

A Guide to the Admission, Review and Dismissal Process





Dear Parent,

The Individuals with Disabilities Education Improvement Act of 2004 (IDEA) is the federal law that governs the special education process. The term *special education* means specially designed instruction to meet the unique needs of a child with a disability. Under the IDEA, parents are given a large level of participation at every stage of the process. This resource guide is designed to give you, as the parent of a child who may be eligible for special education services, a better understanding of the special education process so that you will be able to fully participate in the decision-making process regarding your child's education.

This guide describes various activities that may take place during the special education process such as early intervention activities, determination of eligibility for special education, development of a child's Individualized Education Program (IEP), your procedural rights and responsibilities and dismissal from special education.

This guide will be updated as changes to the federal and/or state special education requirements occur. An electronic version will be updated quarterly and may be found on the Region 18 Education Service Center web page on the *Legal Framework in Texas, IDEA 2004*, at www.esc18.net. The printable version can also be found at this link.

The *Legal Framework* is a template in an electronic format that summarizes state and federal requirements for special education by topic. Parents and schools may use the *Legal Framework* as a reference in managing the special education system's procedures.



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Early Childhood Intervention (ECI)

When an infant or toddler begins to demonstrate problems with meeting developmental milestones, the IDEA addresses early intervention with the family and the child who may have a disability. With a little assistance early on, a child who is late in meeting developmental goals may sometimes catch up with his or her peers.

In Texas, there is an agency that helps children under three years of age who have developmental delays. The program is called ECI and provides services for qualifying infants and toddlers and their families. Services include screening and evaluation, programming, service coordination and transition services, as needed.

About 120 days before a toddler receiving ECI turns three years old, a meeting will be set up to help the family make the transition from ECI services to special education services, if appropriate. Not all children served by the ECI program will qualify for special education services. If the child does qualify, special education services must be made available to the child on his or her third birthday.

How to Get Help for the School-Aged Child Before an Evaluation for Special Education Becomes Necessary

If you have concerns about your child's learning or behavior, the first step is talk to your child's teacher or the school principal about your concerns. If this step is unsuccessful, you should ask your child's teacher, principal or counselor about making a referral to the campus-based student support team, which is a team of teachers and other personnel who meet regularly to address any learning or behavioral concerns that students are having. It is the goal of the school and these teams to identify struggling learners early in order to improve their educational outcomes. Before a referral for a special education evaluation, State law requires that your child be considered for all support services available to all children. These services may, but are not limited to: tutoring, remedial services, compensatory services, response to scientific research-based intervention (RtI), and other academic or behavior support services.

Response to Intervention (RtI)

The federal No Child Left Behind Act of 2001 (NCLB) and the IDEA direct schools to focus more on helping all children learn by addressing problems earlier. Both laws stress the importance of providing high quality, scientifically-based instruction and interventions, and holding schools accountable for the progress of all students in terms of meeting grade level standards. This approach is called Response to Intervention (RtI) and the goal of the process is to identify children who are at-risk for not meeting grade-level standards and to intervene early.

Many school districts and campuses have begun implementing activities associated with RtI. The screening process for identifying children who are at-risk may vary from school to school. The basic elements of an RtI approach are: the provision of scientific, research-based instruction and interventions in the general education classroom; monitoring and measurement of student progress in response to the interventions; and use of these measures of student progress to make educational decisions.

The RtI approach includes a multi-leveled system of interventions in which each level or tier represents an increasingly intense level of services. Interventions that are provided to a child will be continually adjusted based on progress monitoring until the child is progressing adequately. Children, who do not respond to the initial interventions within a reasonable period of time, as suggested by research, are referred for more intensive interventions. Most RtI models have three tiers of interventions.

A school that implements an RtI system still has an obligation to identify students with disabilities. Parents, teachers or anyone else can request a referral at any time regardless of whether the child is receiving interventions through an RtI system. A child does not need to advance through the multi-tiers of the RtI system before a referral is made. In certain circumstances, a student may have progressed through multiple tiers without success. In this situation, a disability should be suspected and a referral must be made. A school may continue RtI interventions that have already been initiated while processing the referral and determining whether or not the child should be evaluated for special education services within required timelines.

The benefit of an RtI approach mentioned most often is that it enables students to get help promptly within the general education setting. In addition, an RtI approach may potentially reduce the number of children referred for special education services as it helps differentiate between students whose achievement problems are due to issues such as a lack of prior instruction from students whose problems are due to a learning disability.

Referral for a Full and Individual Evaluation (FIE) for Special Education Services

If your child continues to experience difficulty in the general classroom after interventions are provided, school personnel may refer your child for an FIE for special education services. A referral for an FIE for special education services may be initiated by you, school personnel or another person involved in the education or care of your child. If you request an evaluation for special education services and the school determines that an evaluation is not needed, the school must give you prior written notice of its decision not to evaluate your child.

