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Section 7 - PROCEDURAL SAFEGUARDS SECTION

I. PROCEDURAL SAFEGUARDS NOTICE

§300.504 Procedural safeguards notice.

(a) General. A copy of the procedural safeguards available to the parents of a child with a disability must be given to the parents only one time a school year, except that a copy also must be given to the parents--

(1) Upon initial referral or parent request for evaluation;

(2) Upon receipt of the first State complaint under §§300.151 through 300.153 or a due process complaint under §300.507 in a school year; and

(3) In accordance with the discipline procedures in 300.530(h); and

(4) Upon request by a parent.

The Tyler ISD will provide the notice of procedural safeguards to each parent of a child with a disability at least 1 time per year at the annual ARD. A copy will also be given as addressed in (a) (1-3) above. The current copy of the TEA publication " A Guide to the Admission, Review and Dismissal Process" will also be provided prior to the first ARD committee meeting or upon a parent's request. Other information that may be given to the parent includes:

Texas Project FIRST (Families Information Resources Support and Training) is a project of the TEA and is committed to providing accurate and consistent information to parents and families of students with disabilities. www.texasprojectfirst.org Partners Resource Network (PRN) is a non-profit agency that operates the federally funded Parent Training and Information Centers (PTIs) in Texas. TEA Toll Free Parent Information Line: 1-800-252-9668 TTY: 512-475-3540 Relay Texas 711

(b) Internet Web site. A public agency may place a current copy of the procedural safeguards notice on its Internet Web site if a Web site exists.

(c) Contents. The procedural safeguards notice must include a full explanation of all of the procedural safeguards available under §300.148, §§300.151 through 300.153, §300.300, §§300.502 through 300.503, §§300.505 through .518, §300.520, §§300.530 through 300.536, and §§300.610 through 300.625 relating to-

(1) Independent educational evaluations;

(2) Prior written notice;

(3) Parental consent;

(4) Access to education records;

(5) Opportunity to present and resolve complaints through the due process complaint or State complaint procedures, including--

(i) The time period in which to file a complaint;

(ii) The opportunity for the agency to resolve the complaint; and

(iii) The difference between the due process complaint and the State complaint procedures, including the jurisdiction of each procedure, what issues may be raised, filing and decisional timelines, and relevant procedures;

(6) The availability of mediation;

(7) The child's placement during the pendency of any due process complaint;

(8) Procedures for students who are subject to placement in an interim alternative educational setting;

(9) Requirements for unilateral placement by parents of children in private schools at public expense;

(10) Hearings on due process complaints, including requirements for disclosure of evaluation results and recommendations;

(11) State-level appeals (if applicable in that State);

(12) Civil actions, including the time period in which to file those actions; and

(13) Attorneys' fees.

(d) Notice in understandable language. The notice required under paragraph (a) of this section must meet the requirements of §300.503(c).

TEC §29.0163. PROTECTION OF THE RIGHTS OF MILITARY FAMILIES WITH CHILDREN WITH DISABILITIES.

(a) In this section, "service member" means a member of:
  1) the armed forces;
  (2) the Commissioned Corps of the National Oceanic and Atmospheric Administration; or
  (3) the Commissioned Corps of the United States Public Health Service.

(b) The agency must include in the notice of procedural safeguards that the statute of limitations for the parent of a student to request an impartial due process hearing under 20 U.S.C. Section 1415(b) may be tolled if the parent is an active-duty service member and 50 U.S.C. Section 3936 applies to the parent.

(c) The commissioner shall adopt rules to implement this section.

§300.29 Native language.

(a) Native language, when used with respect to an individual who is limited English proficient, means the following:
  (1) The language normally used by that individual, or, in the case of a child, the language normally used by the parents of the child, except as provided in paragraph (a)(2) of this section.
  (2) In all direct contact with a child (including evaluation of the child), the language normally used by the child in the home or learning environment.

(b) For an individual with deafness or blindness, or for an individual with no written language, the mode of communication is that normally used by the individual (such as sign language, Braille, or oral communication). (Authority: 20 U.S.C. 1401(20))

TAC § 26.0081. Right to Information Concerning Special Education and Education of Students With Learning Difficulties.

(a) The agency shall produce and provide to school districts sufficient copies of a comprehensive, easily understood document that explains the process by which an individualized education program is developed for a student in a special education program and the rights and responsibilities of a parent concerning the process. The document must include information a parent needs to effectively participate in an admission, review, and dismissal committee meeting for the parent's child.

(b) The agency will ensure that each school district provides the document required under this section to the parent as provided by 20 U.S.C. Section 1415(b):
  (1) as soon as practicable after a child is referred to determine the child's eligibility for admission into the district's special education program, but at least five school days before the date of the initial meeting of the admission, review, and dismissal committee; and
  (2) at any other time on reasonable request of the child's parent.

(c) The agency shall produce and provide to school districts a written explanation of the options and requirements for providing assistance to students who have learning difficulties or who need or may need special education. The explanation must state that a parent is entitled at any time to request an evaluation of the parent's child for special education services under Section 29.004 or for aids, accommodations, or services under Section 504, Rehabilitation Act of 1973 (29 U.S.C. Section 794). Each school year, each district shall provide the written explanation to a parent of each district student by including the explanation in the student handbook or by another means.

(d) Each school year, each school district shall notify a parent of each child, other than a child enrolled in a special education program under Subchapter A, Chapter 29, who receives assistance from the district for learning difficulties, including through the use of intervention strategies, as that term is defined by Section 26.004, that the district provides that assistance to the child. The notice must:
  (1) be provided when the child begins to receive the assistance for that school year;
  (2) be written in English or, to the extent practicable, the parent's native language; and
  (3) include:
    (A) a reasonable description of the assistance that may be provided to the child, including any intervention strategies that may be used;
    (B) information collected regarding any intervention in the base tier of a multi-tiered system of supports that has previously been used with the child;
    (C) an estimate of the duration for which the assistance, including through the use of intervention strategies, will be provided;

(D) the estimated time frames within which a report on the child's progress with the assistance, including any intervention strategies used, will be provided to the parent; and

(E) a copy of the explanation provided under Subsection (c).

(e) The notice required under Subsection (d) may be provided to a child's parent at a meeting of the team established for the child under Section 504, Rehabilitation Act of 1973 (29 U.S.C. Section 794), if applicable.

II. PRIOR WRITTEN NOTICE

§300.503 Prior notice by the public agency; content of notice.

(a) Notice. Written notice that meets the requirements of paragraph (b) of this section must be given to the parents of a child with a disability a reasonable time before the public agency

(1) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or

(2) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.

According to OSEP Letter to Lieberman August 15, 2008, the Prior Written Notice form must be sent to the parents or adult student:

- *after an IEP meeting to inform parents of the final action on a proposal or refusal to initiate or change the identification, evaluation, or educational placement of the student or the provision of a FAPE,*
- *regardless if the parent is in attendance and in agreement with decisions,*
- *regardless if the parent requests the change or the district is making a change,*
- *after a proposal to revise a child's IEP, which typically involves a change to the type, amount, or location of special education and related services being provide to a child.*

(b) Content of notice. The notice required under paragraph (a) of this section must include--

(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 the procedural safeguards of this part and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained;

(5) Sources for parents to contact to obtain assistance in understanding the provisions of this part;

(6) A description of other options that the IEP Team 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.

The regulation §300.503 is required for all Notices including:

- *Notice of Evaluation,*
- *Notice of ARD / IEP Meeting, and*
- *Notice of Proposal or Refusal.(to initiate or change the identifications of the child, initiate or change the educational placement of the child, initiate or change the provision of FAPE to the child, cease the provision of special education and related services due to the parent's revocation of consent for services;or implement an IEP with which parent or adult student disagress)*

All Prior Written Notice forms will contain the required information listed above. All areas will be addressed when completing the appropriate Notice form.

(c) Notice in understandable language.

(1) The notice required under paragraph (a) of this section must be--

(i) Written in language understandable to the general public; and

(ii) Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.

(2) If the native language or other mode of communication of the parent is not a written language, the public agency must take steps to ensure--

(i) That the notice is translated orally or by other means to the parent in his or her native language or other mode of communication;

(ii) That the parent understands the content of the notice; and

(iii) That there is written evidence that the requirements in paragraphs (c)(2)(i) and (ii) of this section have been met.
(Authority: 20 U.S.C. 1415(b)(3) and (4), 1415(c)(1), 1414(b)(1))

§300.505 Electronic mail.
A parent of a child with a disability may elect to receive notices required by §§300.503 *(Prior Written Notice)* **, 300.504** *(Proc. Safeguards/Notice)* **, and 300.508** *(Due Process complaints)* **by an electronic mail communication, if the public agency makes that option available. (Authority: 20 U.S.C. 1415(n))**

§300.322 Parent Participation.
(a) Public agency responsibility—general. Each public agency must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP Team 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 on time and place.

The Tyler ISD will make advance attempts to notify parents of ARD/IEP meetings and arrange a mutually agreeable time and location.

3 Prior Notice Attempts to ensure parent participation in the IEP meeting.
The Tyler ISD will make advance attempts to notify parents of ARD/IEP meetings and arrange a mutually agreeable time and location.
1. The first Prior Written Notice of the ARD/IEP meeting form is provided in writing 2 weeks (10 working days) prior to the scheduled ARD/IEP date. This early notice will allow more time to contact the parent and then proceed at the first scheduled date and time. The Notice form includes options to agree to the proposed date, change the date, hold the meeting on the phone or suggest the district proceed without the parent in attendance. A copy of the completed Notice form sent to the parent is maintained in the student eligibility file as documentation.
2. The second attempt to notify the parents of the ARD will also be in writing, by email or by phone (if there is no response from the parent after the first notice). The Tyler ISD will copy the first notice form and send it as the second Notice of ARD/IEP meeting by mail or with the student. This attempt may be any source of documented contact dependent on the best manner to contact the parent to ensure attendance.
3. The third Notice contact will be attempted to get parental participation if there is no response from the first two attempts. After 3 attempts and no response, the Tyler ISD may go forward with the ARD meeting as scheduled.

The first attempt MUST be in written form however the staff may call and discuss the proposed date with parents in order to pick a reasonable date for both parties for the written Notice. The second Notice may also be in written form using a copy of the first Notice sent and the third Notice may be a follow-up phone call to home and work. All dates of scheduling attempts and the initials of personnel attempting contact must be documented on the district Notice form and filed in the student eligibility folder.

Purpose, Time, Location, Attendance - (Notice)
§300.322 Parent Participation.
(b) Information provided to parents.
(1) The notice required under paragraph (a)(1) of this section must--

(i) Indicate the purpose, time, and location of the meeting and who will be in attendance; *The Tyler ISD will indicate the positions, and not the names, of those individuals participating in the IEP meeting.* **and**

(ii) Inform the parents of the provisions in §300.321(a)(6) and (c) (relating to the participation of other individuals on the IEP Team who have knowledge or special expertise about the child), and §300.321(f) (relating to the participation of the Part C service coordinator or other representatives of the Part C system at the initial IEP Team meeting for a child previously served under Part C of the Act).

(2) For a child with a disability beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team, the notice also must--

(i) Indicate--

(A) That a purpose of the meeting will be the consideration of the postsecondary goals and transition services for the child, in accordance with §300.320(b); and

(B) That the agency will invite the student; and

(ii) Identify any other agency that will be invited to send a representative.

(c) Other methods to ensure parent participation . If neither parent can attend an IEP Team meeting, the public agency must use other methods to ensure parent participation, including individual or conference telephone calls, consistent with §300.328 (related to alternative means of meeting participation).

(d) Conducting an IEP meeting without a parent in attendance. A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend. In this case, the public agency must keep a record of its attempts to arrange a mutually agreed on time and place such as:

(1) Detailed records of telephone calls made or attempted and the results of those calls;

(2) Copies of correspondence sent to the parents and any responses received; and

(3) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

(e) Use of interpreters or other action, as appropriate. The public agency must take whatever action is necessary to ensure that the parent understands the proceedings of the IEP Team meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English.

(f) Parent copy of child's IEP. The public agency must give the parent a copy of the child's IEP at no cost to the parent. (Authority: 20 U.S.C. 1414(d)(1)(B)(i))

§300.321 IEP Team Attendance.

(f) Initial IEP meeting for child under Part C. In the case of a child who was previously served under Part C of the Act, an invitation to the initial IEP meeting must, at the request of the parent, be sent to the Part C service coordinator or other representatives of the Part C system to assist with the smooth transition of services. (Authority: 20 U.S.C. 1401(30), 1414(d)(1)(A)(7),(B))

III. CONSENT

§300.9 Consent. Consent means that--

(a) The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication;

(b) The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and

(c) (1) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at anytime.

(2) If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked). (Authority: 20 U.S.C. 1414(a)(1)(D))

(3) If the parent revokes consent in writing for their child's receipt of special education services after the child is initially provided special education and related services, the public agency is not required to amend the child's education records to remove any references to the child's receipt of special education and related services because of the revocation of consent.

§300.300 Parental consent.

(a) Parental consent for initial evaluation.

(1) (i) The public agency proposing to conduct an initial evaluation to determine if a child qualifies as a child with a disability under §300.8 must after providing notice consistent with §§300.503 and 300.504, obtain informed consent from the parent of the child before conducting the evaluation.

(ii) Parental consent for initial evaluation must not be construed as consent for initial provision of special education and related services.

(iii) The public agency must make reasonable efforts to obtain the informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability.

(2) For initial evaluations only, if the child is a ward of the State and is not residing with the child's parent, the public agency is not required to obtain informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability if--

(i) Despite reasonable efforts to do so, the public agency cannot discover the whereabouts of the parent of the child;

(ii) The rights of the parents of the child have been terminated in accordance with State law; or

(iii) The rights of the parent to make educational decisions have been subrogated by a judge in accordance with State law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child.

(3) (i) If the parent of a child enrolled in public school or seeking to be enrolled in public school does not provide consent for initial evaluation under paragraph (a)(1) of this section, or the parent fails to respond to a request to provide consent, the public agency may , but is not required to, pursue the initial evaluation of the child by utilizing the procedural safeguards in subpart E of this part (including the mediation procedures under §300.506 or the due process procedures under §§300.507 through 300.516), if appropriate, except to the extent inconsistent with State law relating to such parental consent.

The district will follow all state and federal regulations regarding initial evaluations before the provision of special education and related services can be provided to a child with a disability. The initial evaluation must attempt to evaluate the child in all areas of suspected disability and consist of procedures to determine the educational needs of the child. Following a referral from district personnel or the written request for an initial evaluation for special education from a parent or guardian, the district will provide a Written Notice of Evaluation and a copy of the Procedural Safeguards Notice. All requirements regarding Prior Written Notice per §300.503 will be followed. An explanation of the evaluation activities will be explained thoroughly to the parent or guardian. The parent or guardian must agree in writing to the evaluation activities that are to be performed in order to proceed with the evaluation. The district will make reasonable efforts to obtain informed consent from the parent or guardian for the full and initial evaluation. If the child

is a ward of the state and not living with the parent, the district will follow all procedures related to obtaining consent from the appropriate guardian of the student and the district procedures for the assignment of a surrogate parent will be followed. If the student is an adult student, all rights of consent will transfer from the parent to the adult student per the guidelines as outlined in TEC §29.017. If an evaluation is to include any psychological examination or test, the evaluation specialist must provide the child's parent the name and type of examination or test to be used and an explanation of how the test will be used to develop an appropriate IEP for the child (TEC §29.0041). The district evaluation specialist will explain to the parent or guardian of the student that consent for a full and individual evaluation is not consent for special education services. If a parent refuses consent for an initial evaluation, a notation is made on the Consent for Initial Evaluation. After discussion with the special education director/supervisor, a Refusal of Service form is completed by the assessment personnel and provided to the parent. A copy will also be placed in the student's eligibility folder. The district may, but is not required to, pursue the initial evaluation by utilizing the Procedural Safeguards, including mediation or due process procedures if appropriate. If a parent of a home schooled or private school parent refuses consent for a full and initial evaluation, the district may not pursue due process or mediation to obtain consent and the student will not be considered an eligible child for purposes of proportionate share funding.

Consent is not needed:

- *To review existing data as part of an evaluation or reevaluation,*
- *Administering a test or other evaluation that is administered to all children, unless consent is required of all parents,*
- *To screen or utilize evaluation to determine progress or monitor the effectiveness of instruction.*

(ii) The public agency does not violate its obligation under §§300.111 and 300.301 through §§300.311 if it declines to pursue the evaluation.

(b) Parental consent for services.

(1) A public agency that is responsible for making FAPE available to a child with a disability must seek to obtain informed consent from the parent of the child before the initial provision of special education and related services to the child.

(2) The public agency must make reasonable efforts to obtain informed consent from the parent for the initial provision of special education and related services to the child.

At the conclusion of the initial ARD committee meeting in which proposed services are defined, the district will make every effort to obtain written consent for the initial provision of special education and related services from the parent or guardian. District staff will be responsible for maintaining records of the attempts. These reasonable efforts include the following:

(1) Detailed records of telephone calls made or attempted and the results of those calls;

(2) Copies of correspondence sent to the parents and any responses received; and

(3) Detailed records of meetings/conference or visits made to the parent's home or place of employment and the results of those visits.

(3) If the parent of a child fails to respond to a request for, or refuses to consent to, the initial provision of special education and related services, the public agency

(i) May not use the procedures in subpart E of this part (including the mediation procedures under Sec. 300.506 or the due process procedures under Sec. Sec. 300.507 through 300.516) in order to obtain agreement or a ruling that the services may be provided to the child;

(ii) Will not be considered to be in violation of the requirement to make FAPE available to the child because of the failure to provide the child with the special education and related services for which the parent refuses to or fails to provide consent; and

(iii) Is not required to convene an IEP Team meeting or develop an IEP under Sec. Sec. 300.320 and 300.324 for the child.

(4) If, at any time subsequent to the initial provision of special education and related services, the parent of a child revokes consent in writing for the continued provision of special education and related services, the public agency

(i) May not continue to provide special education and related services to the child, but must provide prior written notice in accordance with Sec. 300.503 before ceasing the provision of special education and related services;

(ii) May not use the procedures in subpart E of this part (including the mediation procedures under Sec. 300.506 or the due process procedures under Sec. Sec. 300.507 through 300.516) in order to obtain agreement or a ruling that the services may be provided to the child;

(iii) Will not be considered to be in violation of the requirement to make FAPE available to the child because of the failure to provide the child with further special education and related services; and

(iv) Is not required to convene an IEP Team meeting or develop an IEP under Sec. Sec. 300.320 and 300.324 for the child for further provision of special education and related services.

Campus staff should contact the Special Education Administration when the parent or adult student Revokes Consent for Special Education Services. Documentation in writing of the parent or adult student's revocation will be on the required district form provided to you. As stated in (b)(4)(i) above, use of the district provided form will assure that Prior Written Notice federal requirements (listed on page 703) are specifically documented prior to ceasing services. Parent signature on this PWN form can suffice as written request from the parent.

When a parent revokes consent for the provision of special education and related services, the Tyler ISD may inquire as to why a parent is revoking consent , but may not require a parent to provide an explanation, either orally or in writing, prior to ceasing the provision of special education services.
Prior Written Notice is provided to the parent promptly after receiving written revocation of consent for provision of special education services.

The Tyler ISD cannot discontinue services (following a revocation of consent) until the parent receives the Prior Written Notice form. The PWN states Tyler ISD will provide parents the "reasonable time" and information needed to make informed decisions regarding their child's continued need for services. In Texas, a reasonable time means at least five school days.

(c) Parental consent for reevaluations.

(1) Subject to paragraph (c)(2) of this section, the public agency

(i) Must obtain informed parental consent, in accordance with §300.300(a)(1), prior to conducting any reevaluation of a child with a disability.

(ii) If the parent refuses to consent to the reevaluation the public agency may, but is not required to pursue the reevaluation by using the consent override procedures described in paragraph (a)(3) of this section.

(iii) The public agency does not violate its obligation under §300.111 and §§300.301 through 300.311 if it declines to pursue the evaluation or reevaluation.

(2) The informed parental consent described in paragraph (c)(1) of this section need not be obtained if the public agency can demonstrate that--

(i) It made reasonable efforts to obtain such consent; and

(ii) The child's parent has failed to respond.

Parental consent is not required if the evaluation team determines that additional data are not needed for an evaluation or reevaluation. In all instances, the parents have the opportunity to be part of the team which makes that determination. Therefore, no parental consent is necessary if no additional data are needed to conduct the evaluation or reevaluation. If the team determines the review of existing evaluation data are sufficient to determine whether the child is a child with a disability and that no additional data are needed to determine whether the child qualifies as a child with a disability, parental consent for an evaluation is not required.

Evaluations occur as a regular part of student progress monitoring to assess whether the child has mastered the information. If the evaluation is crucial to determining a child's continued eligibility or to determine whether "services should be increased or decreased" that is considered a reevaluation requiring written parental consent. (OSEP Letter to Sarzynski - May 6, 2008)

FBA - Functional Behavior Evaluation needs parental consent when completed to:
** develop or modify a Behavior Intervention Plan*
** determine whether the child is a child with a disability and the extent of special education and related services needed,*
** determine whether the positive behavioral interventions and supports set out in the current IEP for a child with a disability would be effective in enabling the child to make progress toward the IEP goals/objectives, or*
** determine whether the behavioral components of the IEP would need to be revised.*

(d) <u>Other consent requirements</u>.

(1) Parental consent is not required before -

(i) Reviewing existing data as part of an evaluation or a reevaluation; or

(ii) Administering a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of parents of all children.

(2) In addition to the parental consent requirements described in paragraphs (a), (b), and (c) of this section, a State may require parental consent for other services and activities under this part if it ensures that each public agency in the State establishes and implements effective procedures to ensure that a parent's refusal to consent does not result in a failure to provide the child with FAPE.

(3) The public agency may not use a parent's refusal to consent to one service or activity under paragraphs (a), (b), (c) and (d)(2) of this section to deny the parent or child any other service, benefit, or activity of the public agency, except as required by this part.

(4) (i) If a parent of a child who is home schooled or placed in a private school by the parents at their own expense does not provide consent for the initial evaluation or the reevaluation, or the parent fails to respond to a request to provide consent, the public agency may not use the consent override procedures (described in paragraphs (a)(3) and (c)(1) of the section); and

(ii) The public agency is not required to consider the child as eligible for services under §§300.132 through 300.144.

(5) To meet the reasonable efforts requirement in paragraphs (a)(1)(iii), (a)(2)(i), (b)(2), and (c)(2)(i) of this section, the public agency must document its attempts to obtain parental consent using the procedures in §300.322(d) *(found on pg 711 - conducting ARD/IEP meeting without parent in attendance)*

For more information on consent for observations/screenings, see Section 2: FIE.
For more information on consent for excusal see Section 4 Amendments.

In order to release or disclose educational records to an outside party not listed below, the district will obtain informed written consent for the release of confidential information from the parent or guardian. In general, this consent will be obtained by the educational diagnostician/LSSP or designated district staff member and the signed consent will be maintained in the student's eligibility folder. As stated in the 34 Code of Federal Regualtions §99.3:

Disclosure is defined as permitting access to or releasing, transferring or other communication of personally identifiable information contained in education records by any means, including oral, written, or electronic means, to any party except the party identified as the party that provided or created the record.

