

# Surrogate & Foster Parent Training

Revised February 2020

# Which Students Will Have a Surrogate Parent?

Students with disabilities who need special education services and who do not have a “parent” as defined by law

# Parent Definition

## 34 CFR § 300.30(a)

“Parent” is defined by the Individuals with Disabilities Education Improvement Act (IDEA) 2004 as:

- A biological or adoptive parent;
- A foster parent (unless prohibited by state law from acting as a parent);
- A guardian authorized to act as the child’s parent or authorized to make educational decisions (but not the State if the child is a ward of the State);
- 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 is legally responsible for the child’s welfare; or
- An individual assigned as a surrogate parent.

# When Is a Surrogate Parent Needed?

34 CFR § 300.519

- The district is unable to identify or locate (after reasonable efforts) a parent for a child with a disability;
- The child is a ward of the state;
- The child is an unaccompanied homeless youth; or
- The foster parent of a child is unwilling or unable to serve as a parent.

## Wards of the State

All children in Department of Family and Protective Services' (DFPS) managing conservatorship (by court order or through a voluntary relinquishment under the Texas Family Code §15.03) are considered "wards of the state." By law they must be represented by a parent as defined by the IDEA, or the court's appointee in the education decision-making process.

- Children in residential care facilities (who are wards of the state) have surrogate parents appointed by the school, or an appointee assigned by the court.
- Parental rights may or may not be permanently terminated while the child is under DFPS managing conservatorship. The court's order will provide more detailed information.

## Foster Parents

### TEC § 29.015(a)

A foster parent may act as a parent of a child with a disability if:

- The DFPS is appointed as the temporary or permanent managing conservator of the child;
- The rights and duties of the department to make decisions regarding the child's education have not been limited by court order;
- The foster parent agrees to participate in making educational decisions on the child's behalf; and
- The foster parent completes the training program before the student's next scheduled Admission, Review, and Dismissal (ARD) committee meeting, but not later than the 90<sup>th</sup> day after the foster parent begins acting as the parent for the purpose of making special education decisions.

## Foster Parents

### TAC § 89.1047(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:

- specifically explain why the foster parent is being denied the right to serve as the student's parent; and
- inform the foster parent of his or her right to file a complaint with the TEA in accordance with 34 CFR §§300.151-300.153, relating to special education complaint procedures.

## How Is a Surrogate Parent Chosen?

- The public school district determines which students are in need of a surrogate parent.
- The public school district selects and assigns a person who can serve as a surrogate parent.
- A judge may appoint a surrogate parent for a child who is a ward of the State.



## Surrogate Parent Assignment Timeline

- A surrogate parent must be assigned within 30 days after determination that the student needs one.
- Regardless of the 30 day requirement, if a surrogate parent is needed to represent the student before that timeline, one must be assigned.
- A surrogate parent must complete an approved training program before the next scheduled ARD committee meeting, but not later than the 90<sup>th</sup> day after the date of initial assignment as a surrogate parent.
- As soon as practicable after appointing a surrogate parent under this section, a school district shall provide written notice to the Department of Family and Protective Services of the appointment.

## Who Is Not Eligible To Be a Surrogate Parent?

- Employee of the Texas Education Agency
- Employee of the school district
- Employee of any other agency that is involved in the education or care of the child (including the DFPS)
- Person who has any interest that conflicts with the interest of the child

## Conflicting Interests

- Each school district or shared service 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 and should be communicated, and may be statutorily required to be reported, to the DFPS.

## Surrogate & Foster Parent Training

The training should provide an explanation of the provisions of federal and state laws, rules, and regulations relating to:

- the identification of a student with a disability;
- the collection of evaluation and re-evaluation data relating to a student with a disability;
- the ARD committee process;
- 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.
- the determination of Least Restrictive Environment (LRE);
- the implementation of an IEP;
- the procedural rights and safeguards;
- where to obtain assistance in understanding the provisions of federal and state laws, rules, and regulations relating to the student with a disability; and
- the duties and responsibilities of surrogate parents.

# Training Requirements

**Foster Parents: TAC § 89.1047(a)(1)(2)**

**Surrogate Parents: TAC § 89.1047 (c)(3)(4)**

- A school district must ensure that the foster or surrogate parent has received the training within 90 days.
- The training program can be conducted by:
  - the Texas DFPS;
  - a school district;
  - an education service center; or
  - any entity that receives federal funds to provide IDEA training to parents.

# Training Provisions

**Foster Parents: TAC § 89.1047(a)(2)**

**Surrogate Parents: TAC § 89.1047(c)(4)**

- 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.