Once your consent is given for an FIE, the school will conduct an FIE of your child in all areas of suspected disability. The child between the ages of three through twenty-one (except as noted) must meet the criteria for one or more of the disability categories listed below to be eligible for special education services:

- auditory impairment (from birth)
- autism
- deaf-blindness (from birth)
- emotional disturbance
- mental retardation
- multiple disabilities
- noncategorical early childhood ages 3 - 5
- orthopedic impairment
- other health impairment
- specific learning disability
- speech or language impairment
- traumatic brain injury, and
- visual impairment (including blindness from birth)

A school district has a duty to make a referral for an FIE for special education services anytime it suspects that a child has a disability and a need for special education services under the IDEA.

The FIE and the resulting report must be completed no later than 60 calendar days from the day the school received your written consent.

Prior Written Notice

You have the right to receive written notice about a school's actions concerning your child's special education before the school actually takes the action. A school must give you prior written notice each time it:

- proposes to initiate or change the identification, evaluation, educational program, or educational placement of your child or the provision of a free appropriate public education (FAPE) to your child; or
- refuses to initiate or change the identification, evaluation, educational program, or educational placement of your child or the provision of a FAPE to your child.

Prior written notice must be given at least 5 school days in advance of the action(s) that the school proposes or refuses to take.

Parental Consent

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

When you give consent, it means that you understand and agree in writing for the school to carry out the activity for which consent is sought. It is important that you understand that the consent is voluntary and may be revoked at anytime prior to the activity taking place. However, if you revoke consent for an activity, it is not retroactive.

Consent for Initial Evaluation

The school must ask for consent from you to conduct an FIE for possible special education services. The school may not evaluate your child for special education services without your consent. Informed parental consent means that you understand and agree in writing to allow the school to test your child.

If you do not consent to the initial evaluation, the school district may, but is not required to, ask for mediation or request a due process hearing to evaluate your child. If the school district decides not to ask for mediation or to request a due process hearing to override your refusal to consent for evaluation of your child, the school district does not violate Child Find requirements under the IDEA.

Consent for the Initial Provision of Services

Parental consent to initiate special education and related services must be separately obtained from you if it is determined through the process discussed above that your child qualifies for special education and related services.

The school must make reasonable efforts to obtain informed consent from you for the initial provision of special education and related services to your child. No special education and related services will be provided if you refuse consent.

Eligibility

There is a two-part test for determining whether your child is eligible for special education services: (1) your child must have a disability, and (2) as a result of the disability, your child must need special education services to benefit from education. In Texas, an ARD committee makes decisions about eligibility. You are a member of the committee. Within 30 calendar days of completing the FIE, the ARD committee must meet to review the written report and determine whether your child is eligible for special education services. A copy of the evaluation report must be given to you at no cost.

As explained in the section on RtI, not all struggling learners have a disability. If the child's problems are primarily from a lack of appropriate instruction in reading or math or due to the fact that the child has Limited English Proficiency (LEP), the child is not eligible for special education services. In these situations, the campus-based support team may meet and recommend other services or programs in general education to help the child. In an RtI process, the campus-based support team may recommend additional interventions available to non-disabled children.

If the evaluation shows that your child has a disability, the ARD committee must then decide whether your child needs special education services to benefit from education. If your child does not have an educational need for special education services, he or she is not eligible for any such services.

Reevaluation

Once your child begins receiving special education and related services, periodic reevaluations are required. The school must make reasonable efforts to obtain your consent for a reevaluation. If you fail to respond despite reasonable efforts, the school may conduct a reevaluation without your consent.

If you refuse consent to reevaluate your child, the school district may, but is not required to, ask for mediation or request a due process hearing to override your lack of consent for reevaluation. The school district does not violate its Child Find obligation or its obligation to evaluate the child if the district does not ask for mediation or request a due process hearing.

A reevaluation is similar to the FIE. The reevaluation must be comprehensive enough to determine whether your child continues to be a child with a disability and needs special education services. Unless you and the school agree otherwise, a reevaluation of your child's needs must be done at least every three years. No more than one reevaluation may occur within a year unless you and the school agree.

Review of Existing Evaluation Data (REED)

A REED must take place as part of an initial evaluation, if appropriate, and as part of any reevaluation of a child under the IDEA. The REED must be conducted by the members of the ARD committee including you, but it does not have to take place in a meeting. The members must review existing evaluation data about your child, including information you provide to determine the scope of the evaluation.

If your child has already been receiving special education and related services, the members decide what additional assessment, if any, is needed to decide whether additions or modifications will be made to your child's special education and related services.

If the members decide that additional assessment is not needed for your child to be fully evaluated, the reasons for this decision must be explained to you. After explaining the reasons why the members have concluded that existing evaluation data are sufficient, the school does not have to conduct a new assessment to complete a required evaluation unless you request the school to do so.

Independent Educational Evaluation (IEE)

If you disagree with an evaluation by the school district, you may request an IEE at school district expense. You are entitled to only one IEE at public expense each time the school conducts an evaluation. The school must give you information about where an IEE may be obtained and must give you a copy of the district's criteria for obtaining an IEE. The IEE must meet school district criteria. The criteria will likely include the location of the evaluation and the qualifications of the examiner.