For Consent to Release Records the LEA may release records without parent consent based upon Family Educational Rights and Privacy Act (34 CFR § 99.31) to:

- *School officials with legitimate educational interest:*
- *Other schools to which a student is transferring;*
- *Specified officials for audit or evaluation purposes;*
- *Determine eligibility, the amount, and/or the conditions for the student to apply for or receive financial aid or enforce the terms and conditions of the aid for which the student has applied or which the student has received if the information is necessary. (34 CFR § 99.31(a)(4));*
- *Organizations conducting certain studies for or on behalf of the school;*
- *Accrediting organizations;*
- *To comply with a judicial order or lawfully issued subpoena;*
- *Appropriate officials in cases of health and safety emergencies; and*
- *State and local authorities, within a juvenile justice system, pursuant to specific State law.*

Parental Consent to Release records will be obtained in all other instances not listed above. For the entire FERPA regulations and specifics of each bulleted item above, please see the website below:
<u>http://www.gpo.gov/fdsys/pkg/FR-2011-12-02/pdf/2011-30683.pdf</u>
See the following pages for <u>V. Confidentiality of Information</u> .
<u>Transfer of Records to other District or from other District</u>

Generally, schools must have written permission from the parent or eligible student in order to release any information from a student's education record. However, FERPA allows schools to disclose those records, without consent, to the parties listed above.

§300.154. Methods of ensuring services.

(d) Children with disabilities who are covered by public benefits or insurance.

(1) The public agency may use the Medicaid or other public benefits or insurance programs in which a child participates to provide or pay for services required under this part, as permitted under the public benefits or insurance program, except as provided in paragraph (d)(2) of this section.
Informed parental consent may be obtained one time for the specific services and duration of services identified in a child's IEP. The Tyler ISD is not required to obtain a separate consent each time a Medicaid agency or other public insurer or public program is billed for the provision of required services. (OSEP Memorandum to State Directors May 3, 2007) Use form Consent to Access Public Benefits or Consent to Access Private Insurance. Detailed procedures are provided in Section 8, X, (G).

TEC §29.0041. Information and Consent for Certain Psychological Examinations or Tests

(a) On request of a child's parent, before obtaining the parent's consent under 20 U.S.C. Section 1414 for the administration of any psychological examination or test to the child that is included as part of the evaluation of the child's need for special education, the school district will provide to the child's parent:
(1) the name and type of the examination or test; and
(2) an explanation of how the examination or test will be used to develop an appropriate individualized education program for the child.

(b) If the district determines that an additional examination or test is required for the evaluation of a child's need for special education after obtaining consent from the child's parent under Subsection (a), the district shall provide the information described by Subsections (a)(1) and (2) to the child's parent regarding the additional examination or test and shall obtain additional consent for the examination or test.

(c) The time required for the district to provide information and seek consent under Subsection (b) may not be counted toward the 60 calendar days for completion of an evaluation under Section 29.004. If a parent does not give consent under Subsection (b) within 20 calendar days after the date the district provided to the parent the information required by that subsection, the parent's consent is considered denied.

TAC §103.1301. Video Surveillance of Certain Special Education Settings

(a) Requirement to implement. In order to promote student safety, on written request by a parent, school district board of trustees, governing body of an open-enrollment charter school, principal, assistant principal, or staff member, as authorized by Texas Education Code (TEC) §29.022(a-1), a school district or an open-enrollment charter school must provide video equipment to campuses in accordance with TEC, §29.022, and this section. Campuses that receive video equipment must place, operate, and maintain video cameras in self-contained classrooms or other special education settings in accordance with TEC, §29.022, and this section.

(b) Definitions. For purposes of TEC, §29.022, and this subchapter, the following terms have the following meanings.
(1) Parent means a person described in TEC, §26.002, whose child receives special education and related services in one or more self-contained classrooms or other special education settings. Parent also means a student who receives special education and related services in one or more self-contained classrooms or other special education settings and who is 18 years of age or older or whose disabilities of minority have been removed for general purposes under Texas Family Code, Chapter 31, unless the student has been determined to be incompetent or the student's rights have been otherwise restricted by a court order.
(2) Staff member means a teacher, a related service provider, a paraprofessional, a counselor, or an educational aide assigned to work in a self-contained classroom or other special education setting.
(3) Open-enrollment charter school means a charter granted to a charter holder under TEC, §12.101 or §12.152, identified with its own county district number.
(4) Self-contained classroom means a classroom on a regular school campus (i.e., a campus that serves students in general education and students in special education) of a school district or an open-enrollment charter school, including a room attached to the classroom used for time-out, but not

including a classroom that is a resource room instructional arrangement under TEC, §42.151, in which a majority of the students in regular attendance are provided special education and related services for at least 50 percent of the instructional day and have one of the following instructional arrangements/settings described in the student attendance accounting handbook adopted under §129.1025 of this title (relating to Adoption by Reference: Student Attendance Accounting Handbook):
(A) self-contained (mild/moderate/severe) regular campus;
(B) full-time early childhood (preschool program for children with disabilities) special education setting;
(C) residential care and treatment facility - self-contained (mild/moderate/severe) regular campus;
(D) residential care and treatment facility - full-time early childhood special education setting;
(E) off home campus - self-contained (mild/moderate/severe) regular campus; or
(F) off home campus - full-time early childhood special education setting.

(5) Other special education setting means a classroom on a separate campus (i.e., a campus that serves only students who receive special education and related services) of a school district or open-enrollment charter school, including a room attached to the classroom or setting used for time-out, in which a majority of the students in regular attendance are provided special education and related services, are assigned to the setting for at least 50 percent of the instructional day, and have one of the following instructional arrangements/settings described in the student attendance accounting handbook adopted under §129.1025 of this title:
(A) residential care and treatment facility - separate campus; or
(B) off home campus - separate campus.

(6) Video camera means a video surveillance camera with audio recording capabilities.

(7) Video equipment means one or more video cameras and any technology and equipment needed to place, operate, and maintain video cameras as required by TEC, §29.022, and this section. Video equipment also means any technology and equipment needed to store and access video recordings as required by TEC, §29.022, and this section.

(8) Incident means an event or circumstance that:
(A) involves alleged "abuse" or "neglect," as those terms are described in Texas Family Code, §261.001, of a student by a staff member of the school district or charter school or alleged "physical abuse" or "sexual abuse," as those terms are described in Texas Family Code, §261.001, of a student by another student; and
(B) allegedly occurred in a self-contained classroom or other special education setting in which video surveillance under TEC, §29.022, and this section is conducted.

(9) School business day means a day that campus, school district, or open-enrollment charter school administrative offices are open.

(10) Time-out has the meaning assigned by TEC, §37.0021.

(c) Exclusions. A school district or open-enrollment charter school is not required to provide video equipment to a campus of another district or charter school or to a nonpublic school. In addition, the Texas School for the Deaf, the Texas School for the Blind and Visually Impaired, the Texas Juvenile Justice Department, and any other state agency that provides special education and related services to students are not subject to the requirements in TEC, §29.022, and this section.

(d) Use of funds. A school district or open-enrollment charter school may solicit and accept gifts, grants, and donations from any person to implement the requirements in TEC, §29.022, and this section. A district or charter school is not permitted to use Individuals with Disabilities Education Act, Part B, funds or state special education funds to implement the requirements of TEC, §29.022, and this section.

(e) Dispute resolution. The special education dispute resolution procedures in 34 Code of Federal Regulations, §§300.151-300.153 and 300.504-300.515, do not apply to complaints alleging that a school district or open-enrollment charter school has failed to comply with TEC, §29.022, and/or this section. Complaints alleging violations of TEC, §29.022, and/or this section must be addressed through the district's or charter school's local grievance procedures or other dispute resolution channels.

(f) Regular school year and extended school year services. TEC, §29.022, and this section apply to video surveillance during the regular school year and during extended school year services.

(g) Policies and procedures. Each school district board of trustees and open-enrollment charter school governing body must adopt written policies relating to the placement, operation, and maintenance of video cameras under TEC, §29.022, and this section. At a minimum, the policies must include:

(1) a statement that video surveillance is for the purpose of promoting student safety in certain self-contained classrooms and other special education settings;

(2) information on how a person may appeal an action by the school district or open-enrollment charter school that the person believes to be in violation of this section or a policy adopted in accordance with this section, including the appeal and expedited review processes under §103.1303 of this title (relating to Commissioner's Review of Actions Concerning Video Cameras in Special Education Settings) and the appeals process under TEC, §7.057;

(3) a requirement that the school district or open-enrollment charter school provide a response to a request made under this section not later than the seventh school business day after receipt of the request by the person to whom it must be submitted under TEC, §29.022(a-3), that authorizes the request or states the reason for denying the request;

(4) except as provided by paragraph (6) of this subsection, a requirement that a school or campus begin operation of a video camera in compliance with this section not later than the 45th school business day, or the first school day after the 45th school business day if that day is not a school day, after the request is authorized unless the Texas Education Agency (TEA) grants an extension of time;

(5) a provision permitting the parent of a student whose admission, review, and dismissal committee has determined that the student's placement for the following school year will be in a classroom or other special education setting in which a video camera may be placed under this section to make a request for the video camera by the later of:

(A) the date on which the current school year ends; or

(B) the 10th school business day after the date of the placement determination by the admission, review, and dismissal committee;

(6) a requirement that, if a request is made by a parent in compliance with paragraph (5) of this subsection, unless the TEA grants an extension of time, a school or campus begin operation of a video camera in compliance with this section not later than the later of:

(A) the 10th school day of the fall semester; or

(B) the 45th school business day, or the first school day after the 45th school business day if that day is not a school day, after the date the request is made;

(7) the procedures for requesting video surveillance and the procedures for responding to a request for video surveillance;

(8) the procedures for providing advanced written notice to the campus staff and the parents of the students assigned to a self-contained classroom or other special education setting that video and audio surveillance will be conducted or cease in the classroom or setting, including procedures for notice, in compliance with TEC, §29.022(b), of the opportunity to request continued video and audio surveillance if video and audio surveillance will otherwise cease;

(9) a requirement that video cameras be operated at all times during the instructional day when one or more students are present in a self-contained classroom or other special education setting in which video cameras are placed;

(10) a statement regarding the personnel who will have access to video equipment or video recordings for purposes of operating and maintaining the equipment or recordings;

(11) a requirement that a campus continue to operate and maintain any video camera placed in a self-contained classroom or other special education setting for as long as the classroom or setting continues to satisfy the requirements in TEC, §29.022(a), for the remainder of the school year in which the school or campus received the request, unless the requestor withdraws the request in writing;

(12) a requirement that video cameras placed in a self-contained classroom or other special education setting be capable of recording video and audio of all areas of the classroom or setting, except that no visual monitoring of bathrooms and areas in which a student's clothes are changed may occur. Incidental visual coverage of the inside of a bathroom or any area of the classroom or other special education setting in which a student's clothes are changed is permitted only to the extent that such coverage is the result of the layout of the classroom or setting. Audio recording of the inside of a bathroom or any area of the classroom or other special education setting in which a student's clothes are changed is required;

(13) a statement that video recordings must be retained for at least three months after the date the video was recorded and that video recordings will be maintained in accordance with the requirements of TEC, §29.022(e-1), when applicable;

(14) a statement that the regular or continual monitoring of video is prohibited and that video recordings must not be used for teacher evaluation or monitoring or for any purpose other than the promotion of student safety;

(15) at the school district's or open-enrollment charter school's discretion, a requirement that campuses post a notice at the entrance of any self-contained classroom or other special education setting in which video

cameras are placed stating that video and audio surveillance are conducted in the classroom or setting;

(16) the procedures for reporting an allegation to the school district, charter school, or school that an incident occurred in a self-contained classroom or other special education setting in which video surveillance under TEC, §29.022, and this section is conducted;

(17) the local grievance procedures for filing a complaint alleging violations of TEC, §29.022, and/or this section; and

(18) a statement that video recordings made under TEC, §29.022, and this section are confidential and a description of the limited circumstances under which the recordings may be viewed.

(h) Confidentiality of video recordings. A video recording made under TEC, §29.022, and this section is confidential and may only be released and/or viewed by the following individuals, to the extent permitted or required by TEC, §29.022(i), and to the extent not limited by the Family Educational Rights and Privacy Act of 1974 (FERPA) or other law:

(1) a staff member or a parent of a student involved in an incident described in subsection (b)(8) of this section that is documented by a video recording for which an incident has been reported to the district, charter school, or school;

(2) appropriate Texas Department of Family and Protective Services personnel as part of an investigation under Texas Family Code, §261.406;

(3) a peace officer, school nurse, or administrator of a school district, charter school, or school trained in de-escalation and restraint techniques as provided by commissioner rule, or a human resources staff member designated by the school district's board of trustees or open-enrollment charter school's governing body in response to a report or an investigation of an incident described in subsection (b)(8) of this section; or

(4) appropriate TEA or State Board for Educator Certification personnel or agents as part of an investigation.

(i) Exception to restrictions on viewing. A contractor or employee performing job duties relating to the installation, operation, or maintenance of video equipment or the retention of video recordings who incidentally views a video recording does not violate subsection (h) of this section.

(j) Child abuse and neglect reporting. If a person described in subsection (h)(3) or (4) of this section views a video recording and has cause to believe that the recording documents possible abuse or neglect of a child under Texas Family Code, Chapter 261, the person must submit a report to the Texas Department of Family and Protective Services or other authority in accordance with the local policy adopted under §61.1051 of this title (relating to Reporting Child Abuse and Neglect) and Texas Family Code, Chapter 261.

(k) Disciplinary actions and legal proceedings. If a person described in subsection (h)(2), (3), or (4) of this section views a video recording and believes that it documents a possible violation of school district, open-enrollment charter school, or campus policy, the person may allow access to the recording to appropriate legal and human resources personnel of the district or charter school to the extent not limited by FERPA or other law. A recording believed to document a possible violation of school district, open-enrollment charter school, or campus policy relating to the neglect or abuse of a student may be used in a disciplinary action against district or charter school personnel and must be released in a legal proceeding at the request of a parent of the student involved in the incident documented by the recording. A recording believed to document a possible violation of school district, open-enrollment charter school, or campus policy relating to the neglect or abuse of a student must be released for viewing by the district or charter school employee who is the subject of the disciplinary action at the request of the employee.

(l) Access rights. Subsections (j) and (k) of this section do not limit the access of a student's parent to an educational record of the student under FERPA or other law. To the extent any provisions in TEC, §29.022, and this section conflict with FERPA or other federal law, federal law prevails.

Summary/Purpose

Texas Education Code §29.022 requires school districts to place, operate, and maintain video cameras with audio recording capability in certain Self-contained Classrooms and Other Special Education Settings for students with disabilities, upon the request of a parent, the District's Board of Trustees, or staff member, as defined herein, for the purpose of promoting the safety of students with disabilities in these classrooms.

Definitions

Alleged Incident *– An event or circumstance that allegedly occurred in a Self-contained Classroom or Other Special Education Setting in which video surveillance under TEC §29.022 is conducted that involves alleged*

"abuse" or "neglect," as defined in the Texas Family Code, of a student by an employee of the District, or alleged "physical abuse" or "sexual abuse," as defined in the Texas Family Code, of a student by another student.

Designated District Coordinator *– An administrator, designated by the Superintendent, at the primary administrative office of the District responsible for coordinating the provision of equipment to schools and campuses in compliance with TEC §29.022 and these Operating Guidelines.*

Human Resource Staff Member *– Superintendent, a principal, an assistant principal or other campus administrator, and any supervisory position within the District's human resources office, including the Executive Director of Student Support.*

Incident Report *(i.e. Complaint) – Notification to the District of an Alleged Incident that occurred in a Self-contained Classroom or Other Special Education Setting in which video surveillance under TEC §29.022 is conducted by completing and providing an Incident Report form to the campus principal.*

Other Special Education Setting *– A classroom on a separate campus (i.e. a campus that serves only students who receive special education and related services), in which a majority of the students in regular attendance are provided special education and have one of the following instructional arrangements (i.e. PEIMS codes) as described in the Student Attendance Accounting Handbook: 86 or 96.*

Parent *– A parent, guardian or other person standing in parental relation to the student, whose rights have not been terminated, and whose child receives special education and related services for at least 50 percent of the instructional day in one or more Self-contained Classrooms or Other Special Education Settings. "Parent" also means a student who receives special education and related services for at least 50 percent of the instructional day in one or more Self-contained Classrooms or Other Special Education Settings and who is 18 years of age or older or whose disabilities of minority have been removed, unless the student has been determined to be incompetent or the student's rights have been otherwise restricted by a court order.*

School Business Day *– A day that campus or District administrative offices are open.*

Self-contained Classroom *– A classroom on a regular school campus (i.e. a campus that serves students in general education and students in special education), in which a majority of the students in regular attendance are provided special education and have one of the following instructional arrangements (i.e. PEIMS codes) described in the Student Attendance Accounting Handbook: 43, 44, 45, 84, 85, 89, 94, 95, or 98.*

Staff Member *– A teacher, related service provider, paraprofessional, counselor, or educational aide assigned to work in a Self-contained Classroom or Other Special Education Setting.*

Time-out – *A behavior management technique in which, to provide a student with an opportunity to regain self-control, the student is separated from other students for a limited period in a setting that is not locked and from which the exit is not physically blocked by furniture, a closed door held shut from the outside, or another inanimate object (TEC §37.0021).*

Video Camera *– A video surveillance camera with audio recording capabilities.*

Video Equipment *– One or more video cameras and any technology and equipment needed to place, operate, and maintain video cameras, and any technology and equipment needed to store and access video recordings as required by TEC §29.022.*

Procedures for Requesting Video/Audio Surveillance

A request by a Parent, Staff Member or Assistant Principal for a request for installation and operation of video/audio recording of a Self-contained Classroom or Other Special Education Setting must be made by completing and submitting to the campus principal (or principal's designee) a written Request for the Installation of Video and Audio Recording Equipment ("Request for Installation") form, including identification

of the specific Self-contained Classroom or Other Special Education Setting for which the request is being made. The principal shall provide a copy of the Request to the Designated District Coordinator.

A Parent may request installation of a video camera for the Self-contained Classroom(s) or Other Special Education Setting(s) in which the Parent's child is in regular attendance.

A parent of a student whose Admission, Review, and Dismissal ("ARD") committee has determined that the student will be served in a Self-contained Classroom(s) or Other Special Education Setting(s) the following year, for at least 50 % of the day, may request installation of a video camera for the Self-contained Classroom(s) or Other Special Education Setting(s), where the parent's child will be served in the next school year, by the later of: (1) the last date of the current school year, or (2) the 10th School Business Day after the date of the placement determination by the ARD committee.

A Staff Member may request installation of a video camera for the Self-contained Classroom(s) or Other Special Education Setting(s) to which the Staff Member is assigned.

A Principal may make a request for installation and operation of video/audio recording of a Self-contained Classroom(s) or Other Special Education Setting(s) by completing and submitting to the Designated District Coordinator a written Request for Installation form.

A Principal and/or Assistant Principal may request installation of a video camera for one or more Self-contained Classroom(s) or Other Special Education Setting(s) on the Principal or Assistant Principal's campus.

The District Board of Trustees may make a request for installation and operation of video/audio recording of a Self-contained Classroom(s) or Other Special Education Setting(s) by completing and submitting to the Designated District Coordinator a written Request for Installation form, which must include identification of the specific Self-contained Classroom(s) or Other Special Education Setting(s) for which the request is being made. The Designated District Coordinator shall provide a copy of the Request to the principal (or principal's designee) of each school or campus addressed in the Board of Trustees' Request.

The Request for Installation form may be obtained under the Principal tab in Eduphoria Forms.

A request for installation and operation of video/audio recording of a Self-contained Classroom(s) or Other Special Education Setting(s) must be renewed annually if operation of the video/audio equipment is desired for the subsequent school year.

Procedures for Responding to Requests for Video/Audio Surveillance, Including Notice

1. *Upon receipt of a Request for Installation form, the District will determine if the requested location is subject to video/audio surveillance.*
2. *Within seven (7) School Business Days from receipt of the Request for Installation form, the Designated District Coordinator or associated administrator will provide a written response to the requestor, authorizing the request or stating the reason for denying the request. The response shall include a copy of these Operating Guidelines.*
3. *If the requested location is subject to video/audio surveillance, the District will purchase, install, and operate video/audio recording equipment in the classroom(s) or setting(s) to which the request applies.*
4. *Except as provided in these Operating Guidelines, the purchase, installation, and operation of the video/audio recording equipment will take place not later than the 45th School Business Day, or the 1st school day after the 45th School Business Day if that day is not a school day, after the request is authorized (unless the Texas Education Agency ["TEA"] grants an extension of time).*
5. *If a request is received from a parent of a student whose ARD committee has determined that the student will be served in a Self-contained Classroom(s) or Other Special Education Setting(s) the following year, the purchase, installation, and operation of the video/audio recording equipment will take place not later than the later of: the 10th school day of the fall semester of the next school year, or the 45th School Business Day, or the 1st school day after the 45th School Business Day if that day is not a school day, after the request is made (unless the TEA grants an extension of time).*

6. *The video/audio recording equipment will not be activated until after the campus principal provides advanced written notice, of at least five School Business Days, of the placement of the video camera to (a) the parents of each student attending class, or engaging in school activities, in the classroom or setting, by sending the notice to the parents and (b) all campus staff by posting a notice at the entrance to the classroom or setting stating "This classroom is subject to ongoing video and audio surveillance that is not regularly live monitored."*
7. *The video recording will cover all areas of the classroom or setting, including a room attached to the classroom or setting used for Time-out.*
8. *The inside of a bathroom or area used for toileting or diapering a student or removing or changing a student's clothes may not be visually monitored, except for incidental coverage of a minor portion of the bathroom or changing area because of the layout of the classroom or setting.*
9. *The audio recording will cover all areas of the classroom or setting, Time-out room, and bathroom or changing area.*
10. *Once the video equipment is installed, the District will not allow regular or continual monitoring of the video/audio recordings.*
11. *The video camera will be operated at all times during which students are present in the Self-contained Classroom or Other Special Education Setting. The video camera may also, but is not required to, be operational at times when students are not in the classroom or setting.*
12. *The District will continue to operate and maintain the video/audio recording in the Self-contained Classroom or Other Special Education Setting for the remainder of the regular school year, or for the remainder of the Extended School Year ("ESY") services for which the school or campus received the request, as long as the classroom or setting continues to meet the definition of a Self-contained Classroom or Other Special Education Setting. If the requestor withdraws the request in writing, or if the make-up of the classroom or setting changes such that the location no longer meets the definition of a Self-contained Classroom or Other Special Education Setting, the video/audio recording may be discontinued. Written notice of the discontinuation of video/audio surveillance will be provided to the parents of the students in regular attendance in the classroom or setting at least five (5) school days prior to the discontinuation.*
13. *At least ten (10) school days before the end of each school year, the school or campus shall notify the parents of each student in regular attendance in the classroom or setting that operation of the video camera will not continue during the following school year unless a person eligible to make a request for the next school year submits a new request.*
14. *The video/audio recordings will be stored in a safe and secure manner whether on on-site or off-site servers or in cloud storage.*
15. *The District will retain the video/audio recordings for at least three (3) months after the video was recorded, and may retain them longer if a request for viewing is made, as specified below.*
16. *These requirements apply to video/audio surveillance during the regular school year and during ESY services.*

Procedures for Making an Incident Report

A person may notify the District of an Alleged Incident occurring in a Self-contained Classroom or Other Special Education Setting where video/audio surveillance is in effect by completing an Incident Report form and providing it to the campus principal. The Incident Report form may be obtained from the campus principal or assistant principal. The person making the Incident Report should be as specific as possible regarding the date, time, and location of the Alleged Incident, should include any witnesses, and should describe the suspected incident as clearly as possible. The Incident Report should be provided to the campus principal as soon as possible, and if at all possible within 48 hours after the reporter becomes aware of an Alleged Incident.

