child’s “specific educational deficits?”
- (2) Which and how much of these specific deficits resulted from the child’s loss of FAPE?”
- (3) What are “the specific compensatory measures needed to best correct” those deficits?

The analysis and ultimate decision regarding whether compensatory services will be provided, and if so, what the services will be, should be clearly documented in the deliberations of the ARD Committee meeting. *(Note portions of the Compensatory Services information described above was referenced from the Region 4 Guidance Document for TEA Special Education Strategic Plan, 2018).*

Although not an exhaustive list, the following situations indicate identified noncompliance, and the District **must** consider providing compensatory services:

- Service/accommodations/modifications were not provided/implemented as agreed upon in the ARD/IEP
- Delay in a student’s initial Special Education Evaluation (Indicator 11)
- Delay in a student’s Three-Year Re-evaluation
- Delay in initial ARD meeting (Indicator 11 and 12)

The following steps should occur:

1. Gather all pertinent data and consult the service provider(s) to determine what the services should have been and what has actually been provided. Service delivery models vary from consultation to direct service. Be certain that there has not been a misunderstanding or miscommunication about the services delivered.
2. Contact the appropriate Program Manager to discuss the situation prior to the staffing and ARD meeting.
3. A staffing should be held with all pertinent service providers to review the IEP and the progress the child has made. Below are some topics that should be discussed at the staffing:
  - a. Review the student’s progress and rate of learning

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- b. If the child has made progress on the IEP despite the lack of services, the amount of service time should be reviewed to determine if it is an appropriate amount or perhaps if a lowered service time is appropriate. Based upon the data, develop a plan for service to be presented to the ARD committee for review.
- c. If the child has made limited progress, discuss which goals and objectives specifically are involved and the amount of service time that may be needed to aid in the student's progress. Based upon the data, develop a plan for service to be presented to the ARD committee for review.
- d. Consider the student's current educational services and how the compensatory services can be addressed as not to put the student in a position of "overload".
- e. If the purpose of the compensatory is due to a late evaluation/REED, consider the duration of the delay and the services the child may have missed based on the delay.
4. Contact the parent to schedule an ARD meeting and specifically discuss the purpose of the ARD is to consider the need for compensatory services. During the ARD meeting:
  - a. Discuss the services that were not provided and present a plan to the committee based upon the review of the data.
  - b. Listen to any concerns of the parent and/or student regarding the proposed plan.
5. **Document the reason for the Compensatory service (ie. delay in FIIE, etc.) and describe the plan in the Deliberations of the ARD meeting and complete the EmpoWEr Compensatory Services Supplement. On the Compensatory Services Supplement also note the reason the Compensatory services are being considered.**
6. **If the purpose of the ARD is to consider Compensatory services due to a delay in an Evaluation, not implementing services, etc. The ARD Notice should indicate that Compensatory services are being considered AND the reason why they are required to be considered.**
7. **Prior to conducting an ARD meeting for compensatory services, please contact the appropriate Assistant Director of Special Education for guidance.**

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## Limitations on the Right to FAPE

If the parent of a student enrolled in FBISD or seeking to be enrolled in the District does not provide consent for the student’s full individual and initial evaluation, or the parent fails to respond to a request to provide consent, FBISD may, but is not required to, pursue the initial evaluation of the child by utilizing the procedural safeguards under IDEA. FBISD will use reasonable efforts to obtain parental consent. FBISD will also document its efforts to obtain parental consent and maintain such documentation in the student’s special education file. The level of effort shall be appropriate to the situation. The actions of FBISD when seeking parental consent will reflect genuine effort and will include more than one effort or means. If the parent or guardian does not provide consent for the student’s full individual and initial evaluation after the District has requested and sought to obtain such consent, the District does not violate its *Child Find* and FAPE obligations to the student if the District declines to pursue the evaluation under these circumstances by requesting a due process hearing to override the parent’s lack of consent.<sup>36</sup>

FBISD shall obtain informed consent from the parent or guardian of a student before the initial provision of special education and related services to the student. FBISD will not construe consent for initial evaluation as consent for initial provision of special education and related services.