If you request an IEE at school district expense, the school must either pay for this evaluation or file a request for a due process hearing. Whether or not the school district pays for the IEE, the ARD committee must consider any individual educational evaluation that meets the district criteria.

ARD Committee

The ARD committee must meet at least once a year to review your child's IEP and determine whether the annual goals are being met. The ARD committee may meet more often than annually to revise your child's IEP, as appropriate, to address:

- any lack of expected progress toward the annual goals and in the general curriculum,
- the results of any reevaluation,
- information about the child provided to, or by, the parents, and
- anticipated needs of the child, or
- other matters.

You may request an ARD committee meeting (at a mutually agreeable time) at any time to discuss educational concerns such as placement, IEP goals and objectives, and the extent of services being provided to your child. The school must either grant your request to have a meeting or contact the Texas Education Agency (TEA) to ask for assistance through mediation.

Amendment to the IEP Without a Meeting

After the annual ARD committee meeting has taken place, you and the school may agree to make changes to the IEP without a meeting. Changes to eligibility determination, changes in placement, and manifestation determination review must, however, be made in an ARD Committee meeting.

If an IEP is changed outside of an ARD committee meeting, there must be a written document reflecting the agreed upon changes. Upon request, you must be provided with a copy of the revised IEP with the amendments incorporated.

Membership

The ARD committee members include the following:

- you, the parent,
- at least one regular education teacher of the child,
- at least one special education teacher or provider of the child,
- a representative of the district,
- a person who can interpret the instructional implications of the evaluation results,
- if appropriate, the student,
- other individuals who have knowledge or special expertise regarding the child and are invited by either you or the school, and if applicable:
 - a certified teacher for the child with a suspected or documented Auditory Impairment (AI),
 - a certified teacher for the child with a suspected or documented Visual Impairment (VI),
 - an AI certified teacher and a VI certified teacher for the child with suspected or documented deaf-blindness,
 - a Career and Technology Education (CTE) representative for the child who is being considered for initial or continued placement, or
 - a Language Proficiency Assessment Committee (LPAC) representative for a child who is a child with LEP.

Adult Student

At least one year before your child reaches the age of majority under State law (i.e., age 18), the IEP must include a statement that your child has been informed of his or her rights under the IDEA, if any, that will transfer to him or her on reaching the age of majority. Unless your child is determined to be incompetent under State law and you are appointed as the guardian, your rights under the IDEA will transfer to your adult child at age 18 except that all notices required by IDEA must be given to both you and your adult child. These notices are not an invitation for you to attend meetings, however. You may only attend meetings if your adult child invites you or gives the school permission to invite you.

Excusing Members from Attending the Meeting

The regular education teacher, the special education teacher, the representative of the school district, and the evaluation person may be excused from attending part or all of the ARD committee meeting when the person's attendance is not necessary, because the person's area of the curriculum or related service is not being modified or discussed in the meeting. A member of the ARD committee may also be excused from attending an ARD

committee meeting when the meeting involves a modification to or discussion of the member's area of curriculum or related service if:

- you and the district agree,
- the agreement is in writing,
- the parties agree that the person's area of the curriculum or related services is not being changed or discussed in the meeting,
- the person being excused submits written input into the development of the IEP to you and the rest of the ARD committee, and
- the written input is submitted before the meeting.

Scheduling the Meeting

The school must invite you to each ARD committee meeting for your child and make efforts to ensure one or both parent's participation. Written notice of the meeting must be given to you at least 5 school days before the meeting, unless you agree otherwise. The written notice must include the purpose, time and location of the meeting and list representatives attending the meeting.

The ARD committee meeting must be at a time and place agreeable to you and the school. If the time or date the school proposes is not convenient for you, the school must make reasonable efforts to find a time that you are able to meet. If neither parent can attend the meeting, you may participate through alternative means such as through telephone or videoconferencing. If the school is unable to convince you to attend, then the school can conduct the meeting without you.

Nonconsensus/Disagreement

A decision of the ARD committee concerning the required elements of the IEP must be made by mutual agreement of the required members if possible. This mutual agreement is called consensus. The ARD committee should work toward consensus, but the school district has the ultimate responsibility to ensure that the IEP includes the services that your child needs in order to receive a FAPE. It is not appropriate to make ARD committee decisions based upon a majority "vote." The members participating in the meeting will be asked to sign the record of the meeting and indicate whether they agree or disagree with the committee's decisions. If there is disagreement, the record of the meeting must indicate the basis for any disagreement. Members who disagree are given the opportunity to write their own statements.

When you disagree with the decisions of the ARD committee, you will be offered a single opportunity to have the committee recess for a period of time not to exceed ten school days. Before recessing the meeting, the members are to agree to a date, time, and place for reconvening the meeting.