Procedures for Responding to an Incident Report

1. *If an Alleged Incident, as defined herein, is reported, absent extenuating circumstances, within seven (7) School Business Days from receipt of the Incident Report Form, the campus principal or authorized designee will coordinate with one or more eligible person(s) as set forth below to schedule a time and location for them to view the recording of the Alleged Incident to determine whether the recording contains evidence of abuse or neglect, as defined in the Texas Family Code, of a student by an employee of the*

District, or physical abuse or sexual abuse, as defined in the Texas Family Code, of a student by another student. If so, the appropriate District administrator shall initiate other steps as required by law, District policy, or local procedures.

2. *The appropriate District administrator(s) will determine whether any additional safety measures should be taken in the Self-contained Classroom or Other Special Education Setting pending a review of the relevant video/audio recording.*
3. *If the Alleged Incident, as set forth on the Incident Report form, cannot as described on the form, qualify as abuse or neglect, as defined in the Texas Family Code, of a student by an employee of the District, or physical abuse or sexual abuse, as defined in the Texas Family Code, of a student by another student, the District will provide written notice to the person making the report that the allegations on the Incident Report form do not set forth an Alleged Incident (i.e. abuse or neglect, as defined in the Texas Family Code, of a student by an employee of the District, or physical abuse or sexual abuse, as defined in the Texas Family Code, of a student by another student.)*
4. *Following the initial review of the video/audio recording by the District's eligible persons, the District will notify the Parent who made the Incident Report as to whether the recording documented abuse or neglect, as defined in the Texas Family Code, of a student by an employee of the District, or physical abuse or sexual abuse, as defined in the Texas Family Code, of a student by another student within three (3) School Business Days. The District will notify the Parent of one of the following:*

a. *The recording documenting abuse or neglect, as defined in the Texas Family Code, of a student by an employee of the District, or physical abuse or sexual abuse, as defined in the Texas Family Code, of a student by another student, is available for viewing by the Parent upon making an appointment;*
b. *While the recording did not document abuse or neglect, as defined in the Texas Family Code, of a student by an employee of the District, or physical abuse or sexual abuse, as defined in the Texas Family Code, of a student by another student, it did document a significant act involving the student, such that the recording is an educational record pursuant to the Family Educational Rights and Privacy Act (FERPA) and is available for viewing by the Parent upon making an appointment; or*
c. *Although the recording does not depict abuse or neglect, as defined in the Texas Family Code, of a student by an employee of the District, physical abuse or sexual abuse, as defined in the Texas Family Code, of a student by another student, or a significant act involving the student such that the recording is not an educational record pursuant to FERPA, the video is available for viewing by the Parent upon making an appointment.*

5. *Additionally, the District will notify any non-reporting parent of a child who is subject to abuse or neglect, as defined in the Texas Family Code, of a student by an employee of the District, or physical abuse or sexual abuse, as defined in the Texas Family Code, of a student by another student, as documented on the recording within three (3) school business days of the initial review of the video/audio recordings.*

Access to Video/Audio Recordings

1. *A video/audio recording made as a result of these provisions is confidential.*
2. *The District will not allow regular or continual monitoring of video/audio recordings.*
3. *The District will not use the video/audio recordings for teacher evaluation or monitoring or for any purpose other than the promotion of safety of students receiving special education in a Self-contained Classroom or Other Special Education Setting.*
4. *In response to an Incident Report setting forth an Alleged Incident, the District will allow viewing of the video/audio recording only by the following eligible persons:*
    a. *An employee who is involved in an Alleged Incident that is documented by the recording and who requests to view the recording;*
    b. *A parent/guardian of a student who is involved in an Alleged Incident documented by the recording and who requests to view the recording;*
    c. *A peace officer;*
    d. *A school nurse;*
    e. *A District or school administrator trained in de-escalation and restraint techniques; and*
    f. *A Human Resources Staff Member designated by the Board of Trustees.*
5. *As part of an investigation of district or school personnel, or a report of alleged abuse committed by a student, the District will allow viewing of the video/audio recording only by the following:*
    a. *A peace officer;*
    b. *A school nurse;*

c. *A District or school administrator trained in de-escalation and restraint techniques; and*
d. *A Human Resources Staff Member designated by the Board of Trustees.*

6. *The District will also allow viewing of the video/audio recording to the following under the following conditions:*
   a. *Appropriate Department of Family and Protective Services ("DFPS") personnel as part of an investigation of alleged or suspected abuse or neglect of a child in a public or private school under the jurisdiction of the TEA;*
   b. *Appropriate TEA or State Board for Educator Certification ("SBEC") personnel or agents as part of an investigation; and*
   c. *If DFPS personnel, a peace officer, school nurse, administrator, human resources staff member or SBEC personnel/agent view the video/audio recording and believes that the recording documents a possible violation of district or school policy, relating to the neglect or abuse of a student, the person may allow appropriate legal and human resources personnel access to the recording, and the recording may be used as part of a disciplinary action against district or school personnel.*
   d. *A District employee who is the subject of the disciplinary action must be allowed to view a recording believed to document a possible violation of District or campus policy, relating to abuse of neglect of a student, if the employee requests to view the recording.*
   e. *In accordance with Board Policy FL (LEGAL and LOCAL), District personnel or contractors whose job duties involve installation, operation, or maintenance of the video equipment or the retention of the video recordings will have access to the equipment and recordings only to the extent necessary to ensure the functionality of the equipment.*
7. *No one has any right to obtain a copy of a video/audio recording except that a copy will be released at the request of the student's parent or guardian in a legal proceeding.*
8. *Nothing in these procedures limits a parent's right to access educational records of a child under the Family Educational Rights and Privacy Act. However, not all surveillance video/audio recordings are educational records of a student. If the recording is directly related to a student who is the focus of the video, only that portion of the recording is an educational record of that student and may be viewed by that student's parent upon request. The recording is not an educational record of students who are merely present and not the focus of the recording, and may not be viewed by the parents of these students.*
9. *If the District receives a request to view a recording, the District will provide a written response to the requestor within seven (7) School Business Days.*

Child Abuse Reporting

If a peace officer, school nurse, administrator, human resources staff member, or SBEC personnel/agent views the recording and believes that the recording documents possible abuse of a child as defined by the Family Code, the person shall submit a report to the DFPS for investigation in accordance with the Family Code.

Dispute Resolution

Special education dispute resolution procedures (i.e. due process hearing, mediation, TEA complaint) do not apply to any dispute arising under TEC §29.022 or these provisions. Such disputes must be addressed through the District's grievance procedures or other local dispute resolution channels.
Employee complaints/grievances must be made in accordance with Board Policy DGBA (LEGAL and LOCAL); Student and/or Parent complaints/grievances must be made in accordance with Board Policy FNG (LEGAL and LOCAL), and public complaints must be made in accordance with Board Policy GF (LEGAL and LOCAL).
The grievant may appeal the District's decision by filing a written petition, pursuant to Tex. Educ. Code §7.057, with the Commissioner of Education. The appeal must be made in writing to the Commissioner within 45 days of the District's decision.
Staff Members or a Parent may seek expedited TEA review if a request is denied. This could be a request for installation, a request to view, or a request for extension of time for installation.

§103.1303. Commissioner's Review of Actions Concerning Video Cameras in Special Education Settings.

(a) Applicability. This section shall apply to all hearings and reviews of actions taken under Texas Education Code (TEC), §29.022, concerning denials of requests for the installation of cameras, denials of requests to view a video, denials of requests to release a video, and requests of a school district for an extension of time for the installation of cameras. This section applies to constructive denials of requests, which occur when a school district fails to timely issue a denial of a request. To the extent that this section conflicts with any other sections governing hearings before the commissioner of education, including Chapter 157, Subchapter AA of this title (relating to General Provisions for Hearings Before the Commissioner of Education) and Subchapter BB of this title (relating to Specific Appeals to the Commissioner), this section shall prevail.

(b) Denial of request. The following standards and procedures apply to a denial of a request made under TEC, §29.022(a), for the placement of a video camera or to the denial of a request to release a video or to view a video made under TEC, §29.022(i) or (l)(2).

(1) Once a request for placement of a video camera or a request to release a video is administratively denied, the requestor must exhaust administrative remedies through the school district's grievance process even if the requestor opts for the expedited review process. However, a school district, parent, staff member, or administrator may request an expedited review even before local remedies are exhausted.

(2) After local remedies are exhausted by filing a grievance with the school board and obtaining a school board determination, the requestor may appeal the denial to the commissioner of education under TEC, §7.057, by filing a petition for review.

(3) In a case where there is a denial of a request for the placement of a video camera, the commissioner will determine whether the person requesting placement is a person allowed to request placement under TEC, §29.022(a-1), and whether the requestor made a proper request under TEC, §29.022(a-3)

(4) The commissioner will not consider the cost to the district of installing cameras or releasing a video.

(5) In a case where there is a denial of a request to release a video, the commissioner will determine whether the requestor is a person allowed to receive a video under TEC, §29.022(i). The commissioner may make an in-camera inspection of the video in question in the appropriate case.

(6) The following timelines are established for filing a petition for review.

(A) A petition for review shall be filed with the commissioner within 10 calendar days of the decision of the board of trustees denying the request being first communicated to the requestor or requestor's counsel, whichever occurs first. The petition for review shall be made in accordance with §157.1073(c) of this title (Relating to Hearings Brought Under Texas Education Code, §7.057) and may include a request for expedited review.

(B) The district's answer and local record shall comply with §157.1052(b) and (c) of this title (relating to Answers) and §157.1073(d) of this title and shall be filed with the commissioner within 10 calendar days of the school district receiving notification from the commissioner of the appeal.

(C) The procedures specified in §§157.1059; 157.1061; and 157.1073(e)-(h), (j), and (k) of this title apply to a case brought to the commissioner under this section.

(7) A request for expedited review is governed by the following.

(A) The expedited review process is designed to allow a requestor to promptly receive a preliminary judgment from the commissioner as to a decision to deny a request for the installation of cameras or a decision to deny a request to release a video while at the same time respecting the school grievance process. The expedited review process does not apply to a request to only view a video. Invoking the expedited review process results in a prompt initial determination. However, the final commissioner's determination is to be based on a substantial evidence review of the school district's grievance record. This allows for a full record to be developed at the school district level and does not require the requestor and the school district to make an evidentiary record before the Texas Education Agency (TEA) in Austin, Texas. Because the requirements of TEC, §7.057, are met when the school board's decision is heard by the commissioner, an appeal to district court is allowed under TEC, §7.057(d). TEC, §29.022, does not by itself allow an appeal to district court.

(B) A school district, parent, staff member, or administrator may request an expedited review. Any request for an expedited review shall include the names, telephone numbers, and addresses of all interested parties to the request. "Interested parties" are all persons who brought the grievance, all persons who have testified or provided written statements as part of the grievance process, and the school district. The request for expedited review shall specify whether the school district denied a request for the placement of a video camera or the school district denied a request to release a video and briefly describe why that decision is either correct or incorrect.

(C) A request for expedited review shall be filed with the commissioner no earlier than 14 business days after a request for placement of a video camera or a request to release a video is administratively

denied under TEC, §29.022(i) or (l)(2), and no later than the fifth business day after a school board resolves a grievance as to a request for placement of a video camera or a request to release a video. A request for expedited review shall be filed with the commissioner by U.S. mail, facsimile, hand delivery, or by a commercial delivery service.

(D) Whenever an interested party files a document with the commissioner, with the exception of the request for expedited review, the interested party shall send the same document to all other interested parties by the same method that the document was sent to the commissioner. Hand-delivery of the document by the next day may be substituted for service by facsimile delivery.

(E) If a request for expedited review is timely filed, the commissioner will establish a briefing schedule and will send to all interested parties a notice that an expedited review has been filed, which will include relevant statutes and rules. Any interested party who knows of any additional interested parties who have not been notified will promptly inform the commissioner in writing.

(F) All briefing shall clearly state the facts relied upon. Documents relevant to the issues presented may be attached to a brief. All briefing shall provide the reasons why the commissioner should or should not grant the request for expedited review. Citations to statutes, rules, commissioner decisions, and caselaw are important to identify the legal basis for the claims made.

(G) All interested parties who are in favor of granting the request for expedited review shall file briefing at the time specified for the requestor of the expedited review.

(H) All interested parties who are opposed to granting the request for expedited review shall file briefing at the same time.

(I) Briefing is not limited to the issues specifically raised in the pleadings in the case. However, no new arguments may be raised in the reply briefs. Reply briefs may contain new citations to the record and legal authority as to issues previously raised.

(J) A preliminary judgment shall be issued based on the briefing of the interested parties. The preliminary judgment will be sent to the requestor, the school district, and all interested parties. If it is determined that a school district is not likely to prevail on the issue of a request for the placement of video cameras or the issue of a request to view a video under full review, the school district will fully comply with TEC, §29.022.

(K) After a preliminary judgment is made, a final judgment will be made in accordance with the procedures set forth in paragraphs (1)-(5) of this subsection.

(c) Extension of time. A request by a school district for an extension of time to begin the operation of a video camera under TEC, §29.022, shall be made and decided using the following procedures.

(1) Any request by a school district for an extension of time to begin the operation of a video camera shall be filed with the commissioner prior to the 45th school business day after a request to begin operating a video camera is received. However, a school district should request an extension of time as soon as it determines that an extension of time should be filed.

(2) A request for an extension of time to begin the operation of a video camera shall specify why an extension of time should be granted. The request shall include affidavits supporting any factual claims made in the request and reference any legal authority as to why the request should be granted. The request may include a request for expedited review. The request shall name the individual who requested the installation of cameras and provide the individual's address and telephone number. Immediately following the individual's address and telephone number there shall appear in bold type: "You have been identified as the individual who requested the operation of a video camera that is the subject of this request to the commissioner of education to extend the statutory timeline. You may, but are not required to, participate in the proceedings before the commissioner concerning the school district's request for an extension of time. It is entirely up to you whether and to what extent you wish to participate in these proceedings. The procedures governing these proceedings are found at 19 Texas Administrative Code §103.1303(c) and Texas Education Code, §29.022."

(3) A request for an extension of time to begin the operation of a video camera shall list the names, telephone numbers, and addresses of all interested parties to the request. All interested parties include all parents of students in the classroom or other special education setting for which a video camera has been requested and all staff who provided services in a classroom for which a video camera has been requested.

(4) All documents in a case shall be filed with the Division of Hearings and Appeals, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, facsimile number (512) 475-3662. Documents can be filed by mail, delivery, or facsimile. All documents must be actually received by the

Division of Hearings and Appeals by the date specified in this section. The mailbox rule does not apply to filings in a case filed under this subsection. Filing by facsimile is strongly encouraged.

(5) All filings in a case shall be sent to the school district, the individual who initially requested the installation of the cameras, and all interested parties who have filed a request to receive documents filed in the case by the same method as the request is filed with the commissioner. Due to the requirements of the Family Educational Rights and Privacy Act of 1974, the names, telephone numbers, and addresses of parents and other publicly identifiable student information may not be given to the interested parties. The copies of the filings sent to interested parties shall be redacted to remove all personally identifiable student information.

(6) Any response to a request for an extension of time to begin the operation of a video camera shall be filed with the commissioner by an interested party within 10 calendar days of the filing of the request. If no response to the request is timely filed, the commissioner shall issue a final decision within 20 calendar days of the filing of the request.

(7) A response to a request for an extension of time to begin the operation of a video camera shall specify why an extension of time should or should not be granted. The response shall include affidavits concerning any factual claims made in the request and reference any legal authority as to why the request should or should not be granted. The response may include a request for expedited review.

(8) A request for expedited review must be filed with the commissioner within 10 calendar days of the filing of the request for an extension of time to begin the operation of a video camera. If a request for expedited review is made, all interested parties shall be notified that they have been identified as interested parties in the request for an extension of time to begin the operation of a video camera. In particular, the interested parties will be informed that it is their choice whether to participate in the proceedings before the commissioner, that it is entirely up to them to determine to what extent they wish to participate in the proceedings, that the procedures governing these proceedings are found in this subsection and TEC, §29.022, and that upon their written request filed with the commissioner they will be sent all filings in this case.

(9) If a request for an expedited review is not made, the commissioner shall issue a final decision within 45 calendar days of the filing of the request for an extension of time to begin the operation of a video camera, unless the commissioner determines that an evidentiary hearing would be helpful in deciding the issues raised. If the commissioner decides to hold an evidentiary hearing, the commissioner shall establish the timelines and procedures to be used. Whether to conduct the hearing by telephone or other electronic methods will be considered.

(10) If a request for expedited review is made, the following procedures shall be followed.

(A) Any reply by the school district to any response to the request shall be filed with the commissioner within 25 calendar days of the filing of the request for an extension of time to begin the operation of a video camera.

(B) A preliminary judgment shall be made by the commissioner within 35 calendar days of the filing of the request for an extension of time to begin the operation of a video camera.

(C) Any interested party or the school district may file objections to the preliminary judgment within 40 calendar days of the filing of the request for an extension of time to begin the operation of a video camera.

(D) Any reply to an objection to a preliminary judgment must be filed within 45 calendar days of the filing of a request for an extension of time to begin the operation of a video camera.

(E) The commissioner shall issue a final decision within 55 calendar days of the filing of the request for an extension of time to begin the operation of a video camera, unless the commissioner determines that an evidentiary hearing would be helpful in deciding the issues raised. If the commissioner decides to hold an evidentiary hearing, the commissioner shall establish the timelines and procedures to be used. Whether to conduct the hearing by telephone or other electronic methods will be considered.

(11) In making either a preliminary judgment or a final judgment under this subsection, the commissioner will consider whether granting the requested extension is reasonable considering all factors, including contracting statutes, architectural and structural issues, and the difference in costs to the district if a moderate extension of time is granted.

(12) A commissioner's final decision under this subsection is not subject to appeal.

TEC §48.265 [42.2528]. EXCESS FUNDS FOR VIDEO SURVEILLANCE OF SPECIAL EDUCATION SETTINGS.

See Section 8. under State Funding

Consent for Individual Family Support Plan (IFSP) – §300.323(b)(2)(ii)

§300.323 When IEPs must be in effect.

(b) IEP or IFSP for children aged three through five.

(1) In the case of a child with a disability aged three through five (or, at the discretion of the SEA, a two-year-old child with a disability who will turn age three during the school year), the IEP Team must consider an IFSP that contains the IFSP content (including the natural environments statement) described in section 636(d) of the Act and its implementing regulations (including an educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills for children with IFSPs under this section who are at least three years of age), and that is developed in accordance with the IEP procedures under this part. The IFSP may serve as the IEP of the child, if using the IFSP as the IEP is--

(i) Consistent with State policy; and

(ii) Agreed to by the agency and the child's parents.

(2) In implementing the requirements of paragraph (b)(1) of this section, the public agency must--

(i) Provide to the child's parents a detailed explanation of the differences between an IFSP and an IEP; and

(ii) If the parents choose an IFSP, obtain written informed consent from the parents.

For children served by the district that have an Individualized Family Service Plan (IFSP), the ARD Committee/IEP Team must review and consider the IFSP, including the natural environments statement and educational components that promote school readiness and incorporates pre-literacy, language, and numeracy skills for children with IFSPs. The IFSP may serve as the IEP of the child if it complies with all state and federal regulations for an IEP and if the district and the child's parents agree. Written consent of the parents must be obtained to use the IFSP in place of the IEP. Consent will include a detailed explanation of the differences between an IFSP and an IEP.

§300.323 When IEPs must be in effect.

(e) If a child with a disability (who had an IEP that was in effect in a previous public agency in the same State) transfers to a new public agency in the same State, and enrolls in a new school within the same school year, the new public agency (in consultation with the parents) must provide FAPE to the child (including services comparable to those described in the child's IEP from the previous public agency), until the new public agency either---

(1) Adopts the child's IEP from the previous public agency; or

(2) Develops, adopts, and implements a new IEP that meets the applicable requirements in §§300.320 through 300.324.

(f) IEPs for children who transfer from another State. If a child with a disability (who had an IEP that was in effect in a previous public agency in another State) transfers to a public agency in a new State and enrolls in a new school within the same school year, the new public agency (in consultation with the parents) must provide the child with FAPE (including services comparable to those described in the child's IEP from the previous public agency), until the new public agency-

(1) Conducts an evaluation pursuant to §300.304 through 300.306 (if determined to be necessary by the new public agency); and

(2) Develops, adopts, and implements a new IEP, if appropriate, that meets the applicable requirement in §§ 300.320-300.324.

IV. PARENT PARTICIPATION IN MEETINGS *(also in section 4-ARD/IEP)*

§300.30 Parent.

(a) Parent means--

(1) A biological or adoptive parent of a child;

(2) A foster parent, unless State law, regulations or contractual obligations with a State or local entity prohibit a foster parent from acting as a parent;

(3) A guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child (but not the State if the child is a ward of the State);

(4) An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or

(5) A surrogate parent who has been appointed in accordance with §300.519 or section 639(a)(5) of the Act.

(b) (1) Except as provided in paragraph (b)(2) of this section, the biological or adoptive parent, when attempting to act as the parent under this part and when more than one party is qualified under paragraph (a) of this section to act as a parent, must be presumed to be the parent for purposes of this section unless the biological or adoptive parent does not have legal authority to make educational decisions for the child.

(2) If a judicial decree or order identifies a specific person or persons under paragraph (a)(1) through (4) of this section to act as the "parent" of a child or to make educational decisions on behalf of a child, then such person or persons shall be determined to be the "parent" for purposes of this section, except that a public agency that provides education or care for the child may not act as the parent.

TEC § 26.002. Definition.

In this chapter, "parent" includes a person standing in parental relation. The term does not include a person as to whom the parent-child relationship has been terminated or a person not entitled to possession of or access to a child under a court order. Except as provided by federal law, all rights of a parent under Title 2 of this code and all educational rights under Section 151.003(a)(10), Family Code, shall be exercised by a student who is 18 years of age or older or whose disabilities of minority have been removed for general purposes under Chapter 31, Family Code, unless the student has been determined to be incompetent or the student's rights have been otherwise restricted by a court order.

TEC § 29.052. Definitions. [Excerpt]

In this subchapter:

(2) "Parent" includes a legal guardian of a student.