## What Are My Duties As a Surrogate Parent?

- The surrogate parent is to interact with the school in the same manner that any parent would.
- A surrogate parent must:
  1. Be willing to serve in that capacity;
  2. Exercise independent judgement 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 within 90 days of assignment that complies with minimum standards established by TEA;
  5. Visit the child and the child's school;
  6. Review the child's educational records;
  7. Consult with persons involved in the child's education, including teachers, caseworker, court-appointed volunteer, guardian ad litem, attorney ad litem, foster parent, and caretaker; and
  8. Attend meetings of the child's ARD committee.

## Failure to Perform Duties

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 failing to perform or is not properly performing the duties, the district shall consult with the Department of Family and Protective Services regarding whether [and appoint] another person should be appointed to serve as the surrogate parent for the child.



## School District & DFPS Communication

On receiving notice from a school district, and if the DFPS determines that the appointed surrogate parent is unable or unwilling to properly perform the duties required, it shall promptly notify the court of the determination.

As soon as practicable after receiving notice the court shall:

- review the appointment; and
- enter any orders necessary to ensure the child has a surrogate parent who performs the duties required under this section.

## Surrogate Parent Resources

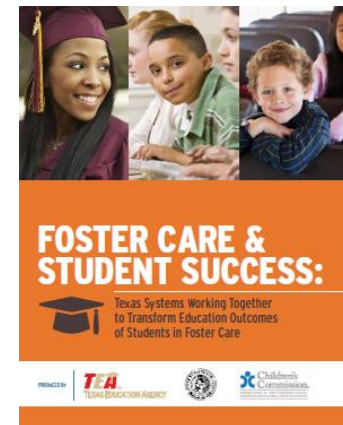
### [Surrogate Parent Training and Eligibility](#)

#### [Legal Framework Link](#)



## Foster Parents Resources

- [Foster Care & Student Success Resource Guide](#)
- [Foster Care & Student Success Information & Resources](#)
- [Every Student Succeeds Act | Foster Care, Preliminary Implementation Q&A](#)



# The Special Education Process

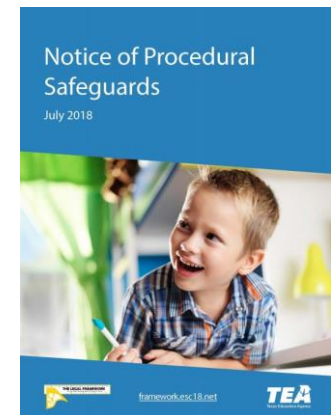


# What Is Special Education?

The purpose of the Individuals with Disabilities Education Improvement Act (IDEA) 2004 is to ensure that all children with disabilities have available to them a free appropriate public education (FAPE) that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living.

## What Is Meant By Procedural Safeguards?

- Procedural Safeguards refers to the rights and privileges afforded to students with disabilities and their parents. The school will give you a copy of the ***Notice of Procedural Safeguards*** at the time of initial referral, parental request for evaluation, the first occurrence of the filing of a complaint, and at your request.
- Click this link to view the [Notice of Procedural Safeguards](#) online at SPEDTex, Special Education Information Center, website where it is available in over 14 languages



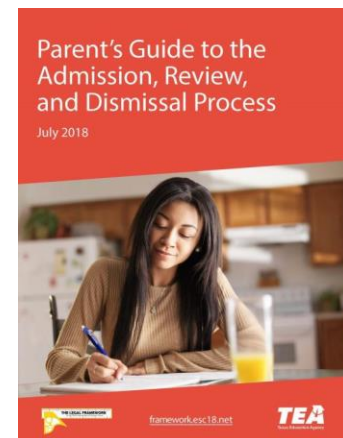
## Notice of Procedural Safeguards

The following topics are addressed in the Procedural Safeguards:

- Prior Written Notice
- Parental Consent
- Independent Educational Evaluation
- Child Find
- Discipline Procedures
- Educational Records
- Voluntary Private School Placement by Parents
- Private School Placements by Parents When FAPE Is at Issue
- Transfer of Rights When a Student Turns 18
- Surrogate & Foster Parent Training
- Resolving Disagreements
- Special Education Information
- State IEP Facilitation
- Mediation Services
- Special Education Complaint Resolution Process
- Due Process Hearing Program

## Parent's Guide to the Admission, Review, and Dismissal Process

An online copy of the [\*Parent's Guide to the Admission, Review, and Dismissal Process\*](#), can be viewed on the SPEDTex, Special Education Information Center, website where it is available in over 14 different languages.