During a recess, the members are encouraged to consider alternatives, gather additional information, prepare further documentation, and seek out additional resource persons to aid in resolving the disagreement. If the ARD committee meets again and you continue to disagree, unless the disagreement involves the initial provision of services for which consent is required, the school shall implement the IEP, which the school has decided is appropriate for your child. When a school implements a program with which you disagree, the school shall provide prior written notice that it will implement the IEP.

The ARD committee may recess for reasons other than failure to reach agreement about all required elements of the IEP.

IEP

If your child qualifies under the IDEA, the school is required to provide a FAPE in the Least Restrictive Environment (LRE). This is accomplished through the ARD committee's development of an IEP, and the school's implementation of the IEP.

In developing the IEP, there are several things the ARD committee must consider, including:

- strengths of your child,
- your concerns for enhancing the education of your child,
- results of the most recent evaluation of your child, and
- academic, developmental and functional needs of your child.

In addition, the ARD committee must address special factors for some children, as follows:

- consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior when a child's behavior impedes learning;
- consider the language needs of the child as those needs relate to the child's IEP when a child has LEP;
- provide for instruction in Braille and the use of Braille unless the committee determines that instruction in Braille or the use of Braille is not appropriate for the child when a child is blind or visually impaired;
- consider the communication needs of the child, and for the child who is deaf or hard of hearing, consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode; and
- consider whether the child needs Assistive Technology (AT) devices and services.

Present Levels

The IEP must contain a statement of present levels of academic achievement and functional performance of your child. This statement must include how the disability affects involvement and progress in the general curriculum. If your child is a preschool child, the statement must explain how the disability affects participation in activities appropriate to the age of the child.

Annual Goals

The IEP must contain measurable annual goals designed to meet your child's needs resulting from the disability so that he or she can be involved and progress in the general curriculum. These goals must also address other educational needs that result from your child's disability. The IEP must describe how your child's progress towards the annual goals will be measured as well as when the progress reports will be provided to you.

Statewide Assessment

Federal law requires that schools be held accountable for educational results so that each child can meet his/her academic potential. State assessments are to be given to determine whether schools have been successful in teaching students the knowledge and skills for

their enrolled grade as defined by the state content standards (the [Texas Essential Knowledge and Skills or TEKS](#)).

Texas has developed new assessments that meet these federal requirements. Students served by special education services will take the Texas Assessment of Knowledge and Skills (TAKS), TAKS (Accommodated), TAKS-Modified (TAKS-M) or TAKS-Alternate (TAKS-Alt). All assessments are based on grade level content as required by federal law.

If the ARD committee determines that accommodations are necessary for a student to participate in assessments, the IEP must contain a statement of appropriate accommodations. More information regarding accommodations is available at: http://www.tea.state.tx.us/student.assessment/admin/AccommManual_2007_08_tagged.pdf.

For those children who take alternate assessments based on alternate achievement standards, the IEP must contain a description of benchmarks or short-term objectives as part of the child's annual goals. If the child does not meet the expectations set by the ARD committee on the statewide assessment, the IEP must include a statement regarding how the student will participate in an accelerated instruction program.

For a student taking an alternate assessment based on modified academic achievement standards, the ARD committee may elect to include annual goals, benchmarks or short-term objectives in the IEP to assist in monitoring the student's progress.

If the ARD committee determines that the child must take an alternate assessment on a particular State or district-wide assessment, a statement must be provided regarding why the child cannot participate in the regular assessment. In addition, the ARD committee must provide a statement indicating why the particular alternate assessment selected is appropriate for the child.

For more information, refer to the ARD Committee Decision-Making Process for the Texas Assessment Program at:

http://www.tea.state.tx.us/student.assessment/admin/2007_2008_ARD_Manual_tagged.pdf.

Supplementary Aids and Services, Related Services, Special Education

The ARD committee decides what services are needed to:

- enable the child to advance appropriately toward attaining the annual goals,
- be involved and make progress in the general curriculum (including participation in extracurricular and nonacademic activities), and
- be educated and participate with nondisabled children.

The IEP must include a statement of needed supplementary aids and services, related services and special education services to be provided to your child or on behalf of the child. These services must be based on peer-reviewed research to the extent practicable.

Additionally, the IEP must contain a statement of any needed program modifications and supports for school personnel that will be provided. The ARD committee determines the length of your child's school day in the IEP.

Supplemental Areas to be Addressed for Children with Autism

For a child with autism, there are additional strategies that must be considered, based on peer-reviewed, research-based educational programming practices to the extent practicable. When needed, these strategies must be addressed in the IEP. When not needed, the IEP must include a statement to that effect and the basis upon which the determination was made. Specifically, the ARD committee must consider:

- additional social and behavioral strategies, including social skills supports and strategies, positive behavior support strategies, in-home and community-based training, and staff-to-student ratios;
- additional instructional strategies, including minimal unstructured time, communication interventions, extended educational programming, teaching strategies;
- future planning; and
- additional services provided on behalf of the child, including parent/family training, and professional educator and staff support.