§300.45 Ward of the State.

(a) General. Subject to paragraph (b) of this section, ward of the State means a child who, as determined by the State where the child resides, is--

(1) A foster child;

(2) A ward of the State; or

(3) In the custody of a public child welfare agency.

(b) Exception. Ward of the State does not include a foster child who has a foster parent who meets the definition of a parent in §300.30.

§300.322 Parent Participation.

(a) Public agency responsibility—general . Each public agency must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP Team 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 on time and place.

(b) Information provided to parents.

(1) The notice required under paragraph (a)(1) of this section must--

(i) Indicate the purpose, time, and location of the meeting and who will be in attendance; and

(ii) Inform the parents of the provisions in §300.321(a)(6) and (c) (relating to the participation of other individuals on the IEP Team who have knowledge or special expertise about the child), and §300.321(f) (relating to the participation of the Part C service coordinator or other representatives of the Part C system at the initial IEP Team meeting for a child previously served under Part C of the Act).

(2) For a child with a disability beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team, the notice also must--

(i) Indicate--

(A) That a purpose of the meeting will be the consideration of the postsecondary goals and transition services for the child, in accordance with §300.320(b); and

(B) That the agency will invite the student; and

(ii) Identifies any other agency that will be invited to send a representative.

(c) Other methods to ensure parent participation . If neither parent can attend an IEP Team meeting, the public agency must use other methods to ensure parent participation, including individual or conference telephone calls, consistent with §300.328 (related to alternative means of meeting participation).

(d) Conducting an IEP meeting without a parent in attendance . A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend. In this case, the public agency must keep a record of its attempts to arrange a mutually agreed on time and place such as:

(1) Detailed records of telephone calls made or attempted and the results of those calls;

(2) Copies of correspondence sent to the parents and any responses received; and

(3) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

(e) Use of interpreters or other action, as appropriate. The public agency must take whatever action is necessary to ensure that the parent understands the proceedings of the IEP Team meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English.

(f) Parent copy of child's IEP . The public agency must give the parent a copy of the child's IEP at no cost to the parent. (Authority: 20 U.S.C. 1414(d)(1)(B)(i))

§300.501 Parent participation in meetings.

(a) Opportunity to examine records. The parents of a child with a disability must be afforded, in accordance with the procedures of §§300.613 through 300.621, an opportunity to inspect and review all education records with respect to--

(1) The identification, evaluation, and educational placement of the child; and

(2) The provision of FAPE to the child.

(b) Parent participation in meetings.

(1) The parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to--

(i) The identification, evaluation, and educational placement of the child; and

(ii) The provision of FAPE to the child.

(2) Each public agency must provide notice consistent with §300.322(a)(1) and (b)(1) to ensure that parents of children with disabilities have the opportunity to participate in meetings described in paragraph (b)(1) of this section.

(3) A meeting does not include informal or unscheduled conversations involving public agency 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 public agency personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

(c) Parent involvement in placement decisions.

(1) Each public agency 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) In implementing the requirements of paragraph (c)(1) of this section, the public agency must use procedures consistent with the procedures described in §300.322(a) through (b)(1).

(3) 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 public agency must use other methods to ensure their participation, including individual or conference telephone calls, or video conferencing.

(4) A placement decision may be made by a group without the involvement of a parent, if the public agency is unable to obtain the parent's participation in the decision. In this case, the public agency must have a record of its attempt to ensure their involvement.

(Authority: 20 U.S.C. 1414(e), 1415(b)(1))

3 Prior Notice Attempts to ensure parent participation in the ARD/IEP meeting

The Tyler ISD will make advance attempts to notify parents of ARD/IEP meetings and arrange a mutually agreeable time and location.

1. *1. The first Prior Written Notice of the ARD/IEP meeting form is provided in writing 2 weeks (10 working days) prior to the scheduled ARD/IEP date. This early notice will allow more time to contact the parent and then proceed at the first scheduled date and time. The Notice form includes options to agree to the proposed date, change the date, hold the meeting on the phone or suggest the district proceed without the parent in attendance. A copy of the completed Notice form sent to the parent is maintained in the student eligibility file as documentation.*
2. *The second attempt to notify the parents of the ARD will also be in writing, by email or by phone (if there is no response from the parent after the first notice). The Tyler ISD will copy the first notice form and send it as the second Notice of ARD/IEP meeting by mail or with the student. This attempt may be any source of documented contact dependent on the best manner to contact the parent to ensure attendance.*
3. *The third Notice contact will be attempted to get parental participation if there is no response from the first two attempts. After 3 attempts and no response, the Tyler ISD may go forward with the ARD/IEP meeting as scheduled.*

The first attempt MUST be in written form however the staff may call and discuss the proposed date with parents in order to pick a reasonable date for both parties for the written Notice. The second Notice may also be in written form using a copy of the first Notice sent and the third Notice may be a follow-up phone call to home and work. All dates of scheduling attempts and the initials of personnel attempting contact must be documented on the district Notice form and filed in the student eligibility folder.

Mandatory Medications

§300.174 Prohibition on mandatory medication.

(a) General. The SEA must prohibit State and LEA personnel from requiring parents to obtain a prescription for substances identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)) for a child as a condition of attending school, receiving an evaluation under §§300.300 through 300.311, or receiving services under this part.

(b) Rule of construction. Nothing in paragraph (a) of this section shall be construed to create a Federal prohibition against teachers and other school personnel consulting or sharing classroom-based observations with parents or guardians regarding a student's academic and functional performance, or behavior in the classroom or school, or regarding the need for evaluation for special education or related services under §300.111 (related to child find). (Authority: 20 U.S.C. 1412(a)(25))

TAC §89.1049. Parental Rights Regarding Adult Students. *See ARD/IEP Section 4*

TEC §29.017. Transfer of Parental Rights at Age of Majority *See ARD/IEP Section 4*

Parent Classroom Observations. A parent may be allowed to observe their student in a classroom setting according to the Tyler ISD approved School Board Policy. Priority is given to an undisturbed learning environment for all students in the classroom, therefore a designated date/time/duration will be prearranged with the campus principal. Specific details of the classroom observation will be discussed in advance with the campus principal. The campus principal may contact the executive director in charge of special education as deemed necessary.

V. CONFIDENTIALITY OF STUDENT INFORMATION

§300.610 Confidentiality.

The Secretary takes appropriate action, in accordance with section 444 of GEPA, to ensure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained by the Secretary and by SEAs and LEAs pursuant to Part B of the Act, and consistent with §§300.611 through 300.627. (Authority: 20 U.S.C. 1417(c))

§300.611 Definitions.

As used in §§300.611 through 300.625--

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

(b) Education records means the type of records covered under the definition of "education records" in 34 CFR part 99 (the regulations implementing the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g (FERPA)).

(c) Participating agency means any agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained, under Part B of the Act.

§300.32 Personally identifiable. Personally identifiable means information that contains--

(a) The name of the child, the child's parent, or other family member;

(b) The address of the child;

(c) A personal identifier, such as the child's social security number or student number; or

(d) A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

TAC §26.013. Student Directory Information. (excerpt)

(a) The Tyler Independent School District shall provide to the parent of each district student at the beginning of each school year or on enrollment of the student after the beginning of a school year:

(1) a written explanation of the provisions of the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g), regarding the release of directory information about the student; and

(2) written notice of the right of the parent to object to the release of directory information about the student under the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g).

(b) The notice required by Subsection (a)(2) must contain:

(1) the following statement in boldface type that is 14- point or larger: "Certain information about district students is considered directory information and will be released to anyone who follows the procedures for requesting the information unless the parent or guardian objects to the release of the directory information about the student. If you do not want [insert name of school district] to disclose directory information from your child's education records without your prior written consent, you must notify the district in writing by [insert date]. [Insert name of school district] has designated the following information as directory information: [Here a school district must include any directory information it chooses to designate as directory information for the district, such as a student's name, address, telephone listing, electronic mail address, photograph, degrees, honors and awards received, date and place of birth, major field of study, dates of attendance, grade level, most recent educational institution attended, and participation in officially recognized activities and sports, and the weight and height of members of athletic teams.]";

§300.612 Notice to parents.

(a) The SEA must give notice that is adequate to fully inform parents about the requirements of §300.123, including--

(1) A description of the extent that the notice is given in the native languages of the various population groups in the State;

(2) A description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the State intends to use in gathering the information

(including the sources from whom information is gathered), and the uses to be made of the information;

(3) A summary of the policies and procedures that participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information; and

(4) A description of all of the rights of parents and children regarding this information, including the rights under FERPA (Family Education Rights and Privacy Act) and implementing regulations in 34 CFR part 99.

(b) Before any major identification, location, or evaluation activity, the notice must be published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the State of the activity. (Authority: 20 U.S.C. 1412(a)(8); 1417(c))

The Tyler ISD will distribute a current copy of the Notice of Procedural Safeguards.
https://tea.texas.gov/academics/special-student-populations/special-education/parent-and-family-resources/guidance-on-procedural-safeguards-production-and-required-dissemination

§300.613 Access rights.

(a) Each participating agency must permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency under this part. The agency must comply with a request without unnecessary delay and before any meeting regarding an IEP, or any hearing pursuant to §300.507 or §§300.530 through 300.532, or resolution session pursuant to §300.510, and in no case more than 45 days after the request has been made.

(b) The right to inspect and review education records under this section includes--

(1) The right to a response from the participating agency to reasonable requests for explanations and interpretations of the records;

(2) The right to request that the agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and

(3) The right to have a representative of the parent inspect and review the records.

(c) An agency may presume that the parent has authority to inspect and review records relating to his or her child unless the agency has been advised that the parent does not have the authority under applicable State law governing such matters as guardianship, separation, and divorce.

§300.614 Record of access.

Each participating agency must keep a record of parties obtaining access to education records collected, maintained, or used under Part B of the Act (except access by parents and authorized employees of the participating agency), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records. (Authority: 20 U.S.C. 1412(a)(8); 1417(c))

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

The records shall include:

a. at least the name of the person or agency that made the request,

b. the date access was given, and

c. the purpose for which the person or agency is authorized to use the records.

**If parts of the student eligibility folder are maintained in classrooms, access records are required if the folder contains information such as an ARD/IEP report, modification sheet(s), or any assessment reports.*

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

3. Access Procedures: The cumulative record and special education legal folder shall be made available to the parent. Records may be reviewed during regular school hours upon request to the appropriate record custodian. The record custodian or designee shall be present to explain the record and to answer questions. The confidential nature of the student's records shall be maintained at all times, and the records shall be restricted to use only in the offices of the Superintendent, a principal, a counselor, or Special Education as

designated by the appropriate record custodian. The original copy of the record or any document contained in the cumulative record shall not be removed from the school or the Special Education office.

§300.615 Records on more than one child.
If any education record includes information on more than one child, the parents of those children have the right to inspect and review only the information relating to their child or to be informed of that specific information. (Authority: 20 U.S.C. 1412(a)(8); 1417(c))

§300.616 List of types and locations of information.
Each participating agency must provide parents on request a list of the types and locations of education records collected, maintained, or used by the agency. (Authority: 20 U.S.C. 1412(a)(8); 1417(c))

§300.617 Fees.
(a) Each participating agency may charge a fee for copies of records that are made for parents under this part if the fee does not effectively prevent the parents from exercising their right to inspect and review those records.
(b) A participating agency may not charge a fee to search for or to retrieve information under this part.

TAC § 26.012. Fee for Copies.
The agency or a school district may charge a reasonable fee in accordance with Subchapter F, Chapter 552, Government Code, for copies of materials provided to a parent under this chapter.

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

§300.618 Amendment of records at parent's request.
(a) A parent who believes that information in the education records collected, maintained, or used under this part is inaccurate or misleading or violates the privacy or other rights of the child may request the participating agency that maintains the information to amend the information.
(b) The agency must decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request.
(c) If the agency decides to refuse to amend the information in accordance with the request, it must inform the parent of the refusal and advise the parent of the right to a hearing under §300.619.

§300.619 Opportunity for a hearing.
The agency must, on request, provide an opportunity for a hearing to challenge information in education records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child. (Authority: 20 U.S.C. 1412(a)(8); 1417(c))

§300.620 Result of hearing.
(a) If, as a result of the hearing, the agency decides that the information <is inaccurate, misleading or otherwise in violation of the privacy or other rights of the child, it must amend the information accordingly and so inform the parent in writing.
(b) If, as a result of the hearing, the agency decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it must inform the parent of the parent's right to place in the records the agency maintains on the child a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency.
(c) Any explanation placed in the records of the child under this section must--
(1) Be maintained by the agency as part of the records of the child as long as the record or contested portion is maintained by the agency; and
(2) If the records of the child or the contested portion is disclosed by the agency to any party, the explanation must also be disclosed to the party. (Authority: 20 U.S.C. 1412(a)(8); 1417(c))

§300.621 Hearing procedures.

A hearing held under §300.619 must be conducted according to the procedures under 34 CFR 99.22.

§300.622 Consent.

(a) Parental consent must be obtained before personally identifiable information is disclosed to parties other than officials of participating agencies collecting or using the information under this part, subject to paragraph (b)(1) of this section unless the information is contained in education records, and the disclosure is authorized without parental consent under 34 CFR part 99.

(b)(1) Except as provided in paragraphs (b)(2) and (b)(3) of this section, parental consent is not required before personally identifiable information is released to officials of participating agencies for purposes of meeting a requirement of this part. *For agency planning purposes, informed consent is required each time the outside agency is invited to attend an ARD/IEP meeting. In addition, informed consent is required each time an outside agency representative meets with students to present orientation and service eligibility information – if personally identifiable information is being released to officials of the agency. Directory information is not considered personally identifiable.*

(2) Parental consent, or the consent of an eligible child who has reached the age of majority under State law, must be obtained before personally identifiable information is released to officials of participating agencies providing or paying the transition services in accordance with 300.321(b)(3).

(3) If a child is enrolled, or is going to enroll in a private school that is not located in the LEA of the parent's residence, parental consent must be obtained before any personally identifiable information about the child is released between officials in the LEA where the private school is located and officials in the LEA of the parent's residence.

§300.535 Referral to and action by law enforcement and judicial authorities.

(a) Rule of construction. Nothing in this part prohibits an agency from reporting a crime committed by a child with a disability to appropriate authorities or prevents State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.

(b) Transmittal of records.

(1) An agency reporting a crime committed by a child with a disability must ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom the agency reports the crime.

(2) An agency reporting a crime under this section may transmit copies of the child's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act.

§300.623 Safeguards.

(a) Each participating agency must protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.

(b) One official at each participating agency must assume responsibility for ensuring the confidentiality of any personally identifiable information.

Custodian of Records: Unless otherwise specified in board policy, the principal is custodian of all records for currently enrolled students at the assigned school. The superintendent is the custodian of records for students who have withdrawn or graduated. The Executive Director of Student Support is custodian of all special education records.

(c) All persons collecting or using personally identifiable information must receive training or instruction regarding the State's policies and procedures under §300.123 and 34 CFR part 99.

Campus Principal will annually train all new and returning campus staff on personally identifiable information. As new staff are employed throughout the school year, the training will be provided. The special education director is responsible for training all central office special education staff. Documentation of the date and persons attending training will be maintained by the campus principal and the special education director.

(d) Each participating agency must maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information. (Authority: 20 U.S.C. 1412(a)(8); 1417(c))

Each local campus will have a listing of all personnel trained in confidentiality of student records and those who have access to the student records.

§300.624 Destruction of information.

(a) The public agency must inform parents when personally identifiable information collected, maintained, or used under this part is no longer needed to provide educational services to the child.

(b) The information must be destroyed at the request of the parents. However, a permanent record of a student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

13 TAC 7.125(a)(4) Retention schedule for records of Texas public school districts.

Part 3: Records of Special Populations and Services

Retention Note: The term "cessation of services" used in the retention periods set in sections 3-1 through 3-5 with reference to records created on students who are referred to but not subsequently enrolled in the special program described, means the date determination against enrollment is made.

Record Description: Records of each student referred to or receiving special education services, including referral, assessment, and reevaluation reports; enrollment and eligibility forms; admission, review, and dismissal (ARD) and transitional planning committee documentation; individual educational plans (IEP) and individual transitional plans (ITP); parental consent forms for testing and placement; and other records of services required under federal and state regulation.

Retention Period: Cessation of services + 5 years, but see retention note (a).

Retention Notes:

a) It is an exception to the retention period given for this record group, that the following information must be retained PERMANENTLY in some form on each student in grades 9-12 participating in a special education program: name, last known address, student ID or Social Security number, grades, classes attended, and grade level and year completed. If an academic achievement record is created for the student and maintained among those for students in the regular population, it is not necessary for special education records custodians to maintain the prescribed information beyond 5 years after the cessation of services, provided that it is contained in the Academic Achievement Record.

b) Prior to the destruction of any records in this record group, the eligible student or the parents of the student, as applicable, must be notified in accordance with federal regulation.

VI. SURROGATE / FOSTER PARENT

§300.45 Ward of the State.

(a) General. Subject to paragraph (b) of this section, ward of the State means a child who, as determined by the State where the child resides, is--

(1) A foster child;

(2) A ward of the State; or

(3) In the custody of a public child welfare agency.

(b) Exception. Ward of the State does not include a foster child who has a foster parent who meets the definition of a parent in §300.30.

(Authority: 20 U.S.C. 1401(36))

§300.519 Surrogate parents.

(a) General. Each public agency must ensure that the rights of a child are protected when--

(1) No parent (as defined in §300.30) can be identified;

(2) The public agency, after reasonable efforts, cannot locate a parent;

(3) The child is a ward of the State under the laws of that State; or

(4) The child is an unaccompanied homeless youth as defined in section 725(6) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(6)).

(b) Duties of public agency. The duties of the public agency under paragraph (a) of this section include the assignment of an individual to act as a surrogate for the parents. This must include a method--

(1) For determining whether a child needs a surrogate parent; and

(2) For assigning a surrogate parent to the child.

(c) Wards of the State. In the case of a child who is a ward of the State, the surrogate parent alternatively may be appointed by the judge overseeing the child's case, provided that the surrogate meets the requirements in paragraphs (d)(2)(i) and (e) of this section.

(d) Criteria for selection of surrogate parents.

(1) The public agency may select a surrogate parent in any way permitted under State law.

(2) The public agency must ensure that a person selected as a surrogate parent--

(i) Is not an employee of the SEA, the public agency, or any other agency that is involved in the education or care of the child;

(ii) Has no personal or professional interest that conflicts with the interest of the child the surrogate parent represents; and

(iii) Has knowledge and skills that ensure adequate representation of the child.

(e) Non-employee requirement; compensation. A person otherwise qualified to be a surrogate parent under paragraph (d) of this section is not an employee of the agency solely because he or she is paid by the agency to serve as a surrogate parent.

It will be up to the discretion of the Executive Director of Student Support if compensation should be made to any person acting as a surrogate.

(f) Unaccompanied homeless youth. In the case of a child who is an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary surrogates without regard to paragraph (d)(2)(i) of this section, until a surrogate can be appointed that meets all of the requirements of paragraph (d) of this section.

(g) Surrogate parent responsibilities. The surrogate parent may represent the child in all matters relating to-

(1) The identification, evaluation, and educational placement of the child; and

(2) The provision of FAPE to the child.

(h) SEA responsibility. The SEA must make reasonable efforts to ensure the assignment of a surrogate parent not more than 30 days after a public agency determines that the child needs a surrogate.

(Authority: 20 U.S.C. 1415(b)(2))

Requirements of Surrogate

TEC Sec. 29.001. Statewide Plan

The agency shall also develop and implement a statewide plan with programmatic content that includes procedures designed to:

(10) ensure that an individual assigned to act as a surrogate parent for a child with a disability, as provided by 20 U.S.C. Section 1415(b) and its subsequent amendments, is required to:
(A) complete a training program that complies with minimum standards established by agency rule;
(B) visit the child and the child's school;
(C) consult with persons involved in the child's education, including teachers, caseworkers, court-appointed volunteers, guardians ad litem, attorneys ad litem, foster parents, and caretakers;
(D) review the child's educational records;
(E) attend meetings of the child's admission, review, and dismissal committee;
(F) exercise independent judgment in pursuing the child's interests; and
(G) exercise the child's due process rights under applicable state and federal law.

TAC §89.1047. Procedures for Special Education Decision-Making for Students in Foster Care.

(a) A foster parent may act as a parent of a child with a disability, in accordance with 34 Code of Federal Regulations (CFR), §300.30, relating to the definition of parent, if requirements of Texas Education Code (TEC), §29.015(a), are met, including the completion of the training program described in subsection (c)(1) of this section.
(1) For a foster parent to serve as a student's parent, a school district must ensure that the foster parent has received training described in subsection (c)(1) of this section. The foster parent must complete the training program before the student's next scheduled admission, review, and dismissal (ARD) committee meeting, but not later than the 90th day after the foster parent begins acting as the parent for the purpose of making special education decisions.
(2) The training program can be conducted or provided by the Texas Department of Family and Protective Services (TDFPS), a school district, an education service center, or any entity that receives federal funds to provide Individuals with Disabilities Education Act (IDEA) training to parents. Once an individual has completed the training, the individual may not be required by any school district to complete additional training in order to serve as the parent or the surrogate parent for the student or other students with disabilities who are in foster care. School districts may provide optional ongoing or supplemental training.

(b) If a school district denies a foster parent the right to serve as a parent, the school district must provide the foster parent with written notice of such denial within seven calendar days after the date on which the decision is made. The written notice must:
(1) specifically explain why the foster parent is being denied the right to serve as the student's parent; and
(2) inform the foster parent of his or her right to file a complaint with the Texas Education Agency in accordance with 34 CFR, §§300.151-300.153, relating to special education complaint procedures.

(c) Except as provided by Texas Family Code, §263.0025, which authorizes a court to appoint a surrogate parent, if a district cannot locate or identify a parent, if the foster parent is unwilling or unable to serve as a parent, or if the student does not reside in a foster home setting, the school district must assign a surrogate parent to make special education decisions on behalf of the student. An individual assigned by a school district to act as a surrogate parent for a student with a disability, in accordance with 34 CFR, §300.519, and TEC, §29.0151, relating to surrogate parents, must comply with the requirements specified in TEC, §29.001(10).
(1) Pursuant to TEC, §29.001(10)(A), a foster parent serving as a parent or an individual assigned by a school district to act as a surrogate parent must complete a training program in which the individual is provided with an explanation of the provisions of federal and state laws, rules, and regulations relating to:
(A) the identification of a student with a disability;
(B) the collection of evaluation and re-evaluation data relating to a student with a disability;
(C) the ARD committee process;
(D) the development of an individualized education program (IEP), including the consideration of transition services for a student who is at least 14 years of age;
(E) the determination of least restrictive environment;
(F) the implementation of an IEP;

(G) the procedural rights and safeguards available under 34 CFR, §§300.148, 300.151- 300.153, 300.229, 300.300, 300.500-300.520, 300.530-300.537, and 300.610-300.627, relating to the issues described in 34 CFR, §300.504(c); and

(H) where to obtain assistance in understanding the provisions of federal and state laws, rules, and regulations relating to students with disabilities.