The District shall make reasonable efforts to obtain informed consent from the parent or guardian for the initial provision of special education and related services; however, if the parent or guardian fails to respond to a request for, or refuses to consent to, the initial provision of special education and related services, FBISD cannot seek to override the parent’s refusal to consent to the initial provision of special education and related services to the student. If the parent does not provide informed written consent for the initial provision of special education and related services, FBISD will not be considered to be in violation of the requirement to make FAPE available to the student because of the failure to provide the student with the special education and related services for which the parent refuses to or fails to provide consent. FBISD is also not required to convene an ARD committee meeting or develop an IEP for the student.<sup>37</sup>

If, at any time subsequent to the initial provision of special education and related services, the parent or guardian of a student revokes consent in writing for the continued provision of special education and related services, FBISD:

- may not continue to provide special education and related services to the student, but shall provide **Prior Written Notice, including [TEA’s Notice of Procedural Safeguards](#), before** ceasing the provision of special education and related services,
- may not use the dispute resolution procedures in IDEA in order to obtain agreement or a ruling that the services may be provided to the student,

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<sup>36</sup> 34 C.F.R. § 300.300(a)(3)

<sup>37</sup> 34 C.F.R. § 300.300(b)(3)

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- will not be considered to be in violation of the requirement to make FAPE available to the student because of the failure to provide the student with further special education and related services, and
- is not required to convene an ARD committee meeting or develop an IEP for further provision of special education and related services.<sup>38</sup>

Unless a parent or guardian has enrolled a student in private school as described herein, that student's enrollment in a private school relieves FBISD of any responsibility for the provision of a FAPE, but the student may be considered for proportionate share services.<sup>39</sup> Likewise, students attending a homeschool program are not entitled to FAPE but may be considered for proportionate share services. TEA, and therefore FBISD, does not regulate, index, monitor, approve, register, or accredit the programs available to parents who choose to home school. This is consistent with the Texas Supreme Court decision rendered in *Texas Education Agency v. Leeper*.<sup>40</sup>

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<sup>38</sup> 34 C.F.R. § 300.300(b)(4)

<sup>39</sup> 19 TEX. ADMIN. CODE § 89.1096

<sup>40</sup> *Texas Education Agency v. Leeper*, 893 S.W.2d 432 (Tex. 1994)

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## District’s Obligations to Children Transitioning from IDEA Part C Early Intervention Services (EIS) to IDEA Part B Early Childhood Special Education (ECSE)

FBISD coordinates with [Texas Health and Human Services Commission \(THHSC\)](#)<sup>41</sup> or its local designees—the Early Intervention Agency—to notify parents or guardians of children in the District who are at least 3 years of age but younger than 6 years of age and who are potentially eligible for enrollment in FBISD’s IDEA Part B Early Childhood Special Education (ECSE) program of the availability of the program.<sup>42</sup> Additionally, at least 90 days before the 3<sup>rd</sup> birthday of a child with a disability under Part C EIS, who may be eligible for preschool special education and related services under Part B, the Early Intervention Agency—must notify the District that the child will shortly reach the age of eligibility for FBISD’s ECSE program.<sup>43</sup> The Program Manager for Evaluation and Related Services is an appropriate contact to receive such notice.

If a child is potentially eligible for FBISD’s ECSE program, with family approval, a transition conference will be convened by the Early Intervention Agency, with an invitation to the District, not fewer than 90 days and not more than 9 months before the child’s 3<sup>rd</sup> birthday, to discuss any potential special education and related services the child could receive from the District.

If the Early Intervention Agency determines that the child is eligible for [Early Intervention Services \(EIS\)](#) more than 45 but less than 90 days before the child’s 3<sup>rd</sup> birthday and if that child may be eligible for ECSE services under Part B, the Early Intervention Agency, as soon as possible after determining the child's eligibility, must notify FBISD that the child on his 3<sup>rd</sup> birthday will reach the age of eligibility for the District’s ECSE program.<sup>44</sup> The Program Manager for Evaluation and Related Services is an appropriate contact to receive such notice.

The Program Manager for Evaluation and Related Services shall ensure that an IEP is in effect for an IDEA B eligible child with a disability who had previously received IDEA Part C services by the child’s 3<sup>rd</sup> birthday while complying with the procedures in **EVALUATIONS: Section 2.0** above. If a child's 3<sup>rd</sup> birthday occurs during the summer, the student's ARD committee shall determine the date when services will begin.<sup>45</sup>

If FBISD knows that a child served in Part C via an *Individualized Family Service Plan (IFSP)* developed by the Early Intervention Agency and referred to IDEA Part B will turn 3 over the summer and that appropriate FBISD personnel won't be available to conduct evaluations and hold ARD committee meetings during the summer, the Program Manager for Evaluation and Related Services shall ensure that required activities such as conducting the evaluations, and convening the ARD committee meeting occurs before the end of the school year.<sup>46</sup>

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<sup>41</sup> 34 CFR § 303.22

<sup>42</sup> Tex. Ed. Code § 29.009

<sup>43</sup> 34 CFR § 303.209(b)(1)(i); [Early Childhood Transition FAQs](#) (OSEP 2009).