Extended School Year (ESY)

The ARD committee decides if your child qualifies for ESY services. The decision is based on formal and/or informal measures. ESY is not limited to categories of disability. These are individualized decisions based on the criteria for extended school year and not a "one size fits all" decision.

Your child qualifies for ESY services if, in one or more critical areas addressed in your child's current IEP, your child has exhibited, or reasonably may be expected to exhibit, severe or substantial regression that cannot be regained within a reasonable period of time. The term *severe or substantial regression* means that the child has been, or will be, unable to maintain one or more acquired critical skills in the absence of ESY services.

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

- removal to a more restrictive placement,
- a significant loss of skills needed to progress in the general curriculum,
- a significant loss of self-help skills and, therefore, requires more direct services and support,
- loss of access to noneducational community-based independent living skill instruction or an independent living environment as a result of losing skills, or
- loss of access to on-the-job training or productive employment due to losing skills.

If the loss of acquired critical skills would be particularly severe or substantial, or if such loss results or reasonably may be expected to result, in immediate physical harm to the child or to others, ESY services may be justified without consideration of the period of time for regaining such skills. In any case, the period of time for regaining a critical skill shall not exceed eight weeks.

If the ARD committee determines that your child is in need of ESY services, then the IEP must also include goals and objectives for ESY services from your child's current IEP.

Transition

Your child must be invited to the ARD committee meeting when transition services will be discussed. Transition services are a coordinated set of activities designed to help the child move from school to post-school activities. Those activities begin by age 16 with an examination of transition issues including the appropriate courses of study based on transition goals. The IEP must include transition services needed to assist the child in reaching those goals.

The ARD committee must make decisions regarding transition goals and services based on age-appropriate transition assessments. The transition goals and services in your child's IEP must be updated annually.

Placement

The IDEA guarantees that your child with a disability will be educated in the LRE. This means that to the maximum extent appropriate, your child with a disability must be educated with children who do not have disabilities. Removal of your child from the regular educational environment may only occur if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

Placement refers to the educational program on the continuum of placements (i.e., regular classes, special classes, special schools, homebound instruction, instruction in hospitals and institutions). Placement does not refer to the specific physical location or site where the services will be delivered. The ARD committee determines the educational placement based on the child's IEP.

Graduation

The State's goal is that all Texas children finish high school with the skills designed to meet their unique needs and prepare them for further education, employment and independent living. Because graduation is a change of placement, the ARD committee decides whether a student has met graduation criteria.

Your child may graduate and receive a regular high school diploma if he or she has met State or local (whichever is greater) minimum curriculum and credit requirements for graduation (under the recommended or distinguished achievement high school program curriculum requirements) applicable to children in general education and the child has performed satisfactorily on the state exit level assessment instrument.

Your child may also graduate and receive a regular high school diploma if he or she has satisfactorily completed the State or local (whichever is greater) minimum curriculum requirements for graduation (under the minimum high school program curriculum requirements) applicable to students in general education, including participation in required state assessments. The ARD committee must determine whether satisfactory performance on a required state assessment must also be required for graduation and whether the child has met those expectations.

When a child graduates in one of the manners described above, the graduation ends the school's obligation to provide services to the child. An evaluation is not required, but the school must give the child a summary of performance.

Your child may also graduate and receive a regular high school diploma if he or she has successfully completed his or her IEP, completes at least the minimum credit requirements and meets one of the following conditions: full-time employment, mastery of specific employability skills, or access to services which are not the legal responsibility of the district. In this situation, your child may be able to return to school and receive services through the end of the school year in which he or she reaches age 22. The ARD committee must determine the appropriate educational services for a child who returns after graduating. If a child graduates in this manner and does not return to school, a reevaluation is not required, but the school must provide the child with a summary of performance. For a child who returns to school, the school must conduct an evaluation and provide a summary of performance.

A child who no longer meets age eligibility requirements (i.e., "ages out") may also graduate and receive a diploma based on the ARD committee's determination that the requirements of the child's IEP have been met and the child no longer meets age eligibility. A child receiving special education services who is 21 on September 1 of a school year shall be eligible for services through the end of that school year or until graduation, whichever comes first. The child who graduates due to aging out and meeting his or her IEP requirements must be given a summary of performance.

Discipline

School officials may consider any unique circumstances on a case-by-case basis when determining whether a change in placement is appropriate for a child with a disability who has violated the school's student code of conduct. As a general rule, the consequences set out in the school's code of conduct apply to all students, including children with disabilities.

There are, however, special rules and limitations that may apply to a child with a disability if the school proposes to:

- change the child's placement, or
- remove the child from his or her current placement for more than ten collective school days during the school year.

School officials may report to law enforcement authorities that a student, including a child with a disability, is suspected of committing a crime. In some instances State law requires school officials to make a report to law enforcement. Schools that report a suspected crime to law enforcement officials must ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities, provided that the transmission is permitted by the Family Educational Rights and Privacy Act (FERPA). The FERPA assures the confidentiality of personally identifiable information contained in education records. Under the FERPA, personally identifiable information (such as the child's status as special education child) can only be released with parental consent, except in certain very limited circumstances. Therefore, in most instances, in order to transmit such records to law enforcement authorities, parental consent will be required.