(I) the duties and responsibilities of surrogate parents as required under TEC, §29.015(d)

(2) The training program described in subsection (c)(1) of this section must be provided in the native language or other mode of communication used by the individual being trained.

(3) To serve as a student's surrogate parent, a school district must ensure that the surrogate parent has received training described in subsection (c)(1) of this section. The individual assigned by a school district to act as a surrogate parent must complete the training program before the student's next scheduled ARD committee meeting but not later than the 90th day after the date of initial assignment as a surrogate parent.

(4) The training program can be conducted or provided by the TDFPS, a school district, an education service center, or any entity that receives federal funds to provide IDEA training to parents. Once an individual has completed the training, the individual may not be required by any school district to complete additional training in order to serve as the surrogate parent or the parent for the student or other students with disabilities who are in foster care. School districts may provide optional ongoing or supplemental training.

(d) Each school district or shared services arrangement must develop and implement procedures for conducting an analysis of whether a potential surrogate parent has an interest that conflicts with the interests of his or her child. Issues concerning quality of care of the child do not constitute a conflict of interest. Concerns regarding quality of care of the child should be communicated, and may be statutorily required to be reported, to TDFPS.

(e) If a court appoints a surrogate parent for a child with a disability under Texas Family Code, §263.0025, and the school district determines that the surrogate parent is failing to perform or is not properly performing the duties listed under TEC, §29.0151(d), the district must consult with TDFPS and appoint another person to serve as the surrogate parent for the child.

TEC §29.015. Special Education Decision-Making For Children in Foster Care.

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

(1) the Department of Family and Protective Services is appointed as the temporary or permanent managing conservator of the child;

(2) the rights and duties of the department to make decisions regarding education provided to the child under Section 153.371, Family Code, have not been limited by court order; and

(3) the foster parent agrees to:

(A) participate in making special education decisions on the child's behalf; and

(B) complete a training program that complies with minimum standards established by agency rule

(b) A foster parent who will act as a parent of a child with a disability as provided by Subsection (a) must complete a training program before the next scheduled admission, review, and dismissal committee meeting for the child but not later than the 90th day after the date the foster parent begins acting as the parent for the purpose of making special education decisions.

(b-1) A school district may not require a foster parent to retake a training program to continue serving as a child's parent or to serve as the surrogate parent for another child if the foster parent has completed a training program to act as a parent of a child with a disability provided by:

(1) the Department of Family and Protective Services;

(2) a school district;

(3) an education service center; or

(4) any other entity that receives federal funds to provide special education training to parents.

(c) A foster parent who is denied the right to act as a parent under this section by a school district may file a complaint with the agency in accordance with federal law and regulations.

(d) Not later than the fifth day after the date a child with a disability is enrolled in a school, the Department of Family and Protective Services must inform the appropriate school district if the child's foster parent is unwilling or unable to serve as a parent for the purposes of this subchapter.

Amended by: Acts 2017, 85th Leg., (HB 1556), Sec. 1 eff. September 1, 2017.

TEC §29.0151. APPOINTMENT OF SURROGATE PARENT FOR CERTAIN CHILDREN.

(a) This section applies to a child with a disability for whom:
  (1) the Department of Family and Protective Services is appointed as the temporary or permanent managing conservator of the child; and
  (2) the rights and duties of the department to make decisions regarding the child's education under Section 153.371, Family Code, have not been limited by court order.

(b) Except as provided by Section 263.0025, Family Code, a school district must appoint an individual to serve as the surrogate parent for a child if:
  (1) the district is unable to identify or locate a parent for a child with a disability; or
  (2) the foster parent of a child is unwilling or unable to serve as a parent for the purposes of this subchapter.

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

(d) A surrogate parent appointed by a district must:
  (1) be willing to serve in that capacity;
  (2) exercise independent judgment in pursuing the child's interests;
  (3) ensure that the child's due process rights under applicable state and federal laws are not violated;
  (4) complete a training program that complies with minimum standards established by agency rule within the time specified in Section 29.015(b);
  (5) visit the child and the school where the child is enrolled;
  (6) review the child's educational records;
  (7) consult with any person involved in the child's education, including the child's:
    (A) teachers;
    (B) caseworkers;
    (C) court-appointed volunteers;
    (D) guardian ad litem;
    (E) attorney ad litem;
    (F) foster parent; and
    (G) caregiver; and
  (8) attend meetings of the child's admission, review, and dismissal committee.

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

(e-1) As soon as practicable after appointing a surrogate parent under this section, a school district shall provide written notice of the appointment to the child's educational decision-maker and caseworker as required under Section 25.007(b)(10)(H).

(f) If a court appoints a surrogate parent for a child with a disability under Section 263.0025, Family Code, and the school district determines that the surrogate parent is not properly performing the duties listed under Subsection (d), the district shall consult with the Department of Family and Protective Services regarding whether another person should be appointed to serve as the surrogate parent for the child.

(g) On receiving notice from a school district under Subsection (f), if the Department of Family and Protective Services agrees with the district that the appointed surrogate parent is unable or unwilling to properly perform the duties required under this section.
  (1) the department shall promptly notify the court of the agreement; and
  (2) as soon as practicable after receiving notice under Subdivision (1), the court shall:
    (A) review the appointment; and
    (B) enter any orders necessary to ensure the child has a surrogate parent who performs the duties required under this section.

Amended by: Acts 2017, 85th Leg., (HB 1556), Sec. 2 eff. September 1, 2017.

Section 107.031(c), Family Code.

(c) A court-certified volunteer advocate appointed under this section may be assigned to act as a surrogate parent for the child, as provided by 20 U.S.C. Section 1415(b), if:
  (1) the child is in the conservatorship of the Department of Family and Protective Services;
  (2) the volunteer advocate is serving as guardian ad litem for the child;
  (3) a foster parent of the child is not acting as the child's parent under Section 29.015, Education Code; and

(4) the volunteer advocate completes a training program for surrogate parents that complies with minimum standards established by rule by the Texas Education Agency within the time specified by Section 29.015(b), Education Code.

Texas Family Code §263.0025. SPECIAL EDUCATION DECISION-MAKING FOR CHILDREN IN FOSTER CARE.

(a) In this section, "child" means a child in the temporary or permanent managing conservatorship of the department who is eligible under Section 29.003, Education Code, to participate in a school district's special education program.

(a-1) A foster parent for a child may act as a parent for the child, as authorized under 20 U.S.C. Section 1415(b), if:

(1) the rights and duties of the department to make decisions regarding the child's education under Section 153.371 have not been limited by court order; and

(2) the foster parent agrees to the requirements of Sections 29.015(a)(3) and (b), Education Code.

(a-2) Sections 29.015(b-1), (c), and (d), Education Code, apply to a foster parent who acts or desires to act as a parent for a child for the purpose of making special education decisions.

(b) To ensure the educational rights of a child are protected in the special education process, the court may appoint a surrogate parent for the child if:

(1) the child's school district is unable to identify or locate a parent for the child; or

(2) the foster parent of the child is unwilling or unable to serve as a parent for the purposes of this subchapter

(c) Except as provided by Subsection (d), the court may appoint a person to serve as a child's surrogate parent if the person:

(1) is willing to serve in that capacity; and

(2) meets the requirements of 20 U.S.C. Section 1415(b)

(d) The following persons may not be appointed as a surrogate parent for the child:

(1) an employee of the department;

(2) an employee of the Texas Education Agency;

(3) an employee of a school or district; or

(4) an employee of any other agency that is involved in the education or care of the child.

(e) The court may appoint a child's guardian ad litem or court-certified volunteer advocate, as provided by Section 107.031(c), as the child's surrogate parent.

(f) In appointing a person to serve as the surrogate parent for a child, the court may consider the person's ability to meet the qualifications listed under Sections 29.0151(d)(2)-(8), Education Code.

(g) If the court prescribes training for a person who is appointed as the surrogate parent for a child, the training program must comply with the minimum standards for training established by rule by the Texas Education Agency.

SECTION 5. This Act takes effect September 1, 2017.

Texas Family Code §263.004. Notice to Court Regarding Education Decision-Making.

(a) Unless the rights and duties of the department under Section 153.371(10) to make decisions regarding the child's education have been limited by court order, the department shall file with the court a report identifying the name and contact information for each person who has been:

(1) designated by the department to make educational decisions on behalf of the child; and

(2) assigned to serve as the child's surrogate parent in accordance with 20 U.S.C. Section 1415(b) and Section 29.001(10), Education Code, for purposes of decision-making regarding special education services, if applicable.

(b) Not later than the fifth day after the date an adversary hearing under Section 262.201 or 262.205 is concluded, the information required by Subsection (a) shall be filed with the court and a copy shall be provided to the school the child attends.

(c) If a person other than a person identified in the report required by Subsection (a) is designated to make educational decisions or assigned to serve as a surrogate parent, the department shall file with the court an updated report that includes the information required by Subsection (a) for the designated or assigned person. The updated report must be filed not later than the fifth day after the date of designation or assignment.

Staff Training: Method to determine whether a child needs a surrogate parent

Annually, the local campus principals, counselors and staff, along with the special education staff are trained on the situations in §300.519 in which a student would need a surrogate or the foster parent require training. The Executive Director of Student Support or designee will maintain the list and schedule training.

Assignment Guidelines

The educational diagnostician makes the request for a surrogate parent for an eligible Tyler ISD child. Procedures for requesting a surrogate parent are as follows:

a. *The educational diagnostician notifies his or her Special Education Parent-Teacher-Community Liaison of need and of potential surrogate parents if they are aware of any potential volunteers.*
b. *The Special Education Parent-Teacher-Community Liaison schedules and conducts the training using application form to document assurances below.*
c. *The Special Education Parent-Teacher-Community Liaison notifies Special Education Coordinator of completed training and the names of new surrogate parents.*
d. *The Special Education Director/Coordinator or designee notifies/contacts the student's assigned surrogate parent when appropriate.*

Assurances

Assurances must be made by the individual selected to serve as a surrogate parent. These assurances are reviewed at the training and documented on the application form signed by the surrogate / foster parent.

- *The individual may have no personal or professional interest which conflicts with the interest of the child the surrogate parent represents;*
- *The individual may not be an employee of the Tyler ISD or of any other public agency responsible for or involved in the education or care of the child the surrogate parent represents;*
- *The individual must have knowledge and skills that insure adequate representation of the child;*
- *The individual must be a resident of the member school district where the student attends, and*
- *The Tyler ISD may select as a surrogate a person who is an employee of a nonpublic agency that only provides non-educational care for the child and who meets the standards above.*

  **A foster parent in a home which is verified by the TDFPS or a child-placing agency shall not be deemed to have a financial conflict of interest by virtue of serving as the foster parent in that home. These homes include, but are not limited to, basic, habilitative, primary medical, or therapeutic foster or foster group homes. In addition, issues concerning quality of care of the child do not constitute a conflict of interest. Concerns regarding quality of care of the child should be communicated, and may be statutorily required to be reported, to TDFPS.*

Documentation of Training for Volunteer as Surrogate Parent

(a.) The individual assigned to act as a surrogate parent must complete the training program within 90 calendar days after the effective date of initial assignment as a surrogate parent.
(b.) Once the individual has completed a training program conducted or provided by or through the Texas Department of Family and Protective Services (TDFPS), a school district, an education service center, or any entity that receives federal funds to provide IDEA training to parents, the individual shall not be required by any school to complete the additional training in order to continue serving as the student's surrogate parent or to serve as the surrogate parent for other students with disabilities.
(c.) The Tyler ISD may provide additional training to surrogates parents and/or parents; however, Tyler ISD cannot deny an individual who has received the training from serving as a surrogate parent on the grounds that the individual has not been trained.
(d.) Prior to assigning an individual to act as a surrogate parent, training should be provided.

(e.) Individuals already serving as surrogate parents identified as not receiving previous training will receive training within 90 calendar days of identification.
(f.) The Tyler ISD will keep records of those individuals who have received training and each person trained by our Tyler ISD will be given a certificate to take should they move to another school and need evidence of training.

Documentation of Training for Assignment of Foster Parents as Surrogate Parents

(a.) A foster parent may act as parent of a child with a disability, in accordance with §300.20 relating to the definition of parent, if he/she complies with the requirements of TEC §29.015(b), relating to foster parents, including the completion of the training programs described in this section.
(b.) The foster parent must complete the training within 90 calendar days after the date of initial assignment as the surrogate parent, whichever comes later.
(c.) Once the individual has completed a training program conducted or provided by or through the Texas Department of Family and Protective Services (TDFPS), a school district, an education service center, or any entity that receives federal funds to provide IDEA training to parents, the individual will not be required by any school to complete the additional training in order to continue serving as the student's surrogate parent or to serve as the surrogate parent for other students with disabilities.
(d.) The Tyler ISD may provide additional training to surrogates parents and/or parents; however, Tyler ISD cannot deny an individual who has received the training from serving as a surrogate parent on the grounds that the individual has not been trained.
(e.) Prior to assigning a foster parent to act as a surrogate parent, training should be provided.
(f.) Individuals already serving as surrogate parents identified as not receiving previous training will receive training within 90 calendar days of identification if there is no evidence training was previously provided by (TDFPS).
(g.) The Tyler ISD will keep records of those individuals who have received training and each person trained by our Tyler ISD will be given a certificate to take should they move to another school and need evidence of training.
(h.) If the foster parent does not meet the criteria to serve as parent, the Tyler ISD will appoint a surrogate parent. The Tyler ISD will give preferential consideration to a foster parent of a student with a disability when assigning a surrogate parent for the child.
(i.) If the foster parent is denied serving as the surrogate parent, the Tyler ISD will follow TAC §89.1047(d) to notify the foster parent of their right to file a complaint with TEA.

Surrogate Training Completed

When the applicant successfully completes the Surrogate Parent Training, a copy of those individuals trained as Surrogate Parents will be filed in the office of the Special Education Coordinator of Assessment.

Student in Conservatorship

TEC §25.001(g). Attendance Area

(g) A student who was enrolled in a primary or secondary public school before the student entered the conservatorship of the Department of Family and Protective Services and who is placed at a residence outside the attendance area for the school or outside the school district is entitled to continue to attend the school in which the student was enrolled immediately before entering conservatorship until the student successfully completes the highest grade level offered by the school at the time of placement without payment of tuition. The student is entitled to continue to attend the school regardless of whether the student remains in the conservatorship of the department for the duration of the student's enrollment in the school.

(g-1) If a student who is in the conservatorship of the department is enrolled in a primary or secondary public school, other than the school in which the student was enrolled at the time the student was placed in the conservatorship of the department, the student is entitled to continue to attend that school without payment of tuition until the student successfully completes the highest grade level offered by the school at the time of enrollment in the school, even if the child's placement is changed to a residence outside the attendance area for that school or outside the school district. The student is entitled to continue to attend the school

regardless of whether the student remains in the conservatorship of the department for the duration of the student's enrollment in the school.

TEC §25.087 Excused Absence

(b) A school district shall excuse a student from attending school for:

(1) the following purposes, including travel for those purposes:

(A) observing religious holy days;

(B) attending a required court appearance;

(C) appearing at a governmental office to complete paperwork required in connection with the student's application for United States citizenship;

(D) taking part in a United States naturalization oath ceremony;

(E) serving as an election clerk; or

(F) if the student is in the conservatorship of the Department of Family and Protective Services, participating, as determined and documented by the department, in an activity:

(i) ordered by a court under Chapter 262 or 263, Family Code, provided that it is not practicable to schedule the participation outside of school hours; or

(ii) required under a service plan under Subchapter B, Chapter 263, Family Code; or

(2) a temporary absence resulting from an appointment with a health care professional if that student commences classes or returns to school on the same day of the appointment.

(b-3) A temporary absence for purposes of Subsection (b)(2) includes the temporary absence of a student diagnosed with autism spectrum disorder on the day of the student's appointment with a health care practitioner, as described by Section 1355.015(b), Insurance Code, to receive a generally recognized service for persons with autism spectrum disorder, including applied behavioral analysis, speech therapy, and occupational therapy.

TEC §25.087 Excused Absence(d) A student whose absence is excused under Subsection (b), (b-1), (b-2), (b-4), (b-5), (b-7), or (c) may not be penalized for that absence and shall be counted as if the student attended school for purposes of calculating the average daily attendance of students in the school district. A student whose absence is excused under Subsection (b), (b-1), (b-2), (b-4), (b-5), (b-7), or (c) shall be allowed a reasonable time to make up school work missed on those days. If the student satisfactorily completes the school work, the day of absence shall be counted as a day of compulsory attendance.

TEC §25.007 Transferring Students (homeless or in substitute care)

(b) In recognition of the challenges faced by students who are homeless or in substitute care, the agency shall assist the transition of students who are homeless or in substitute care students from one school to another by:

(1) ensuring that school records for a student who is homeless or in substitute care are transferred to the student's new school not later than the 10th working day after the date the student begins enrollment at the school;

(2) developing systems to ease transition of a student who is homeless or in substitute care during the first two weeks of enrollment at a new school;

(3) developing procedures for awarding credit, including partial credit if appropriate, for course work, including electives, completed by a student who is homeless or in substitute care while enrolled at another school;

(4) developing procedures to ensure that a new school relies on decisions made by the previous school regarding placement in courses or educational programs of a student who is homeless or in substitute care and places the student in comparable courses or educational programs at the new school, if those courses or programs are available;

(5) promoting practices that facilitate access by a student who is homeless or in substitute care to extracurricular programs, summer programs, credit transfer services, electronic courses provided under Chapter 30A, and after-school tutoring programs at nominal or no cost;

(6) establishing procedures to lessen the adverse impact of the movement of a student who is homeless or in substitute care to a new school;

(7) entering into a memorandum of understanding with the Department of Family and Protective Services regarding the exchange of information as appropriate to facilitate the transition of students in substitute care from one school to another;

(8) encouraging school districts and open-enrollment charter schools to provide services for a student who is homeless or in substitute care in transition when applying for admission to postsecondary study and when seeking sources of funding for postsecondary study;

(9) requiring school districts, campuses, and open-enrollment charter schools to accept a referral for special education services made for a student who is homeless or in substitute care by a school previously attended by the student, and to provide comparable services to the student during the referral process or until the new school develops an individualized education program for the student;

(10) requiring school districts, campuses, and open-enrollment charter schools to provide notice to the child's educational decision-maker and caseworker regarding events that may significantly impact the education of a child, including:

(A) requests or referrals for an evaluation under Section 504, Rehabilitation Act of 1973 (29 U.S.C. Section 794), or special education under Section 29.003;

(B) admission, review, and dismissal committee meetings;

(C) manifestation determination reviews required by Section 37.004(b);

(D) any disciplinary actions under Chapter 37 for which parental notice is required;

(E) citations issued for Class C misdemeanor offenses on school property or at school-sponsored activities;

(F) reports of restraint and seclusion required by Section 37.0021; ~~and~~

(G) use of corporate punishment as provided by Section 37.0011; and

(H) appointment of a surrogate parent for the child under Section 29.0151;

(11) developing procedures for allowing a student who is homeless or in substitute care who was previously enrolled in a course required for graduation the opportunity, to the extent practicable, to complete the course, at no cost to the student, before the beginning of the next school year;

(12) ensuring that a student who is homeless or in substitute care who is not likely to receive a high school diploma before the fifth school year following the student's enrollment in grade nine, as determined by the district, has the student's course credit accrual and personal graduation plan reviewed;

(13) ensuring that a student in substitute care who is in grade 11 or 12 be provided information regarding tuition and fee exemptions under Section 54.366 for dual-credit or other courses provided by a public institution of higher education for which a high school student may earn joint high school and college credit;

(14) designating at least one agency employee to act as a liaison officer regarding educational issues related to students in the conservatorship of the Department of Family and Protective Services; and

(15) providing other assistance as identified by the agency.

VII. INDEPENDENT EDUCATIONAL EVALUATION (IEE)

§300.502 Independent educational evaluation.

(a) General.

(1) The parents of a child with a disability have the right under this part to obtain an independent educational evaluation of the child, subject to paragraphs (b) through (e) of this section.

(2) Each public agency must provide to parents, upon request for an independent educational evaluation, information about where an independent educational evaluation may be obtained, and the agency criteria applicable for independent educational evaluations as set forth in paragraph (e) of this section.

Information on where an IEE may be obtained will be provided to parents on request. A list of individuals who can provide an IEE is available from the Special Education Office. The district criteria (State/Federal requirements) applicable for all evaluations (FIE Section 2 and 3 of this document) must also be followed for the IEE. See Evaluator Requirements found below. Contract evaluation personnel (which includes personnel who complete evaluations for Independent Educational Evaluations) must provide assessment results, recommendations and report to Tyler ISD prior to reviewing and/or sending information to parents.

(3) For the purposes of this subpart--

(i) Independent educational evaluation means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question; and

(ii) Public expense means that the public agency either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent, consistent with §300.103.

(b) Parent right to evaluation at public expense.

(1) A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency, subject to the conditions in paragraphs (b)(2) through (4) of this section.

(2) If a parent requests an independent educational evaluation at public expense, the public agency must, without unnecessary delay, either--

(i) File a due process complaint to request a hearing to show that its evaluation is appropriate; or

(ii) Ensure that an independent educational evaluation is provided at public expense, unless the agency demonstrates in a hearing pursuant to §§300.507 through 300.513 that the evaluation obtained by the parent did not meet agency criteria.

If the parent requests an IEE from any staff member or campus Principal, the parent will be provided the name and phone number of the Executive Director of Student Support and asked to notify that administrator immediately so that proper steps may be taken to address their request for an IEE. The Executive Director of Student Support, in consultation with appropriate Tyler ISD staff, will determine whether to pay for the IEE or file for a due process hearing.

(3) If the public agency files a due process complaint notice to request a hearing and the final decision is that the agency's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.

(4) If a parent requests an independent educational evaluation, the public agency may ask for the parent's reason why he or she objects to the public evaluation. However, the public agency may not require the parent to provide an explanation and may not unreasonably delay either providing the independent educational evaluation at public expense or filing a due process complaint to request a due process hearing to defend the public evaluation.

(5) A parent is entitled to only one independent educational evaluation at public expense each time the public agency conducts an evaluation with which the parent disagrees.

If the parent requests an IEE during an ARD/IEP meeting, the minutes will document that the parent was asked to provide reasons why they object to the Tyler ISD evaluation. If the parent does not provide any

specific reason, that also will be documented in the minutes.

(c) Parent-initiated evaluations. If the parent obtains an independent educational evaluation at private expense or shares with the public agency an evaluation obtained at private expense, the results of the evaluation--

(1) Must be considered by the public agency, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the child; and

(2) May be presented by any party as evidence at a hearing on a due process complaint under subpart E of this part regarding that child.

(d) Requests for evaluations by hearing officers. If a hearing officer requests an independent educational evaluation as part of a hearing on a due process complaint, the cost of the evaluation must be at public expense.

(e) Agency criteria.

(1) If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the public agency uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation.

(2) Except for the criteria described in paragraph (e)(1) of this section, the public agency may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.