<sup>44</sup> 34 CFR § 303.209 (b)(1)(ii).

<sup>45</sup> 34 CFR § 300.101

<sup>46</sup> [Early Childhood Transition FAQs](#) (OSEP 2009)

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When the Early Intervention Agency provides notification to FBISD of a potentially eligible child fewer than 90 days before the student’s 3<sup>rd</sup> birthday, the Early Intervention Agency must provide a written explanation to the District stating the reason for the delay. The Program Manager for Evaluation and Related Services is an appropriate contact to receive such notice. If notification is given between 45-89 days before the student’s 3<sup>rd</sup> birthday, the Program Manager for Evaluation and Related Services shall ensure that eligibility is determined as soon as possible.

If a student with a disability was served under IDEA Part C via an *IFSP*, the student’s IFSP may serve as the IEP of a child with a disability aged 3 through 5 (or, at the discretion of the state educational agency, a 2-year-old child with a disability who will turn age 3 during the school year), if the IFSP was developed in accordance with ARD committee procedures, is consistent with state policy, and agreed to by FBISD and the student's parents or guardians.<sup>47</sup>

If a student’s IFSP was incorrectly developed by the Early Intervention Agency and FBISD and the parent or guardian agree to use the IFSP in lieu of an IEP, FBISD shall modify the IFSP so that it meets the requirements for an IEP.<sup>48</sup>

While IDEA Part B requires coordination to assure the continuity of services, it does not compel FBISD to provide all the same services in an IEP that were in a student’s IFSP.

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<sup>47</sup> 34 CFR § 300.323 (b)(1); 20 USC § 1414 (d)(2)

<sup>48</sup> 34 CFR § 300.323 (b); U.S. Department of Education, 71 Fed. Reg. 46679 (2006)

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## FAPE via virtual or remote instruction

In accordance with [guidance from the TEA](#), each student’s ARDC is encouraged to convene a meeting to develop emergency contingency plans as part of a student’s IEP that provides for virtual or other remote services and instruction during periods of cessation of normal school operations in response to a natural disaster, pandemic and/or other public health and safety crisis in accordance with federal, state and local authorities. The student’s ARD committee and the parent(s) or guardian(s) may also agree to modify a student’s IEP to include a separate schedule of related services and accommodations that will be followed during periods of remote or virtual instruction.

The student’s ARD committee, with input from the parent or guardian, may choose to use the model [Special Education Emergency Contingency Plan](#) developed by the [TEA or other plan as determined by the District](#).

According to nonbinding guidance from [OSEP on September 28, 2020](#), ARD committees should consider—

- “how a student’s IEP will be implemented with traditional in-person instruction
- how services also could be provided through remote/distance instruction if circumstances require a change to distance learning or a hybrid model.”<sup>49</sup>

When ARD committees make these determinations, the ARD committee, together with the parent or guardian, may also consider:

- alternate available instructional methodologies or delivery,
- online instruction, teleconference, direct instruction via telephone or videoconferencing, and
- consultative services to the parent, if feasible and appropriate.<sup>50</sup>

The District will investigate all appropriate assessment instruments and tools to determine if some can be administered or completed remotely during the natural disaster, pandemic and/or other public health and safety crisis, provided that evaluation of the student is based on personal observation (whether in person or through tele- or videoconferencing).

The District may coordinate with the developers of their current assessment instruments to determine if the instruments can be administered or completed remotely, without significantly impacting the validity and reliability of the results. Tests and other evaluation materials must be used for the purposes for which the assessments or measures are valid and reliable and must be administered by trained and knowledgeable personnel in accordance with any instructions provided by the producer of the assessments.<sup>51</sup>

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<sup>49</sup> OSEP. [Part B Implementation of IDEA Provision of Services in the Current COVID-19 Environment Q&A Document](#). September 28, 2020.

<sup>50</sup> *Id.*

<sup>51</sup> 34 C.F.R. § 300.304(c)(1)(iii)-(v)