Removal from Placement

School officials may remove your child from the placement if your child violates the code of conduct. This removal can be to an appropriate interim alternative educational setting, another setting, or suspension.

The authority of school officials to order such a removal is limited to no more than ten consecutive school days, except for *special circumstances/situations*. In ordering the removal of your child with a disability, school officials must apply the same standards and follow the same procedures that apply to the general education student.

The First Ten Days of Removal

For the first ten days of such removals in the school year, there is no requirement to hold an ARD committee meeting or conduct a manifestation determination. As far as services, your child must be treated the same as the general education student. This may include an out-of-school suspension of up to three days with no services provided.

Beyond the First Ten Days

School officials may order a short-term removal (up to ten school days) of your child with a disability after the first ten days of removal in response to separate incidents of misconduct, provided that these removals do not constitute a *change of placement*.

For any such short-term removal, (beyond the first ten days) the school must provide services to your child with a disability to enable your child to continue to participate in the general curriculum, although in another setting and to progress toward meeting the goals set out in your child's IEP. School personnel must consult with at least one of your child's teachers to decide which services are needed.

Change of Placement

A removal of a child with a disability from his or her current educational placement is a change of placement if:

- the removal is for more than ten school days in a row; or
- the child has had a series of removals that constitute a pattern because:
 - the removals total more than 10 school days in a school year,
 - the child's behavior is largely similar to the child's behavior in past incidents that resulted in the series of removals, and
 - other factors like the length of the removals, the total amount of time the child has been removed, and the proximity of the removals to one another.

The school will determine on a case-by-case basis whether a pattern of removals amounts to a change of placement. You may challenge the school's decision about this through a due process hearing or judicial proceeding.

If the school proposes a removal that will constitute a change of placement due to your child's violation of the student code of conduct, school officials must notify you of that decision and provide you with a copy of the Notice of Procedural Safeguards document. This must be done on the date on which the decision is made to change the child's placement. In addition, the school must arrange for a meeting of the ARD committee to determine whether the conduct was a manifestation of the child's disability.

Manifestation Determination Review (MDR)

Within ten school days of any decision to change the placement of your child due to a violation of the code of conduct, the ARD committee must meet and conduct an MDR.

When conducting an MDR, the ARD committee must review all relevant information in your child's file, including the IEP, any teacher observations and any relevant information provided by you. You may present any relevant information at this time for the ARD committee to review when making the determination whether your child's conduct is a manifestation of your child's disability.

The ARD committee must then answer both of the following questions:

- Was the conduct in question caused by or did it have a direct and substantial relationship to your child's disability?
- Was the conduct in question the direct result of the school's failure to implement the IEP?

When Conduct is a Manifestation

If the ARD committee answers "yes" to either of these questions, the conduct is a manifestation of the child's disability. In that event, the committee must either:

- conduct a functional behavioral assessment (FBA), unless the school had conducted an FBA before the behavior that resulted in the change of placement occurred, and implement a behavior intervention plan (BIP); or
- if a BIP is already in place, review the BIP and modify it as necessary to address the behavior.

In addition, if the committee concludes that your child's conduct was caused by the school's failure to implement the IEP, the school must take immediate steps to remedy the deficiencies.

If the ARD committee concludes that your child's behavior is a manifestation of his or her disability, the committee must return your child to the placement from which your child was removed unless:

- you and the school agree to a change of placement as part of the modification of the child's BIP; or
- your child's violation of the code of conduct involves one of the "special circumstances" described below.

When Conduct is Not a Manifestation

If the ARD committee concludes that your child's conduct was not a manifestation of the disability, school personnel may discipline your child in the same manner as other children, except appropriate educational services must continue.

The child's ARD committee will determine the interim alternative educational setting in which the child will be served. In Texas, the interim alternative educational setting may be a Disciplinary Alternative Education Program (DAEP).

Special Circumstances

School personnel may remove your child to an interim alternative educational without regard to whether the behavior is a manifestation of his or her disability in cases where your child:

- carries or possesses a weapon at school, on school premises, or at a school function;
- knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school, on school premises, or at a school function; or
- has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function.

The child's ARD committee will determine the interim alternative educational setting in which the child will be served.

Expedited Due Process Hearing

If you disagree with a decision regarding placement in an interim alternative educational setting or manifestation determination, you may request a due process hearing. While the hearing is pending, unless you and school district agree otherwise, your child must remain in the interim alternative educational setting selected by the ARD committee until the hearing officer decides the case or the assignment to the interim alternative educational setting concludes, whichever occurs first.

Due process hearings concerning disciplinary placements have shortened timelines. This means that the resolution meeting must be held within seven calendar days and the hearing must be held within 20 school days of the request. The hearing officer must make a decision within ten school days after the hearing.