Specific guidance regarding IEE's is provided in the Section 2. XI; FIE Section

Reimbursement or Payment

Parents are free to select whomever they choose to perform the IEE, so long as the examiner meets the District's criteria. If parents select an examiner that is not on the District's list of qualified examiners, provided upon request, they should submit the name and vitae of the examiner with copies of certificates and/or licenses in advance of conducting the IEE in order that the District may confirm and notify the parents whether the examiner is qualified to perform the IEE. If the parents fail to submit the name and vitae of the examiner prior to conducting the IEE, the evaluator will not be paid if they do not meet the District's criteria.

Reimbursement/payment will be made directly to evaluator upon receipt of IEE which meets all of the Tyler ISD's assessment criteria. Parents obtaining an IEE without following these procedures will not be paid. Whenever an IEE is at public expense, the criteria under which the IEE is obtained, must be the same as the criteria which the school uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's rights to an IEE.

Criteria For Fee Setting

- *The Tyler Independent School District will pay a fee for the IEE which allows a parent to choose from among the qualified professionals in the area.*
- *The Tyler ISD will not pay unreasonably excessive fees. An unreasonably excessive fee is one which is 10% above the prevailing fees in the area (or 30% above the Medicaid rate) for the specific test being considered.*
- *Upon receipt of a request for payment of an unreasonably excessive fee, the Tyler ISD may request a hearing to challenge the right of parents to be reimbursed.*
- *Parents will be allowed the opportunity to demonstrate to an ARD/IEP committee that unique circumstances justify an IEE that does not fall within the Tyler ISD's criteria.*
- *When service providers have a sliding scale fee based on parent income, the Tyler ISD will pay the amount charged to the parent.*
- *In the event that a parent pursues an IEE independently, an original billing form must be submitted to the Tyler ISD prior to payment. Before reimbursement or direct payment is authorized, criteria must be met and the written report received.*

- *Travel costs for examiner and/or parents will not exceed Tyler ISD rates for travel as established by state guidelines.*

Parents Seeking Reimbursement For A Unilaterally Obtained IEE

- *The Tyler ISD will not consider a parent request for payment for a unilaterally parent-initiated IEE unless the request is made within a reasonable time after receipt of the results of the evaluation. A reasonable time is defined as 90 calendar days.*
- *The request will be presented to the ARD/IEP Committee for action.*
- *The Tyler ISD can request a due process hearing to prove its own evaluation is appropriate. This can occur before an IEE is conducted or, after the parent has obtained one and is seeking reimbursement.*
- *The Tyler ISD will deny payment of an IEE conducted by an evaluator who does not meet minimum qualifications.*
- *The Tyler ISD will deny payment of an IEE which does not meet minimum Texas Education Agency criteria for the specific disability identified.*
- *The Tyler ISD will deny payment of an IEE which does not meet all state and federal requirements.*

Consideration of Parent Initiated IEE

The results of a parent-initiated IEE obtained at private expense will be considered by the ARD/IEP committee in any decision made with respect to the provision of a free appropriate public education to the student (if the IEE meets TEA criteria). Such consideration does not make the Tyler ISD liable for payment of the evaluation.

Number of IEEs

A parent is entitled to only one IEE for each evaluation performed by the District, if the parent disagrees with the evaluation. This would include the three year re-evaluation or re-evaluations conducted more frequently. A parent is not entitled to multiple IEEs at public expense without an intervening re-evaluation. OSEP Policy Letter, EHLR 213.259 (1989); Hudson v. Wilson , 828 F.2d 1059, 1965 (4 th Cir. 1989).

VIII. COMPLAINT PROCEDURES

TAC § 26.011. Complaints.
The board of trustees of each school district shall adopt a grievance procedure under which the board shall address each complaint that the board receives concerning violation of a right guaranteed by this chapter.

TAC §89.1150. General Provisions.
(a) It is the policy and intent of the Texas Education Agency (TEA) to encourage and support the resolution of any dispute that arises between a parent and a public education agency relating to the identification, evaluation, or educational placement of or the provision of a free appropriate public education (FAPE) to a student with a disability at the lowest level possible and in a prompt, efficient, and effective manner.
(b) The possible options for resolving disputes include, but are not limited to:
(1) meetings of the student's admission, review, and dismissal committee, including individualized education program (IEP) facilitation if offered by the public education agency in accordance with §89.1196 of this title (relating to Individualized Education Program Facilitation);
(2) meetings or conferences with the student's teachers;
(3) meetings or conferences, subject to the public education agency's policies, with the campus administrator, the special education director of the public education agency (or the shared services arrangement to which the public education agency may be a member), the superintendent of the public education agency, or the board of trustees of the public education agency;
(4) requesting state IEP facilitation in accordance with §89.1197 of this title (relating to State Individualized Education Program Facilitation);
(5) requesting mediation through the TEA in accordance with 34 Code of Federal Regulations (CFR), §300.506;
(6) filing a complaint with the TEA in accordance with 34 CFR, §300.153; or
(7) requesting a due process hearing through the TEA in accordance with 34 CFR, §§300.507-300.514.

TAC §89.1195. Special Education Complaint Resolution.
(a) In accordance with 34 Code of Federal Regulations (CFR), §300.151, the Texas Education Agency (TEA) has established a complaint resolution process that provides for the investigation and issuance of findings regarding alleged violations of Part B of the Individuals with Disabilities Education Act (IDEA). or a state special education statute or administrative rule.
(b) A complaint may be filed with the TEA by any individual or organization and must:
(1) be in writing;
(2) include the signature and contact information for the complainant;
(3) contain a statement that a public education agency has violated Part B of the IDEA; 34 CFR, §300.1 et seq.; or a state special education statute or administrative rule;
(4) include the facts upon which the complaint is based;
(5) if alleging violations with respect to a specific student, include:
(A) the name and address of the residence of the student;
(B) the name of the school the student is attending;
(C) in the case of a homeless child or youth (within the meaning of §725(2) of the McKinney-Vento Homeless Act (42 United States Code, §11434a(2)), available contact information for the student and the name of the school the student is attending;
(D) a description of the nature of the problem of the student, including facts relating to the problem; and
(E) a proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed;
(6) allege a violation that occurred not more than one calendar year prior to the date the complaint is received; and
(7) be forwarded to the public education agency that is the subject of the complaint at the same time that the complaint is filed with the TEA.
(c) A complaint must be filed with the TEA by electronic mail, mail, hand-delivery, or facsimile. The TEA has developed a form that may be used by persons or organizations filing a complaint. The form is available on request from the TEA and is also available on the TEA website. The complaint timeline will commence on the business day that TEA receives the complaint. If a complaint is received on a day other than a business

day, the complaint timeline will commence on the first business day after the day on which the TEA receives the complaint. The one-calendar-year statute of limitations for a complaint will be determined based on the day that the complaint timeline commences.

(d) If a complaint does not meet the requirements outlined in subsection (b) of this section, the TEA must notify the complainant of the deficiencies in the complaint.

(e) Upon receipt of a complaint that meets the requirements of this section, the TEA must initiate an investigation to determine whether the public education agency is in compliance with applicable law and regulations in accordance with the following procedures.

(1) The TEA must send written notification to the parties acknowledging receipt of a complaint.

(A) The notification must include:

(i) the alleged violations that will be investigated;

(ii) alternative procedures available to address allegations in the complaint that are outside of the scope of Part B of the IDEA; 34 CFR, §300.1, et seq.; or a state special education statute or administrative rule;

(iii) a statement that the public education agency may, at its discretion, investigate the alleged violations and propose a resolution of the complaint;

(iv) a statement that the parties have the opportunity to resolve the complaint through mediation in accordance with the procedures in §89.1193 of this title (relating to Special Education Mediation);

(v) a timeline for the public education agency to submit:

(I) documentation demonstrating that the complaint has been resolved; or

(II) a written response to the complaint and all documentation and information requested by the TEA;

(vi) a statement that the complainant may submit additional information about the allegations in the complaint, either orally or in writing within a timeline specified by the TEA, and may provide a copy of any additional information to the public education agency to assist the parties in resolving the dispute at the local level; and

(vii) a statement that the TEA may grant extensions of the timeline for a party to submit information under clause (v) or (vi) of this subparagraph at the request of either party.

(B) In accordance with 34 CFR, §300.504, upon receipt of the first special education complaint filed by a parent during a school year, TEA will provide an electronic copy of the Notice of Procedural Safeguards to the parent, and the public agency against which the complaint is filed must provide the parent with a hard copy of the Notice of Procedural Safeguards unless that parent has elected, in accordance with 34 CFR, §300.505, to receive the required notice by electronic mail, if the public education agency makes that option available.

(C) The public education agency must provide the TEA with a written response to the complaint and all documentation and information requested by the TEA. The public education agency must forward its response to the parent who filed the complaint at the same time that the response is provided to the TEA. The public education agency may also provide the parent with a copy of the documentation and information requested by the TEA. If the complaint was filed by an individual other than the student's parent the public education agency must forward a copy of the response to that individual only if written parental consent has been provided to the public education agency.

(2) If the complaint is also the subject of a due process hearing or if it contains multiple issues of which one or more are part of that due process hearing, the TEA must:

(A) set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing; and

(B) resolve any issue in the complaint that is not a part of the due process hearing.

(3) If an issue raised in the complaint has previously been decided in a due process hearing involving the same parties, the TEA must inform the complainant that the due process hearing decision is binding.

(4) The TEA has 60 calendar days after a valid written complaint is received to carry out the investigation and to resolve the complaint. The TEA may extend the time limit beyond 60 calendar days if exceptional circumstances, as determined by the TEA, exist with respect to a particular complaint. The parties will be notified in writing by the TEA of the exceptional circumstances, if applicable, and the extended time limit. The time limit may also be extended if the parties agree to extend it in order to engage in mediation pursuant to §89.1193 of this title or other alternative means of dispute resolution. In accordance with the Texas Education Code, §29.010(e), the TEA must expedite a complaint alleging that

a public education agency has refused to enroll a student eligible for special education and related services or that otherwise indicates a need for expedited resolution, as determined by the TEA.

(5) During the course of the investigation, the TEA must:

(A) conduct an investigation of the complaint that must include a complete review of all relevant documentation and that may include interviews with appropriate individuals and an independent on-site investigation, if necessary;

(B) consider all facts and issues presented and the applicable requirements specified in law, regulations, or standards;

(C) make a determination of compliance or noncompliance on each issue in the complaint based upon the facts and applicable law, regulations, or standards and issue a written report of findings of fact and conclusions, including reasons for the decision, and any corrective actions that are required, including the time period within which each action must be taken;

(D) review any evidence that the public education agency has corrected noncompliance on its own initiative;

(E) ensure that the TEA's final decision is effectively implemented, if needed, through technical assistance activities, negotiations, and corrective actions to achieve compliance; and

(F) in the case of a complaint filed by an individual other than the student's parent, provide a copy of the written report only if written parental consent has been provided to the TEA.

(6) In resolving a complaint in which a failure to provide appropriate services is found, the TEA must address:

(A) the failure to provide appropriate services, including corrective action appropriate to address the needs of the student, including compensatory services, monetary reimbursement, or other corrective action appropriate to the needs of the student; and

(B) appropriate future provision of services for all students with disabilities.

(7) In accordance with 34 CFR, §300.600(e), the public education agency must complete all required corrective actions as soon as possible, and in no case later than one year after the TEA's identification of the noncompliance. A public education agency's failure to correct the identified noncompliance within the one-year timeline will result in an additional finding of noncompliance under 34 CFR, §300.600(e), and may result in sanctions against the public education agency in accordance with §89.1076 of this title (relating to Interventions and Sanctions).

(f) If a party to a complaint believes that the TEA's written report includes an error that is material to the determination in the report, the party may submit a signed, written request for reconsideration to the TEA by mail, hand-delivery, or facsimile within 15 calendar days of the date of the report. The party's reconsideration request must identify the asserted error and include any documentation to support the claim. The party filing a reconsideration request must forward a copy of the request to the other party at the same time that the request is filed with the TEA. The other party may respond to the reconsideration request within five calendar days of the date on which the TEA received the request. The TEA will consider the reconsideration request and provide a written response to the parties within 45 calendar days of receipt of the request. The filing of a reconsideration request must not delay a public education agency's implementation of any corrective actions required by the TEA.

(g) In accordance with 34 CFR, §300.151, the TEA's complaint resolution procedures must be widely disseminated to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities.

(h) In exercising its general supervisory authority under 34 CFR, §300.149 and §300.600, the TEA may resolve any other credibly alleged violation of IDEA or a state special education statute or administrative rule that it receives even if a sufficient complaint is not filed with the TEA in accordance with 34 CFR, §§300.151-300.153, and this section. In doing so, the TEA may take one or more of the following actions:

(1) requesting a response and supporting documentation from a public education agency against which a credible violation of IDEA or a state special education statute or administrative rule has been alleged;

(2) conducting a desk or on-site investigation of a public education agency;

(3) making a determination regarding the allegation(s); and

(4) requiring a public education agency to implement corrective actions to address any identified noncompliance.

(i) For the purposes of subsection (h) of this section, anonymous complaints, complaints that are received outside the one-calendar-year statute of limitations for a special education complaint, and complaints that do not include sufficient information or detail for the TEA to determine that an alleged violation of special education requirements may have occurred will not be considered to be credible complaints.

(j) If the public education agency against which a complaint is received under subsection (h) of this section believes that TEA made an incorrect determination of noncompliance, the public education agency may submit a written request for consideration to the TEA within 15 calendar days of the date that TEA issued its findings. The reconsideration request must identify the asserted error and include any documentation to support the claim. The TEA will consider the reconsideration request and provide a written response to the public education agency within 45 calendar days of receipt of the request. The filing of a reconsideration request must not delay a public education agency's implementation of any corrective actions required by the TEA.

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

The Tyler ISD should always be sure the parents have a current Procedural Safeguards document if there is disagreement expressed by the parent. If the parents say they do not have the document, provide them with the document, an explanation, and keep documentation that they have received the document. This documentation of receipt of the Procedural Safeguards is kept in the Special Education student eligibility file. The possible options for resolving disputes include, but are not limited to §89.1150(c) found on the following pages below:

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

A. Administration may encourage parents to follow local complaint procedures. The following may also be suggested:
1. schedule an ARD/IEP Committee meeting to discuss concern,
2. follow 10 day recess procedures to try to reach mutual agreement (see ARD Section),
3. encourage the parents to contact the Executive Director of Student Support for a meeting to discuss possible alternatives, resolution or mediation.
B. Parents may notify the Texas Education Agency and file a complaint. The TEA will:
1. collect information concerning special education and analyzing the information in conjunction with other information on file with the TEA;
2. respond to inquiries concerning special education services;
3. take appropriate action on substantial complaints;
4. engage in mediation activities; and
5. provide information on the formal procedures available in the impartial hearing process.
Complaint must include: §300.153.

TAC §89.1196 IEP Facilitation: See Section 4a. IX. Mutual Agreement for entire text of TAC §89.1196.

State Complaint Procedures

§300.151 Adoption of State complaint procedures.
(a) General. Each SEA must adopt written procedures for--
(1) Resolving any complaint, including a complaint filed by an organization or individual from another State, that meets the requirements of §300.153 by--
(i) Providing for the filing of a complaint with the SEA; and
(ii) At the SEA's discretion, providing for the filing of a complaint with a public agency and the right to have the SEA review the public agency's decision on the complaint; and
(2) Widely disseminating to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities, the State procedures under §§300.151 through 300.153.
(b) Remedies for denial of appropriate services. In resolving a complaint in which the SEA has found a failure to provide appropriate services, an SEA, pursuant to its general supervisory authority under

Part B of the Act, must address--

(1) The failure to provide appropriate services, including corrective action appropriate to address the needs of the child (such as compensatory services or monetary reimbursement); and

(2) Appropriate future provision of services for all children with disabilities. (Authority: 20 U.S.C. 1221e-3)

§300.152 Minimum State complaint procedures.

(a) Time limit; minimum procedures. Each SEA must include in its complaint procedures a time limit of 60 days after a complaint is filed under §300.153 to--

(1) Carry out an independent on-site investigation, if the SEA determines that an investigation is necessary;

(2) Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;

(3) Provide the public agency with the opportunity to respond to the complaint, including, at a minimum--

(i) At the discretion of the public agency, a proposal to resolve the complaint; and

(ii) An opportunity for a parent who has filed a complaint and the public agency to voluntarily engage in mediation consistent with §300.506;

(4) Review all relevant information and make an independent determination as to whether the public agency is violating a requirement of Part B of the Act or of this part; and

(5) Issue a written decision to the complainant that addresses each allegation in the complaint and contains--

(i) Findings of fact and conclusions; and

(ii) The reasons for the SEA's final decision.

(b) Time extension; final decision; implementation. The SEA's procedures described in paragraph (a) of this section also must--

(1) Permit an extension of the time limit under paragraph (a) of this section only if--

(i) Exceptional circumstances exist with respect to a particular complaint; or

(ii) The parent (or individual or organization, if mediation or other alternative means of dispute resolution is available to the individual or organization under State procedures) and the public agency involved agree to extend the time to engage in mediation pursuant to paragraph (a)(3)(ii) of this section; or to engage in other alternative means of dispute resolution, if available in the State; and

(2) Include procedures for effective implementation of the SEA's final decision, if needed, including--

(i) Technical assistance activities;

(ii) Negotiations; and

(iii) Corrective actions to achieve compliance.

(c) Complaints filed under this section and due process hearings under §300.507 and §§300.530 through 300.532.

(1) If a written complaint is received that is also the subject of a due process hearing under §300.507 or §§300.530 through 300.532, or the State must set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing. However, any issue in the complaint that is not a part of the due process action must be resolved using the time limit and procedures described in paragraphs (a) and (b) of this section.

(2) If an issue is raised in a complaint filed under this section has previously been decided in a due process hearing involving the same parties--

(i) The due process hearing decision is binding on that issue; and

(ii) The SEA must inform the complainant to that effect.

(3) A complaint alleging a public agency's failure to implement a due process hearing decision must be resolved by the SEA. (Authority: 20 U.S.C. 1221e-3)

§300.153 Filing a complaint.

(a) An organization or individual may file a signed written complaint under the procedures described in §§300.151 through 300.152.

(b) The complaint must include--

(1) A statement that a public agency has violated a requirement of Part B of the Act or of this part;

(2) The facts on which the statement is based;

(3) The signature and contact information for the complainant; and
(4) If alleging violations with respect to a specific child--
(i) The name and address of the residence of the child;
(ii) The name of the school the child is attending;
(iii) In the case of a homeless child or youth (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), available contact information for the child, and the name of the school the child is attending;
(iv) A description of the nature of the problem of the child, including facts relating to the problem; and
(v) A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.

(c) The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received in accordance with §300.151.

(d) The party filing the complaint must forward a copy of the complaint to the LEA or public agency serving the child at the same time the party files the complaint with the SEA.

§300.507 Filing a due process complaint.

(a) General.
(1) A parent or a public agency may file a due process complaint on any of the matters described in §300.503(a)(1) and (2) (relating to the identification, evaluation or educational placement of a child with a disability, or the provision of FAPE to the child).
(2) The due process complaint must allege a violation that occurred not more than two years before the date the parent or public agency knew or should have known about the alleged action that forms the basis of the due process complaint, or, if the State has an explicit time limitation for filing a due process complaint under this part, in the time allowed by that State law, except that the exceptions to the timeline described in §300.511(f) apply to the timeline in this section.

(b) Information for parents. The public agency must inform the parent of any free or low-cost legal and other relevant services available in the area if--
(1) The parent requests the information; or
(2) The parent or the agency files a hearing under this section.
(Authority: 20 U.S.C. 1415(b)(6))

§300.508 Due process complaint.

(a) General.
(1) The public agency must have procedures that require either party, or the attorney representing a party, to provide to the other party a due process complaint (which must remain confidential).
(2) The party filing a due process complaint must forward a copy of the due process complaint to the SEA.

(b) Content of complaint. The due process complaint required in paragraph (a)(1) of this section must include--
(1) The name of the child;
(2) The address of the residence of the child;
(3) The name of the school the child is attending;
(4) In the case of a homeless child or youth (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), available contact information for the child, and the name of the school the child is attending;
(5) A description of the nature of the problem of the child relating to the proposed or refused initiation or change, including facts relating to the problem; and
(6) A proposed resolution of the problem to the extent known and available to the party at the time.

(c) Notice required before a hearing on a due process complaint. A party may not have a hearing on a due process complaint until the party, or the attorney representing the party, files a due process complaint that meets the requirements of paragraph (b) of this section.

(d) Sufficiency of complaint.
(1) The due process complaint required by this section must be deemed sufficient unless the party receiving the due process complaint notifies the hearing officer and the other party in writing, within 15 days of receipt of the due process complaint, that the receiving party believes the due process complaint does not meet the requirements in paragraph (b) of this section.

(2) Within 5 days of receipt of notification under paragraph (d)(1) of this section, the hearing officer must make a determination on the face of the due process complaint of whether the due process complaint meets the requirements of paragraph (b) of this section, and must immediately notify the parties in writing of that determination.

(3) A party may amend its due process complaint only if--

(i) The other party consents in writing to the amendment and is given the opportunity to resolve the due process complaint through a meeting held pursuant to §300.510; or

(ii) The hearing officer grants permission, except that the hearing officer may only grant permission to amend at any time not later than five days before the due process hearing begins.

(4) If a party files an amended due process complaint, the timelines for the resolution meeting in §300.510(a) and the time period to resolve in §300.510(b) begin again with the filing of the amended due process complaint.

(e) LEA response to a due process complaint.

(1) If the LEA has not sent a prior written notice under §300.503 to the parent regarding the subject matter contained in the parent's due process complaint, the LEA must, within 10 days of receiving the due process complaint, send to the parent a response that includes--

(i) An explanation of why the agency proposed or refused to take the action raised in the due process complaint;

(ii) A description of other options that the IEP Team considered and the reasons why those options were rejected;

(iii) A description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action; and

(iv) A description of the other factors that are relevant to the agency's proposed or refused action.

(2) A response by an LEA under paragraph (e) (1) of this section shall not be construed to preclude the LEA from asserting that the parent's due process complaint was insufficient, where appropriate.

(f) Other party response to a due process complaint. Except as provided in paragraph (e) of this section, the party receiving a due process complaint must, within 10 days of receiving the due process complaint, send to the other party a response that specifically addresses the issues raised in the due process complaint.

(Authority: 20 U.S.C. 1415(b)(7), 1415(c)(2))

§300.509 Model forms.

(a) Each SEA must develop model forms to assist parents in filing a due process complaint in accordance with §§300.507(a) and 300.508(a) through (c) and to assist parents and other parties in filing a State complaint under §§300.151 through 300.153. However the SEA or LEA may not require the use of the model forms.

(b) Parents, public agencies, and other parties may use the appropriate model form described in paragraph (a) of the section, or another form or other document, so long as the form or document that is used meets, as appropriate, the content requirements in §300.508(b) for filing a due process complaint, or the requirements in §300.153(b) for filing a State complaint. (Authority: 20 U.S.C. 1415(b)(8))

http://www.tea.state.tx.us/index2.aspx?id=2147504486

§300.510 Resolution process.

(a) Resolution meeting.