The school may also request a due process hearing if the school wants to challenge a student's return to school after the ARD committee has determined that the student's conduct was a manifestation of his or her disability.

Child Not Yet Eligible

If your child has not been determined eligible for special education and engages in behavior that violates the code of conduct, your child is entitled to the protections provided in the IDEA if the school had knowledge that your child had a disability before the behavior occurred. The school has knowledge if before the behavior occurred:

- you expressed concerns in writing to supervisory or administrative personnel or to your child's teacher that your child needs special education and related services;
- you asked for an evaluation of your child; or
- school personnel have expressed specific concerns about a pattern of your child's behavior to the special education director or other supervisory personnel of the school.

The school is not considered to have knowledge if:

- you refused to allow the school to evaluate your child or refused special education services for your child; or
- your child has been evaluated and determined not to be eligible for special education services.

If the school does not have knowledge that your child had a disability prior to taking disciplinary action, your child will be subject to disciplinary measures that apply to children without disabilities who engage in the same type of behavior. The parent may request an evaluation of the child for possible special education services during the time when the child is being disciplined. If this occurs, the school must complete the evaluation in an expedited

manner. Until the evaluation is completed, the child remains in the placement determined by the school, which can include suspension or expulsion.

Confinement, Seclusion, Restraint and Time-Out

The rules pertaining to confinement, seclusion, restraint and time-out do not apply to:

- peace officers who are performing law enforcement duties;
- juvenile probation, detention, or corrections personnel; or
- educational service providers with whom a child is placed by a judicial authority, unless those services are provided in an educational program of a school district.

Confinement and Seclusion

School officials may not place a child in a locked room of any kind if that room is designed solely to seclude a person and contains less than 50 square feet of space.

School officials may, however, confine and seclude a student in an emergency situation while awaiting the arrival of law enforcement personnel if the student possesses a weapon and the confinement is necessary to prevent the student from causing bodily harm to the student or another person.

Restraint

School personnel may use restraint only in an emergency situation with the following limitations:

- the restraint shall be limited to the use of such reasonable force as is necessary to address the emergency;
- the restraint shall be discontinued at the point at which the emergency no longer exists;
- the restraint shall be implemented in such a way as to protect the health and safety of the student and others; and
- the restraint shall not deprive the student of basic human necessities.

If restraint is used, the school must try to notify you on the day it occurs and must provide written notice of the restraint through the mail or other means within one school day. Written documentation regarding the use of restraint must be placed in your child's special education folder so that it is available for consideration by the ARD committee.

Certain actions which involve a significant restriction of the free movement of your child's body are not considered restraint. These are:

- physical contact or prescribed adaptive equipment to promote normative body positioning and/or physical functioning;
- limited physical contact to promote safety, to prevent a potentially harmful action, to teach a skill, to redirect attention, to provide guidance to a location or to provide comfort;
- limited physical contact or prescribed adaptive equipment to prevent a child from engaging in ongoing, repetitive self-injurious behaviors (this will normally be specified in the child's IEP); and
- seatbelts and other safety equipment to secure students during transportation.

School personnel called upon to use restraint in an emergency and who have not received prior training must receive training within 30 school days following the use of restraint.

Time-Out

Time-out may be used only along with an array of positive behavior interventions and must be included in the child's IEP or BIP if used on a recurring basis. Time-out must not prevent the child from progressing in the general curriculum and advancing toward achieving the goals in the child's IEP.

Procedural Safeguards

A copy of the Notice of Procedural Safeguards must be provided to you at least once a year and when any of the following circumstances occur:

- upon initial or your request for evaluation,
- upon receipt of the first State complaint in a school year,
- upon receipt of the first due process hearing complaint in a school year,
- on the day a decision is made to make a disciplinary change of placement, and
- upon your request.

For a complete explanation of your rights, see the Notice of Procedural Safeguards document on the Internet www.esc18.net or request a copy from the school counselor or the school district's special education department.

Dispute Resolution

From time to time, disputes may arise between you and the school district relating to the identification, evaluation, educational placement or the provision of a FAPE to your child with a disability. It is the policy and intent of the TEA to encourage and support the resolution of any dispute at the lowest level possible in a prompt, efficient and effective manner.

The possible options for resolving disputes include, but are not limited to:

- meetings of your child's ARD committee;
- meetings or conferences with your child's teachers;
- meetings or conferences, subject to local school district policies, with campus administrator(s), the special education director, the superintendent, or the board of trustees of the district;
- requesting mediation through the TEA;
- filing a special education complaint with the TEA; or
- requesting a special education due process hearing through the TEA.

Upon the filing of a request for a due process hearing, the parent and the school district will also be provided with an opportunity to resolve the dispute through the mediation process established by the TEA.

The TEA has additional information regarding dispute resolution at:

<http://www.tea.state.tx.us/special.ed/medcom/>.

Mediation

You or a school may ask the TEA to assign a mediator to help find a way to solve the problem. Mediation is provided at no cost to you or the school.