(1) Within 15 days of receiving notice of the parents' due process complaint, and prior to the initiation of a due process hearing under §300.511, the LEA must convene a meeting with the parents and the relevant member or members of the IEP Team who have specific knowledge of the facts identified in the due process complaint that--

(i) Includes a representative of the public agency who has decision-making authority on behalf of that agency; and

(ii) May not include an attorney of the LEA unless the parent is accompanied by an attorney.

(2) The purpose of the meeting is for the parents of the child to discuss their due process complaint, and the facts that form the basis of the due process complaint, so that the LEA has the opportunity to resolve the dispute that is the basis for the due process complaint.

(3) The meeting described in paragraph (a)(1) and (2) of this section need not be held if--

(i) The parents and the LEA agree in writing to waive the meeting; or
(ii) The parents and the LEA agree to use the mediation process described in §300.506.

(4) The parents and the LEA determine the relevant members of the IEP Team to attend the meeting.

(b) Resolution period.

(1) If the LEA has not resolved the due process complaint to the satisfaction of the parents within 30 days of the receipt of the due process complaint, the due process hearing must occur.

(2) Except as provided in paragraph (c) of this section, the timeline for issuing a final decision under §300.515 begins at the expiration of this 30-day period.

(3) Except where the parties have jointly agreed to waive the resolution process or to use mediation, notwithstanding paragraphs (b)(1) and (2) of this section, the failure of a parent filing a due process complaint to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until the meeting is held.

(4) If the LEA is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made (and documented using the procedures in §300.322(d)), the LEA may, at the conclusion of the 30-day period, request that a hearing officer dismiss the parent's due process complaint.

(5) If the LEA fails to hold the resolution meeting specified in paragraph (a) of this section within 15 days of receiving notice of a parent's due process complaint or fails to participate in the resolution meeting, the parent may seek the intervention of a hearing officer to begin the due process hearing timeline.

(c) Adjustments to 30-day resolution period. The 45-day timeline for the due process hearing in §300.515(a) starts the day after one of the following events:

(1) Both parties agree in writing to waive the resolution meeting;

(2) After either the mediation or resolution meeting starts but before the end of the 30-day resolution period, the parties agree in writing that no agreement is possible;

(3) If both parties agree in writing to continue the mediation at the end of the 30-day resolution period, but later, the parent or public agency withdraws from the mediation process.

(d) Written settlement agreement. If a resolution to the dispute is reached at the meeting described in paragraphs (a)(1) and (2) of this section, the parties must execute a legally binding agreement that is--

(1) Signed by both the parent and a representative of the agency who has the authority to bind the agency; and

(2) Enforceable in any State court of competent jurisdiction or in a district court of the United States, or by the SEA, if the State has other mechanisms or procedures that permit parties to seek enforcement of resolution agreements, pursuant to §300.537.

(e) Agreement review period. If the parties execute an agreement pursuant to paragraph (c) of this section, a party may void the agreement within 3 business days of the agreement's execution.

(Authority: 20 U.S.C. 1415(f)(1)(B))

This Resolution process allows an opportunity for the school to resolve the parent's complaint. This can take up to 30 days and the timelines for a due process hearing begin to run only after those first 30 days. Also, there is an "expedited hearing" in the case of a disciplinary appeal.

Children with Disabilities Enrolled by their Parents in Private Schools

§300.140 Due process complaints and State complaints. *(See also Section 5. of this manual which includes Parentally Placed Students in Private Schools)*

(a) Due process not applicable, except for child find.

(1) Except as provided in paragraph (b) of this section, the procedures in §§300.504 through 300.519 do not apply to complaints that an LEA has failed to meet the requirements of §§300.132 through 300.139, including the provision of services indicated on the child's services plan.

(b) Child find complaints—to be filed with the LEA in which the private school is located.

(1) The procedures in §§300.504 through 300.519 apply to complaints that an LEA has failed to meet the child find requirements in §§300.131 including the requirements in §§300.300 through 300.311.

(2) Any due process complaint regarding the child find requirements (as described in paragraph (b)(1) of the section) must be filed with the LEA in which the private school is located and a copy must be forwarded to the SEA.

(c) State complaints.

(1) Any complaints that an SEA or LEA has failed to meet the requirements of §§300.132 through 300.135 and §§300.137 through 300.134 must be filed under the procedures in §§300.151 through 300.153.

(2) A complaint filed by a private school official under §300.136(a) must be filed with the SEA in accordance with the procedures in §300.136(b). (Authority: 20 U.S.C. 1412(a)(10)(A))

TAC §89.1096. Provision of Services for Students Placed by their Parents in Private Schools or Facilities.

(f) Complaints regarding the implementation of the components of the student's IEP that have been selected by the parent and the district under subsection (c) of this section may be filed with the Texas Education Agency under the procedures in 34 CFR, §§300.151-300.153. Additionally, parents may request mediation as outlined in 34 CFR, §300.506. The procedures in 34 CFR, §§300.300, 300.504, 300.507, 300.508, and 300.510-300.518 (relating to due process hearings) do not apply to complaints regarding the implementation of the components of the student's IEP that have been selected by the parent and the district under subsection (c). *(subsection (c) refers to dual enrollment and this is found in this manual in Section 4 – IEP)*

IX. MEDIATION

§300.506 Mediation.

(a) General. Each public agency must ensure that procedures are established and implemented to allow parties to disputes involving any matter under this part, including matters arising prior to the filing of a due process complaint, to resolve disputes through a mediation process.

(b) Requirements. The procedures must meet the following requirements:

(1) The procedures must ensure that the mediation process--

(i) Is voluntary on the part of the parties;

(ii) Is not used to deny or delay a parent's right to a hearing on the parent's due process complaint, or to deny any other rights afforded under Part B of the Act; and

(iii) Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

(2) A public agency may establish procedures to offer to parents and schools that choose not to use the mediation process, an opportunity to meet, at a time and location convenient to the parents, with a disinterested party--

(i) Who is under contract with an appropriate alternative dispute resolution entity, or a parent training and information center or community parent resource center in the State established under section 671 or 672 of the Act; and

(ii) Who would explain the benefits of, and encourage the use of, the mediation process to the parents.

(3) (i) The State must maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services.

(ii) The SEA must select mediators on a random, rotational, or other impartial basis.

(4) The State must bear the cost of the mediation process, including the costs of meetings described in paragraph (b)(2) of this section.

(5) Each session in the mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the dispute.

(6) If the parties resolve a dispute through the mediation process, the parties must execute a legally binding agreement that sets forth that resolution and that--

(i) States that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding arising from that dispute; and

(ii) Is signed by both the parent and a representative of the agency who has the authority to bind such agency.

(7) A written, signed mediation agreement under this paragraph is enforceable in any State court of competent jurisdiction or in a district court of the United States. Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearing or civil proceedings arising from that dispute of any Federal court or State court of a State receiving assistance under this part.

(c) Impartiality of mediator.

(1) An individual who serves as a mediator under this part--

(i) May not be an employee of the SEA or the LEA that is involved in the education or care of the child; and

(ii) Must not have a personal or professional interest that conflicts with the person's objectivity.

(2) A person who otherwise qualifies as a mediator is not an employee of an LEA or State agency described under §300.228 solely because he or she is paid by the agency to serve as a mediator.

TAC §89.1193. Special Education Mediation.

(a) In accordance with 34 Code of Federal Regulations (CFR), §300.506, the Texas Education Agency (TEA) has established a mediation process to provide parents and public education agencies with an opportunity to resolve disputes involving any matter arising under Part B of the Individuals with Disabilities Education Act (IDEA) or 34 CFR, §300.1 et seq. Mediation is available to resolve these disputes at any time.

(b) The mediation procedures must ensure that the process is:

(1) voluntary on the part of the parties;
(2) not used to deny or delay a parent's right to a due process hearing or to deny any other rights afforded under Part B of the IDEA; and
(3) conducted by a qualified and impartial mediator who is trained in effective mediation techniques and who is knowledgeable in laws and regulations relating to the provision of special education and related services.

(c) A request for mediation must be in writing and must be filed with the TEA by mail, hand-delivery, or facsimile. The TEA has developed a form that may be used by parties requesting mediation. The form is available on request from the TEA and is also available on the TEA website.

(d) The TEA will maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services.

(e) An individual who serves as a mediator:
(1) must not be an employee of the TEA or the public education agency that is involved in the education or care of the child who is the subject of the mediation process;
(2) must not have a personal or professional conflict of interest, including relationships or contracts with schools or parents outside of mediations assigned by the TEA; and
(3) is not an employee of the TEA solely because the individual is paid by the TEA to serve as a mediator.

(f) The TEA will select mediators on a random, rotational, or other impartial basis. Selecting mediators on an impartial basis includes permitting the parties involved in a dispute to agree on a mediator from the TEA's list of mediators. If the parties agree to a mediator, they must advise the TEA of the desired mediator. The TEA will provide the parties with written notice of the specific mediator assigned to conduct the mediation. The parties must not contact a mediator on the TEA's list of mediators until the TEA has provided the parties with the written notice of the mediator assignment.

(g) If a mediator is also a hearing officer under §89.1170 of this title (relating to Impartial Hearing Officer), that individual may not serve as a mediator if he or she is the hearing officer in a pending due process hearing involving the same student who is the subject of the mediation process or was the hearing officer in a previous due process hearing involving the student who is the subject of the mediation process.

(h) The TEA will bear the cost of the mediation process.

(i) A mediation session must be scheduled in a timely manner and held in a location that is convenient to the parties.

(j) If the parties resolve a dispute through the mediation process, the parties must execute a legally binding agreement that:
(1) states that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding; and
(2) is signed by both the parent and a representative of the public education agency who has the authority to bind the public education agency.

(k) A written, signed mediation agreement under subsection (j) of this section is enforceable in any state or federal court of competent jurisdiction.

(l) Discussions that occur during the mediation process are confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings of any state or federal court.

TEA guidance and forms found at this website will be used. https://tea.texas.gov/about-tea/government-relations-and-legal/special-education-hearings/office-of-general-counsel-special-education-mediation-program

X. DUE PROCESS HEARING

§300.511 Impartial due process hearing.

(a) General. Whenever a due process complaint is filed under §300.507, the parents or the LEA involved in the dispute must have an opportunity for an impartial due process hearing, consistent with the procedures in §§300.507 through 300.508, and §300.510.

(b) Agency responsible for conducting the due process hearing. The hearing described in paragraph (a) of this section must be conducted by the SEA or the public agency directly responsible for the education of the child, as determined under State statute, State regulation, or a written policy of the SEA.

(c) Impartial hearing officer.

- **(1) At a minimum, a hearing officer--**
  - **(i) Must not be--**
    - **(A) An employee of the SEA or the LEA that is involved in the education or care of the child; or**
    - **(B) A person having a personal or professional interest that conflicts with the person's objectivity in the hearing;**
  - **(ii) Must possess knowledge of, and the ability to understand, the provisions of the Act, Federal and State regulations pertaining to the Act, and legal interpretations of the Act by Federal and State courts;**
  - **(iii) Must possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and**
  - **(iv) Must possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.**
- **(2) A person who otherwise qualifies to conduct a hearing under paragraph (c)(1) of this section is not an employee of the agency solely because he or she is paid by the agency to serve as a hearing officer.**
- **(3) Each public agency must keep a list of the persons who serve as hearing officers. The list must include a statement of the qualifications of each of those persons.**

(d) Subject matter of due process hearings. The party requesting the due process hearing may not raise issues at the due process hearing that were not raised in the due process complaint filed under §300.508(b), unless the other party agrees otherwise.

(e) Timeline for requesting a hearing. A parent or agency must request an impartial hearing on their due process complaint within two years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the due process complaint, or if the State has an explicit time limitation for requesting such a due process hearing under this part, in the time allowed by that State law.

(f) Exceptions to the timeline. The timeline described in paragraph (e) of this section does not apply to a parent if the parent was prevented from filing a due process complaint due to--

- **(1) Specific misrepresentations by the Tyler ISD that it had resolved the problem forming the basis of the due process complaint; or**
- **(2) The LEA's withholding of information from the parent that was required under this part to be provided to the parent.**

Hearing Rights

§300.512 Hearing rights.

(a) General. Any party to a hearing conducted pursuant to §§300.507 through 300.513 or §§300.530 through 300.534, or an appeal conducted pursuant to §300.514, has the right to--

- **(1) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities, except that whether parties have the right to be represented by non-attorneys at due process hearings is determined under State law;**
- **(2) Present evidence and confront, cross-examine, and compel the attendance of witnesses;**
- **(3) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing;**
- **(4) Obtain a written, or, at the option of the parents, electronic, verbatim record of the hearing; and**

(5) Obtain written, or, at the option of the parents, electronic findings of fact and decisions.

(b) Additional disclosure of information.

(1) At least five business days prior to a hearing conducted pursuant to §300.511(a), each party must disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing.

(2) A hearing officer may bar any party that fails to comply with paragraph (b)(1) of this section from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

(c) Parental rights at hearings. Parents involved in hearings must be given the right to--

(1) Have the child who is the subject of the hearing present;

(2) Open the hearing to the public; and

(3) Have the record of the hearing and the findings of fact and decisions described in paragraphs (a)(4) and (a)(5) of this section provided at no cost to parents.

TEC §29.0162. Representation in Special Education Due Process Hearing.

(a) A person in an impartial due process hearing brought under 20 U.S.C. Section 1415 may be represented by:

(1) an attorney who is licensed in this state; or

(2) an individual who is not an attorney licensed in this state but who has special knowledge or training with respect to problems of children with disabilities and who satisfies qualifications under Subsection (b).

(b) The commissioner by rule shall adopt additional qualifications required of a representative for purposes of Subsection (a)(2). The rules must:

(1) prohibit an individual from being a representative under Subsection (a)(2) opposing a school district if:

(A) the individual has prior employment experience with the district; and

(B) the district raises an objection to the individual serving as a representative; and

(2) include requirements that the representative have knowledge of:

(A) special education due process rules, hearings, and procedure; and

(B) federal and state special education laws.

(3) require, if the representative receives monetary compensation from a person for representation in an impartial due process hearing, that the representative agree to abide by a voluntary code of ethics and professional conduct during the period of representation; and

(4) require, if the representative receives monetary compensation from a person for representation in an impartial due process hearing, that the representative enter into a written agreement for representation with the person who is the subject of the special education due process hearing that includes a process for resolving any disputes between the representative and the person.

(c) A special education due process hearing officer shall determine whether an individual satisfies qualifications under Subsections (a)(2) and (b).

(d) The agency is not required to license or in any way other than as provided by Subsection (b) regulate representatives described by Subsection (a)(2) in a special education impartial due process hearing.

(e) The written agreement for representation required under Subsection (b)(4) is considered confidential and may not be disclosed.

TAC §89.1151. Special Education Due Process Hearings.

(a) A parent or public education agency may initiate a due process hearing as provided in 34 Code of Federal Regulations (CFR), §300.507 and §300.508.

(b) The Texas Education Agency will implement a one-tier system of hearings. The proceedings in hearings will be governed by the provisions of 34 CFR, §§300.507-300.515 and 300.532, if applicable, and this division.

(c) A parent or public education agency must request a hearing within one year of the date the parent or public education agency knew or should have known about the alleged action that serves as the basis for the request.

(d) The timeline described in subsection (c) of this section does not apply to a parent if the parent was prevented from filing a request for a due process hearing due to:

(1) specific misrepresentations by the public education agency that it had resolved the problem forming the basis of the request for a hearing; or

(2) the public education agency's withholding of information from the parent that was required by 34 CFR, §300.1, et seq. to be provided to the parent. *Amended to be effective March 1, 2017, 42 TexReg 760.*

(e) TEA will include in the Notice of Procedural Safeguards a statement that the statute of limitations for the parent of a student to request an impartial due process hearing under 20 USC, §1415(b), may be tolled if:

(1) the parent is an active-duty member of the armed forces, the Commissioned Corps of the National Oceanic and Atmospheric Administration, or the Commissioned Corps of the United States Public Health Service; and
(2) 50 USC, §3936, applies to the parent.

TAC §89.1165. Request for Hearing.

(a) A request for a due process hearing (due process complaint) must be in writing and must be filed with the Texas Education Agency (TEA). The request may be filed by mail, hand-delivery, or facsimile.

(b) The party filing a request for a hearing must forward a copy of the request to the non-filing party at the same time that the request is filed with the TEA. The timelines applicable to hearings will commence the calendar day after the non-filing party receives the request. Unless rebutted, it will be presumed that the non-filing party received the request on the date it is sent to the parties by the TEA.

(c) The request for due process hearing must include:
(1) the name of the child;
(2) the address of the residence of the child;
(3) the name of the school the child is attending;
(4) in the case of a homeless child or youth (within the meaning of §725(2) of the McKinney-Vento Homeless Assistance Act (42 United States Code §11434a(2)), available contact information for the child, and the name of the school the child is attending;
(5) a description of the nature of the problem of the child relating to the proposed or refused initiation or change, including facts relating to the problem; and
(6) a proposed resolution of the problem to the extent known and available to the party at the time.

(d) A party may not have a due process hearing until the party files a request for a due process hearing that meets the requirements of paragraph (c) of this section.

(e) The TEA has developed a model form that may be used by parents and public education agencies to request a hearing. The form is available on request from the TEA and on the TEA website. https://tea.texas.gov/about-tea/government-relations-and-legal/special-education-hearings/due-process-hearings

TAC §89.1170. Impartial Hearing Officer.

(a) The Texas Education Agency (TEA) will maintain a pool of impartial hearing officers to conduct due process hearings. The TEA will assign cases to hearing officers who are private practice attorneys based on an alphabetical rotation. The TEA will assign cases to hearing officers who are employed by the State Office of Administrative Hearings (SOAH) in accordance with the procedures specified in the interagency contract between the TEA and SOAH. If, however, a request for a hearing relates to the same student who was involved in another hearing that was filed within the last 12 months, the TEA will assign the recently filed hearing request to the same hearing officer who presided over the previous hearing. In addition, the same hearing officer may be assigned to hearings involving siblings that are filed within 12 months of each other

(b) If a hearing officer is also a mediator under §89.1193 of this title (relating to Special Education Mediation), that individual will not be assigned as hearing officer if he or she is the mediator in a pending mediation involving the same student who is the subject of the hearing or was the mediator in a previous mediation involving the student who is the subject of the hearing.

(c) A hearing officer must possess the knowledge and abilities described in 34 Code of Federal Regulations, §300.511(c), and must not be:
(1) an employee of the TEA or the public agency that is involved in the education or care of the child who is the subject of the hearing; or
(2) a person having a personal or professional interest that conflicts with the person's objectivity in the hearing.

(d) A hearing officer is not an employee of the TEA solely because the individual is paid by the TEA to serve as a hearing officer.

(e) A hearing officer has the authority to administer oaths; call and examine witnesses; rule on motions, including discovery and dispositive motions; determine admissibility of evidence and amendments to pleadings; maintain decorum; schedule and recess the proceedings from day to day; and make any other orders as justice requires, including the application of sanctions as necessary to maintain an orderly hearing process.

(f) If a hearing officer is removed, dies, becomes disabled, or withdraws from a hearing before the completion of duties, the TEA will designate a substitute hearing officer to complete the performance of duties without the

necessity of repeating any previous proceedings.

(g) A party to a hearing who has grounds to believe that the assigned hearing officer cannot afford the party a fair and impartial hearing due to bias, prejudice, or a conflict of interest may file a written request with the assigned hearing officer asking that the hearing officer recuse himself or herself from presiding over the hearing. Any such written request must state the grounds for the request and the facts upon which the request is based. Upon receipt of a request, the assigned hearing officer must review the request and determine the sufficiency of the grounds stated in the request. The hearing officer then must prepare a written order concerning the request and serve the order on the parties to the hearing within three business days of receiving the request. If the hearing officer finds that the grounds for recusal are insufficient, the TEA will assign a second hearing officer to review the request. The second hearing officer must rule on the request and serve a written order on the parties to the hearing within three business days of receiving the assignment. If the second hearing officer also determines that the grounds for recusal are insufficient, the assigned hearing officer will continue to preside over the hearing. If either the assigned hearing officer or the second hearing officer finds that the grounds for recusal are sufficient, the TEA will assign another hearing officer to preside over the remainder of the proceedings in accordance with the procedures in subsection (a) of this section.

TAC §89.1175. Representation in Special Education Due Process Hearings.

(a) A party to a due process hearing may represent himself or herself or be represented by:
(1) an attorney who is licensed in the State of Texas; or
(2) an individual who is not an attorney licensed in the State of Texas but who has special knowledge or training with respect to problems of children with disabilities and who satisfies the qualifications of this section.

(b) A party who wishes to be represented by an individual who is not an attorney licensed in the State of Texas must file a written authorization with the hearing officer promptly after filing the request for a due process hearing or promptly after retaining the services of the non-attorney representative. The party must forward a copy of the written authorization to the opposing party at the same time that the written authorization is filed with the hearing officer.

(c) The written authorization must be on the form provided in this subsection.
https://artifacts.casetext.com/artifacts/2022201704054_1

(d) The written authorization must include the non-attorney representative's name and contact information and a description of the non-attorney representative's:
(1) special knowledge or training with respect to problems of children with disabilities;
(2) knowledge of the rules and procedures that apply to due process hearings, including those in 34 Code of Federal Regulations, §§300.507-300.515 and 300.532, if applicable, and this division;
(3) knowledge of federal and state special education laws, regulations, and rules; and
(4) educational background.

(e) The written authorization must state the party's acknowledgment of the following:
(1) the non-attorney representative has been given full authority to act on the party's behalf with respect to the hearing;
(2) the actions or omissions by the non-attorney representative are binding on the party, as if the party had taken or omitted those actions directly;
(3) documents are deemed to be served on the party if served on the non-attorney representative;
(4) communications between the party and a non-attorney representative are not generally protected by the attorney-client privilege and may be subject to disclosure during the hearing proceeding;
(5) neither federal nor state special education laws provide for the recovery of fees for the services of a non-attorney representative; and
(6) it is the party's responsibility to notify the hearing officer and the opposing party of any change in the status of the authorization and that the provisions of the authorization will remain in effect until the party notifies the hearing officer and the opposing party of the party's revocation of the authorization.

(f) If the non-attorney representative receives monetary compensation in exchange for representing the party in the due process hearing, the written authorization must affirm the following:
(1) the non-attorney representative has agreed to abide by a voluntary code of ethics and professional conduct during the period of representation; and
(2) the non-attorney representative and the party have entered into a confidential, writte representation agreement that includes a process for resolving any disputes that may arise between the non-attorney representative and the party.