Mediations are informal and voluntary on your part and the school. Mediations are confidential. Mediations can help you and the school come to an agreement and rebuild positive relationships. Mediators encourage cooperation and help keep the focus on the child.

You or the school may request mediation in writing from the TEA, by mail or by fax at:

Texas Education Agency
Division of Legal Services
1701 North Congress Avenue
Austin, Texas 78701-1494
Telephone: 512.463.9720
Fax: 512.475.3662

The TEA has additional information regarding mediation at:

<http://www.tea.state.tx.us/special.ed/medcom/medinfo.html>.

Complaint

When you or a third party believes the school has violated federal or State requirements related to special education, you or a third party can file a complaint. The complainant (the person filing a complaint) must sign a written complaint and provide a copy at the same time to both the TEA and the school district. The written complaint must state the violations believed to have occurred. Also, the complaint must state the facts on which the complaint is based and include a suggested resolution.

The complaint may be resolved locally between the complainant and the school district. The complainant and the school district may agree to participate in mediation. However, if the complaint is not resolved, the school district may submit an early resolution proposal to the TEA. If the TEA does not accept the early resolution proposal, it will investigate the complaint and make a determination.

The written complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received by the TEA. The TEA has additional information regarding filing complaints at:

<http://www.tea.state.tx.us/special.ed/medcom/compinfo.html>.

Due Process Hearing

Sometimes a parent and the school do not agree regarding the school's proposed or refused initiation or change of a child's program. If a parent files a request for a due process hearing with the TEA, the school must give a copy of the Notice of Procedural Safeguards to the parent. A parent may ask for a due process hearing by writing a request to the TEA.

The request for a due process hearing must be within one year of the date the complainant knew or should have known about the alleged action that forms the basis of the hearing request. This timeline does not apply if the complainant was prevented from requesting the

hearing because of specific misrepresentations by the school that it had resolved the problem, or because the school withheld information that was required to be provided.

The TEA provides answers to frequently asked questions about due process hearings at:
<http://www.tea.state.tx.us/special.ed/hearings/hodfaq.html>.

The TEA provides forms in English and in Spanish to file a due process hearing at:
<http://www.tea.state.tx.us/special.ed/hearings/duepro.html>.

Resolution Period

If you request a due process hearing, the school has 30 days from receipt of the due process hearing complaint to attempt to resolve the due process hearing complaint with you. The timelines for a due process hearing do not begin running until the expiration of this 30-day resolution period. However, the 30-day resolution period does not apply in the case of an expedited due process hearing complaint involving discipline.

During the resolution period, the school is required to convene a resolution meeting with you within 15 days of receiving notice of your due process hearing complaint. Even in an expedited due process hearing complaint involving discipline, a resolution meeting is required. For expedited due process hearing complaints, the deadline for convening the resolution meeting is seven days.

The purpose of the resolution meeting is to give you the opportunity to discuss the complaint and the facts in order to allow the school to resolve the problem. An attorney for the school district may not be included in the resolution meeting unless you bring an attorney to the resolution meeting.

The resolution meeting is not required if you and the school agree in writing to waive the resolution meeting. Also, the resolution meeting does not need to be held if you and the school agree to go to mediation instead.

The school may request dismissal of your due process hearing complaint if the school cannot get you to participate in the resolution meeting after reasonable efforts have been made.

Due Process Hearing Procedures

At least five business days prior to a due process hearing being conducted, you and the school must disclose to each other and the hearing officer copies of all evidence. The disclosure must include evaluations completed by that date and recommendations based on the evaluations which the party intends to use at the hearing.

Both you and the school have the following rights in a due process hearing:

- to be accompanied and advised by an attorney and by individuals with special knowledge or training with respect to the problems of children with disabilities,
- to present evidence and confront and cross-examine, and compel the attendance of witnesses,
- to prohibit the introduction of any evidence that has not been properly disclosed,
- to obtain a transcript of the hearing, and
- to obtain a written decision including findings of fact.

You, as the parent have the following additional rights in a due process hearing:

- to have your child present,
- to open the hearing to the public, and
- to have the transcript of the hearing provided at no cost.

The TEA will ensure that a final hearing decision is reached and mailed to you and the school within 45 days after the conclusion of the initial 30-day resolution period. The hearing officer may extend the time at your request or at the request of the school. For an expedited due process hearing, the hearing must occur on or before 20 days after the request for an expedited due process hearing. In this case the hearing officer must reach a final decision within 30 days of a request for such hearing. You or the school may appeal the findings of the hearing officer to State or federal court.

The school may be ordered to pay reasonable attorney's fees if the court rules you are the *prevailing party*. If the school prevails and a court finds that your due process hearing complaint was presented for any improper purpose such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation, you may be ordered to pay the school district's reasonable attorney's fees. Additionally, your attorney may be ordered to pay the school district's reasonable attorney's fees under certain circumstances.

For a complete listing of the definitions of acronyms found in this document, visit www.TexasProjectFirst.com and for additional information, visit <http://www.tea.state.tx.us/special.ed/>