(g) The written authorization must be signed and dated by the party.
(h) An individual is prohibited from being a party's representative under subsection (a)(2) of this section if the individual has prior employment experience with the school district and the school district raises an objection to the individual serving as a representative based on the individual's prior employment experience. No other objections to a party's representation by a non-attorney are permitted under this section.
(i) Upon receipt of a written authorization filed under this section, the hearing officer must promptly determine whether the non-attorney representative is qualified and meets the requirements to represent the party in the hearing and must notify the parties in writing of the determination. A hearing officer's determination is final and not subject to review or appeal.
(j) A non-attorney representative may not file pleadings or other documents on behalf of a party, present statements and arguments on behalf of a party, examine and cross-examine witnesses, offer and introduce evidence, object to the introduction of evidence and testimony, or engage in other activities in a representative capacity unless the hearing officer has reviewed a written authorization filed under this section and determined that the non-attorney representative is qualified to represent the party in the hearing.
(k) In accordance with the Texas Education Code, §38.022, a school district may require an attorney or a non-attorney representative who enters a school campus to display his or her driver's license or another form of government-issued identification. A school district may also verify whether the representative is a registered sex offender and may apply a policy adopted by its board of trustees regarding the action to be taken when a visitor to a school campus is identified as a sex offender. *Amended to be effective March 1, 2017, 42 TexReg 760.*

TAC §89.1180. Prehearing Procedures**.**
(a) Promptly upon being assigned to a due process hearing, the hearing officer will forward to the parties a scheduling order which sets the time, date, and location of the hearing and contains the timelines for the following actions, as applicable:
(1) Response to Request for a Due Process Hearing (34 Code of Federal Regulations (CFR), §300.508(f));
(2) Resolution Meeting (34 CFR, §300.510(a));
(3) Contesting Sufficiency of the Request for a Hearing (34 CFR, §300.508(d));
(4) Resolution Period (34 CFR, §300.510(b));
(5) Five-Business Day Disclosure (34 CFR, §300.512(a)(3)); and
(6) the date by which the final decision of the hearing officer must be issued (34 CFR, §300.515 and §300.532(c)(2)).
(b) The hearing officer must schedule a prehearing conference to be held at a time reasonably convenient to the parties to the hearing. The prehearing conference must be held by telephone unless the hearing officer determines that circumstances require an in-person conference.
(c) The prehearing conference must be recorded and transcribed by a court reporter, who will promptly prepare a transcript of the prehearing conference for the hearing officer with copies to each of the parties.
(d) The purpose of the prehearing conference will be to consider any of the following:
(1) specifying issues as set forth in the request for a hearing;
(2) admitting certain assertions of fact or stipulations;
(3) establishing any limitations on the number of witnesses and the time allotted for presenting each party's case; and/or
(4) discussing other matters which may aid in simplifying the proceeding or disposing of matters in controversy, including settling matters in dispute.
(e) Promptly upon the conclusion of the prehearing conference, the hearing officer will issue and deliver to the parties a written prehearing order which confirms and/or identifies:
(1) the time, place, and date of the hearing;
(2) the issues to be adjudicated at the hearing;
(3) the relief being sought at the hearing;
(4) the deadline for disclosure of evidence and identification of witnesses, which must be at least five business days prior to the scheduled date of the hearing (hereinafter referred to as the "Disclosure Deadline");
(5) the date by which the final decision of the hearing officer must be issued; and
(6) other information determined to be relevant by the hearing officer.

(f) No pleadings, other than the request for a hearing, and the response to the request for a hearing, if applicable, are mandatory, unless ordered by the hearing officer. Any pleadings after the request for a hearing must be filed with the hearing officer. Copies of all pleadings must be sent to all parties of record in the hearing and to the hearing officer. If a party is represented by an attorney or a non-attorney determined by the hearing officer to be qualified to represent the party, all copies must be sent to the attorney of record or non-attorney representative, as applicable. Facsimile copies may be substituted for copies sent by other means. An affirmative statement that a copy of the pleading has been sent to all parties and the hearing officer is sufficient to indicate compliance with this subsection.

(g) Discovery methods are limited to those specified in the Administrative Procedure Act (APA), Texas Government Code, Chapter 2001, and may be further limited by order of the hearing officer. Upon a party's request to the hearing officer, the hearing officer may issue subpoenas and commissions to take depositions under the APA. Subpoenas and commissions to take depositions must be issued in the name of the Texas Education Agency.

(h) On or before the Disclosure Deadline (which must be at least five business days prior to a scheduled hearing), each party must disclose and provide to all other parties and the hearing officer copies of all evidence (including, without limitation, all evaluations completed by that date and recommendations based on those evaluations) that the party intends to use at the hearing. An index of the documents disclosed must be included with and accompany the documents. Each party must also include with the documents disclosed a list of all witnesses (including their names, addresses, phone numbers, and professions) that the party anticipates calling to testify at the hearing.

(i) A party may request a dismissal or nonsuit of a hearing to the same extent that a plaintiff may dismiss or nonsuit a case under the Texas Rules of Civil Procedure, Rule 162. However, if a party requests a dismissal or nonsuit of a hearing after the Disclosure Deadline has passed and, at any time within one year thereafter requests a subsequent hearing involving the same or substantially similar issues as those alleged in the original hearing, then, absent good cause or unless the parties agree otherwise, only evidence disclosed and witnesses identified by the Disclosure Deadline in the original hearing may be introduced at the subsequent hearing. *Amended to be effective March 1, 2017, 42 TexReg 760.*

TAC §89.1183. Resolution Process.

(a) Within 15 calendar days of receiving notice of the parent's request for a due process hearing, the public education agency must convene a resolution meeting with the parent and the relevant members of the admission, review, and dismissal committee who have specific knowledge of the facts identified in the request. The resolution meeting:
  (1) must include a representative of the public education agency who has decision-making authority on behalf of the public education agency; and
  (2) may not include an attorney of the public education agency unless the parent is accompanied by an attorney.

(b) The purpose of the resolution meeting is for the parent of the child to discuss the hearing issues and the facts that form the basis of the request for a hearing so that the public education agency has the opportunity to resolve the dispute.

(c) The resolution meeting described in subsections (a) and (b) of this section need not be held if:
  (1) the parent and the public education agency agree in writing to waive the meeting; or
  (2) the parent and the public education agency agree to use the mediation process described in §89.1193 of this title (relating to Special Education Mediation).

(d) The parent and the public education agency determine the relevant members of the admission, review, and dismissal committee to attend the resolution meeting.

(e) The parties may enter into a confidentiality agreement as part of their resolution agreement. There is nothing in this division, however, that requires the participants in a resolution meeting to keep the discussion confidential or make a confidentiality agreement a condition of a parent's participation in the resolution meeting.

(f) If the public education agency has not resolved the hearing issues to the satisfaction of the parent within 30 calendar days of the receipt of the request for a hearing, the hearing may occur.

(g) Except as provided in subsection (k) of this section, the timeline for issuing a final decision begins at the expiration of this 30-day resolution period.

(h) Except where the parties have jointly agreed to waive the resolution process or to use mediation, notwithstanding subsections (f) and (g) of this section, the failure of the parent filing a request for a hearing

to participate in the resolution meeting delays the timelines for the resolution process and the hearing until the meeting is held.

(i) If the public education agency is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made (and documented in accordance with the procedures in 34 Code of Federal Regulations, §300.322(d)), the public education agency may at the conclusion of the 30-day resolution period, request that a hearing officer dismiss the parent's request for a hearing.

(j) If the public education agency fails to hold the resolution meeting within 15 calendar days of receiving the parent's request for a hearing or fails to participate in the resolution meeting, the parent may seek the intervention of the hearing officer to begin the hearing timeline.

(k) Notwithstanding subsections (f) and (g) of this section, the timeline for issuing a final decision starts the calendar day after one of the following events:

(1) both parties agree in writing to waive the resolution meeting;

(2) after either the mediation or resolution meeting starts but before the end of the 30-day resolution period, the parties agree in writing that no agreement is possible; or

(3) if both parties agree in writing to continue the mediation at the end of the 30-day resolution period, but later the parent or public education agency withdraws from the mediation process.

(l) If a resolution to the dispute is reached at the resolution meeting, the parties must execute a legally binding agreement that is:

(1) signed by both the parent and a representative of the public education agency who has the authority to bind the public education agency; and

(2) enforceable in any state or federal court of competent jurisdiction.

(m) If the parties execute an agreement pursuant to subsection (l) of this section, a party may void the agreement within three business days of the agreement's execution. *Statutory Authority: amended to be effective March 1, 2017, 42 TexReg 760.*

TAC §89.1185. Hearing Procedures.

(a) The hearing officer must afford the parties an opportunity for hearing within the timelines set forth in 34 Code of Federal Regulations (CFR), §300.515 and §300.532, as applicable, unless the hearing officer, at the request of either party, grants an extension of time, except that the timelines for expedited hearings cannot be extended.

(b) Each hearing must be conducted at a time and place that are reasonably convenient to the parents and child involved.

(c) All persons in attendance must comport themselves with the same dignity, courtesy, and respect required by the district courts of the State of Texas. All argument must be made to the hearing officer alone.

(d) Except as modified or limited by the provisions of 34 CFR, §§300.507-300.514, or 300.532, or this division, the Texas Rules of Civil Procedure will govern the proceedings at the hearing and the Texas Rules of Evidence must govern evidentiary issues.

(e) Before a document may be offered or admitted into evidence, the document must be identified as an exhibit of the party offering the document. All pages within the exhibit must be numbered, and all personally identifiable information concerning any student who is not the subject of the hearing must be redacted from the exhibit.

(f) The hearing officer may set reasonable time limits for presenting evidence at the hearing.

(g) Upon request, the hearing officer, at his or her discretion, may permit testimony to be received by telephone.

(h) Granting of a motion to exclude witnesses from the hearing room will be at the hearing officer's discretion.

(i) Hearings conducted under this division must be closed to the public, unless the parent requests that the hearing be open.

(j) The hearing must be recorded and transcribed by a court reporter, who will promptly prepare and transmit a transcript of the evidence to the hearing officer with copies to each of the parties.

(k) Filing of post-hearing briefs will be permitted only upon order of the hearing officer.

(l) The hearing officer must issue a final decision, signed and dated, no later than 45 calendar days after the expiration of the 30-day resolution period under 34 CFR, §300.510(b), and §89.1183 of this title (relating to Resolution Process) or the adjusted time periods described in 34 CFR, §300.510(c), and §89.1183 of this title after a request for a due process hearing is received by the Texas Education Agency (TEA), unless the deadline for a final decision has been extended by the hearing officer as provided in §89.1186 of this title (relating to Extensions of Time). A final decision must be in writing and must include findings of fact and conclusions of law separately stated. Findings of fact must be based exclusively on the evidence presented at

the hearing. The final decision must be mailed to each party by the hearing officer on the day that the decision is issued. The hearing officer, at his or her discretion, may render his or her decision following the conclusion of the hearing, to be followed by written findings of fact and written decision.

(m) At the request of either party, the hearing officer must include, in the final decision, specific findings of fact regarding the following issues:
  (1) whether the parent or the public education agency unreasonably protracted the final resolution of the issues in controversy in the hearing; and
  (2) if the parent was represented by an attorney, whether the parent's attorney provided the public education agency the appropriate information in the request for a hearing in accordance with 34 CFR, §300.508(b).

(n) The decision issued by the hearing officer is final, except that any party aggrieved by the findings and decision made by the hearing officer, or the performance thereof by any other party, may bring a civil action with respect to the issues presented at the hearing in any state court competent jurisdiction or in a district court of the United States, as provided in 34 CFR, §300.516.

(o) A public education agency must implement any decision of the hearing officer that is, at least in part, adverse to the public education agency within the timeframe prescribed by the hearing officer or, if there is no timeframe prescribed by the hearing officer or, within ten school days after the date the decision was rendered. In accordance with 34 CFR, §300.518(d), a public education agency must implement a hearing officer's decision during the pendency of an appeal, except that the public education agency may withhold reimbursement for past expenses ordered by the hearing officer.

(p) In accordance with 34 CFR, §300.152(c)(3), a parent may file a complaint with the TEA alleging that a public education agency has failed to implement a hearing officer's decision. *Amended to be effective March 1, 2017, 42 TexReg 760.*

TAC §89.1186. Extensions of Time.

(a) A hearing officer may grant extensions of time for good cause beyond the time period specified in §89.1185(l) of this title (relating to Hearing Procedures) at the request of either party. A hearing officer must not solicit extension requests, grant extensions on his or her own behalf, or unilaterally issue extensions for any reason. Any extension must be granted to a specific date, and the reason for the extension must be documented in a written order of the hearing officer and provided to each of the parties.

(b) A hearing officer may grant a request for an extension only after fully considering the cumulative impact of the following factors:
  (1) whether the delay will positively contribute to, or adversely affect, the child's educational interest or well-being;
  (2) the need of a party for additional time to prepare or present the party's position at the hearing;
  (3) any adverse financial or other detrimental consequences likely to be suffered by a party in the event of delay; and
  (4) whether there has already been a delay in the proceeding through the actions of one of the parties.
  Amended to be effective March 1, 2017, 42 TexReg 760.

TEC §29.016.Evaluation Conducted Pursuant to a Special Education Due Process Hearing.

A special education hearing officer in an impartial due process hearing brought under 20 U.S.C. Section 1415 may issue an order or decision that authorizes one or more evaluations of a student who is eligible for, or who is suspected as being eligible for, special education services. Such an order or decision authorizes the evaluation of the student without parental consent as if it were a court order for purposes of any state or federal law providing for consent by order of a court.

§300.513 Hearing decisions.

(a) Decision of hearing officer.

(1) Subject to paragraph (a)(2) of this section, a hearing officer's determination of whether a child received FAPE must be based on substantive grounds.

(2) In matters alleging a procedural violation, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies--
  (i) Impeded the child's right to a FAPE;
  (ii) Significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to the parents' child; or
  (iii) Caused a deprivation of educational benefit.

(3) Nothing in paragraph (a) of this section shall be construed to preclude a hearing officer from ordering an LEA to comply with procedural requirements under §§300.500 through 300.536.

(b) Construction clause. Nothing in §§300.507 through 300.513 shall be construed to affect the right of a parent to file an appeal of the due process hearing decision with the SEA under §300.514(b), if a State level appeal is available.

(c) Separate request for a due process hearing. Nothing in §§300.500 through 300.536 shall be construed to preclude a parent from filing a separate due process complaint on an issue separate from a due process complaint already filed.

(d) Findings and decision to advisory panel and general public. The public agency, after deleting any personally identifiable information, must--

(1) Transmit the findings and decisions referred to in §300.512(a)(5) to the State advisory panel established under §300.167; and

(2) Make those findings and decisions available to the public.

(Authority: 20 U.S.C. 1415(f)(3)(E) and (F), 1415(h)(4), 1415(o))

§300.514 Finality of decision; appeal; impartial review.

(a) Finality of hearing decision. A decision made in a hearing conducted pursuant to §§300.507 through 300.513 or §§300.530 through 300.534 is final, except that any party involved in the hearing may appeal the decision under the provisions of paragraph (b) of this section and §300.516.

(b) Appeal of decisions; impartial review.

(1) If the hearing required by §300.511 is conducted by a public agency other than the SEA, any party aggrieved by the findings and decision in the hearing may appeal to the SEA.

(2) If there is an appeal, the SEA must conduct an impartial review of the findings and decision appealed. The official conducting the review must--

(i) Examine the entire hearing record;

(ii) Ensure that the procedures at the hearing were consistent with the requirements of due process;

(iii) Seek additional evidence if necessary. If a hearing is held to receive additional evidence, the rights in §300.512 apply;

(iv) Afford the parties an opportunity for oral or written argument, or both, at the discretion of the reviewing official;

(v) Make an independent decision on completion of the review; and

(vi) Give a copy of the written, or, at the option of the parents, electronic findings of fact and decisions to the parties.

(c) Findings and decision to advisory panel and general public. The SEA, after deleting any personally identifiable information, must--

(1) Transmit the findings and decisions referred to in paragraph (b)(2)(vi) of this section to the State advisory panel established under §300.167; and

(2) Make those findings and decisions available to the public.

(d) Finality of review decision. The decision made by the reviewing official is final unless a party brings a civil action under §300.516.

(Authority: 20 U.S.C. 1415(g) and (h)(4), 1415(i)(1)(A), 1415(i)(2))

§300.515 Timelines and convenience of hearings and reviews.

(a) The ;public agency must ensure that not later than 45 days after the expiration of the 30 day period under §300.510(b), or the adjusted time periods described in 300.510(c)--

(1) A final decision is reached in the hearing; and

(2) A copy of the decision is mailed to each of the parties.

(b) The SEA must ensure that not later than 30 days after the receipt of a request for a review--

(1) A final decision is reached in the review; and

(2) A copy of the decision is mailed to each of the parties.

(c) A hearing or reviewing officer may grant specific extensions of time beyond the periods set out in paragraphs (a) and (b) of this section at the request of either party.

(d) Each hearing and each review involving oral arguments must be conducted at a time and place that is reasonably convenient to the parents and child involved.

(Authority: 20 U.S.C. 1415(f)(1)(B)(ii), 1415(g), 1415(i)(1))

TAC §89.1191. Special Rule for Expedited Due Process Hearings.

A parent who disagrees with any decision regarding a child's placement under 34 Code of Federal Regulations (CFR), §300.530 and §300.531, or a manifestation determination under 34 CFR, §300.530(e), or a school district that believes that maintaining the current placement of a child is substantially likely to result in injury to the child or others, may appeal the decision by requesting an expedited due process hearing under 34 CFR, §300.532. An expedited due process hearing will be governed by the same procedural rules as are applicable to due process hearings generally, except that:

(1) the hearing must occur within 20 school days of the date the request for a due process hearing is filed;
(2) the hearing officer must make a decision within 10 school days after the hearing;
(3) unless the parents and the school district agree in writing to waive the resolution meeting required by 34 CFR, §300.532(c)(3)(i), or to use the mediation process described in 34 CFR, §300.506, the resolution meeting must occur within seven calendar days of the receipt of the request for a hearing;
(4) the hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 calendar days of the receipt of the request for a hearing;
(5) the hearing officer must not grant any extensions of time or grant permission for the hearing to proceed under the timelines that apply to hearings involving non-disciplinary matters; and
(6) the provisions in 34 CFR, §300.508(d), do not apply.

§300.517 Attorneys' fees.

(a) In general.

(1) In any action or proceeding brought under section 615 of the Act, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to--

(i) The prevailing party who is the parent of a child with a disability;

(ii) To a prevailing party who is an SEA or LEA against the attorney of a parent who files a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or

(iii) To a prevailing SEA or LEA against the attorney of a parent, or against the parent, if the parent's request for a due process hearing or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.

(2) Nothing in this subsection shall be construed to affect section 327 of the District of Columbia Appropriations Act, 2005.

(b) Prohibition on use of funds.

(1) Funds under Part B of the Act may not be used to pay attorneys' fees or costs of a party related to any action or proceeding under section 615 of the Act and subpart E of this part.

(2) Paragraph (b)(1) of this section does not preclude Tyler ISD from using funds under Part B of the Act for conducting an action or proceeding under section 615 of the Act.

(c) Award of fees. A court awards reasonable attorneys' fees under section 615(i)(3) of the Act consistent with the following:

(1) Fees awarded under section 615(i)(3) of the Act must be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded under this paragraph.

(2) (i) Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding under section 615 of the Act for services performed subsequent to the time of a written offer of settlement to a parent if--

(A) The offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than 10 days before the proceeding begins;

(B) The offer is not accepted within 10 days; and

(C) The court or administrative hearing officer finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement.

(ii) Attorneys' fees may not be awarded relating to any meeting of the IEP Team unless the meeting is convened as a result of an administrative proceeding or judicial action, or at the discretion of the State, for a mediation described in §300.506.

(iii) A meeting conducted pursuant to §300.510 shall not be considered--

(A) A meeting convened as a result of an administrative hearing or judicial action; or

(B) An administrative hearing or judicial action for purposes of this section.

(3) Notwithstanding paragraph (c)(2) of this section, an award of attorneys' fees and related costs may be made to a parent who is the prevailing party and who was substantially justified in rejecting the settlement offer.

(4) Except as provided in paragraph (c)(5) of this section, the court reduces, accordingly, the amount of the attorneys' fees awarded under section 615 of the Act, if the court finds that--

(i) The parent, or the parent's attorney, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;

(ii) The amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience;

(iii) The time spent and legal services furnished were excessive considering the nature of the action or proceeding; or

(iv) The attorney representing the parent did not provide to the LEA the appropriate information in the due process request notice in accordance with §300.508.

(5) The provisions of paragraph (c)(4) of this section do not apply in any action or proceeding if the court finds that the State or local agency unreasonably protracted the final resolution of the action or proceeding or there was a violation of section 615 of the Act.

(Authority: 20 U.S.C. 1415(i)(3)(B)–(G))

TAC §89.1192 Attorneys' Fees.

In an action or proceeding brought under this division, a court, in its discretion, may award reasonable attorneys' fees to the prevailing party under the circumstances described in 34 Code of Federal Regulations. §300.517.

XI. CIVIL ACTION

§300.516 Civil action.

(a) General. Any party aggrieved by the findings and decision made under §§300.507 through 300.513 or §§300.530 through 300.534 who does not have the right to an appeal under §300.514(b), and any party aggrieved by the findings and decision under §300.514(b), has the right to bring a civil action with respect to the due process complaint notice requesting a due process hearing under §300.507 or §§300.530 through 300.532. The action may be brought in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy.

(b) Time limitation. The party bringing the action shall have 90 days from the date of the decision of the hearing officer or if applicable, the decision of the State review official, to file a civil action, or, if the State has an explicit time limitation for bringing civil actions under Part B of the Act, in the time allowed by that State law.

(c) Additional requirements. In any action brought under paragraph (a) of this section, the court—

(1) Receives the records of the administrative proceedings;

(2) Hears additional evidence at the request of a party; and

(3) Basing its decision on the preponderance of the evidence, grants the relief that the court determines to be appropriate.

(d) Jurisdiction of district courts. The district courts of the United States have jurisdiction of actions brought under section 615 of the Act without regard to the amount in controversy.

(e) Rule of construction. Nothing in this part restricts or limits the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990, title V of the Rehabilitation Act of 1973, or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under these laws seeking relief that is also available under section 615 of the Act, the procedures under §§300.507 and 300.514 must be exhausted to the same extent as would be required had the action been brought under section 615 of the Act.

XII. STUDENT STATUS DURING PROCEEDINGS

§300.518 Child's status during proceedings.

(a) Except as provided in §300.533, during the pendency of any administrative or judicial proceeding regarding a request for a due process complaint notice requesting a due process hearing under §300.507, unless the State or local agency and the parents of the child agree otherwise, the child involved in the complaint must remain in his or her current educational placement.

(b) If the complaint involves an application for initial admission to public school, the child, with the consent of the parents, must be placed in the public school until the completion of all the proceedings.

(c) If the complaint involves an application for initial services under this part from a child who is transitioning from Part C of the Act to Part B and is no longer eligible for Part C services because the child has turned three, the public agency is not required to provide the Part C services that the child had been receiving. If the child is found eligible for special education and related services under Part B and the parent consents to the initial provision of special education and related services under §300.300(b), then the public agency must provide those special education and related services that are not in dispute between the parent and the public agency.

(d) If the hearing officer in a due process hearing conducted by the SEA or a State review official in an administrative appeal agrees with the child's parents that a change of placement is appropriate, that placement must be treated as an agreement between the State or local agency and the parents for purposes of paragraph (a) of this section.

(Authority: 20 U.S.C. 1415(j))