## Prior Written Notice

Prior written notice to parents must be given before the school proposes or refuses to initiate or change a student's:

- Identification
- Evaluation
- Educational placement
- Free appropriate public education (FAPE)

## When Will I Receive Notice From the School?

- Prior written notice to parent must be given at least five school days prior to the action.
- A prior written notice must include:
  - a description of the action proposed or refused by the school;
  - an explanation of why the school proposes or refuses the action;
  - a description of each evaluation procedure, assessment, record, or report the school used in deciding to propose or refuse the action(s)
  - a statement that the parent has protection under the procedural safeguards of the IDEA and the means by which a copy of the ***Notice of Procedural Safeguards*** may be obtained;
  - sources for the parent to contact to obtain assistance in understanding the IDEA;
  - a description of other options that the ARD committee considered and the reasons why those options were rejected; and
  - a description of other factors that are relevant to the school's proposal or refusal.

## Parental Consent

There are certain activities under the IDEA that cannot take place unless the school obtains your written 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.

## When Will the School Seek My Written Consent?

When the school seeks to:

- Conduct an initial evaluation
- Conduct any re-evaluation
- Place the student in a special education placement for the first time
- Change placement
- Release educational records
- Excuse an ARD committee member from attending an ARD committee meeting
- Invite other agencies to the ARD meeting

## May I Revoke My Consent For Special Education Services?

- You have the right to revoke your consent for the continued provision of special education and related services to your child at any time after the initial provision of special education and related services.
- A parent's revocation of consent must be in writing.
- Once the school receives your written revocation, it must honor your decision.
- Before the school discontinues services, however, it must provide you with prior written notice that services will cease. (Notice must be given at least five school days in advance of discontinuation of services.)

## Eligibility

There is a two-part test for determining whether a child is eligible for special education services:

- (1) the child must have a disability, and
- (2) as a result of the disability, the child must need special education services to benefit from education.

## Steps to Eligibility

- Step 1: Child Find process
- Step 2: Refer and obtain written parent consent for a Full Individual and Initial Evaluation
- Step 3: Referral for evaluation
- Step 4: Full Individual and Initial Evaluation
- Step 5: ARD Committee meeting: The ARD committee (which includes a parent or surrogate parent) considers the evaluation results and determines if the student is eligible based on educational needs.

## Child Find

Child Find ensures that all children with disabilities residing in Texas who are in need of special education and related services, including children with disabilities attending private schools, are identified, located, and evaluated.

School personnel, parents, legal guardians, or any other persons involved in the education or care of a child with a disability or suspected disability may refer the child for a special education evaluation.



## Response to Intervention

- Federal laws direct schools to focus more on helping all children learn by addressing problems early. Response to Intervention (RtI) is an approach that many schools use to identify and helping children who are at-risk for not meeting grade-level standards.
- The basic elements of an RtI approach are the provision of scientific, research-based instruction and intervention in the general education classroom, monitoring and measurement of the child's progress in response to the interventions, and use of these measures of progress to make educational decisions.
- The student's performance and progress is monitored to determine if the student needs more intensive interventions or to be referred for evaluation.

## Referral for Evaluation

- School personnel, parents, legal guardians, or any other persons involved in the education or care of a child may request an evaluation when a disability is suspected.
- If the parent makes a written request for an FIE to the director of special education, or any other administrative employee, then the district must respond to the request within 15 school days by seeking consent, or by giving the parent a written notice of refusal along with a copy of the *Notice of Procedural Safeguards*.

## Referral for Evaluation

- The school must obtain prior written consent from the parent before conducting the initial evaluation.
- The initial FIE is to be completed no later than the 45<sup>th</sup> school day after receiving the signed written consent for evaluation.
  - If the student is absent three or more days, the timeline is extended day-for-day.
  - For those not enrolled in school, private school, home school and preschoolers, it is 45 school days.
- If the consent is obtained at least 35 but less than 45 school days before the last day of the school year, then the FIE must be completed and delivered to the parent by June 30<sup>th</sup>, and the ARD meeting held within the first 15 schools days of the next school year.

## Evaluation

- The evaluation must be conducted by a team of qualified professionals and include parent input in all areas of suspected disability.
- The school must use a variety of technically sound instruments and procedures that are not biased against the child because of race, cultural background, language, or disability.
- The materials and procedures must be administered in the language and form most likely to provide accurate information on what the child knows and can do.

## Evaluation Data May Include

- Results from intelligence testing
- Results from achievement level testing
- Results from psychological tests
- Results from tests of the child's speech/language abilities
- Results from the child's medical evaluations
- The child's grades
- The child's behavior/conduct reports
- Information from the child's teachers
- Information from the child's parents

## How Evaluation Data Drives Decisions

- After the evaluation is complete, the ARD committee will meet within 30 calendar days from the date of completion of the initial evaluation report.
- The ARD committee will use the academic, developmental, and functional performance data collected in determining:
  - whether the child is a child with a disability; and
  - the content of the child's IEP (Individualized Education Program), including information related to enabling the child to be involved and progress in the general education curriculum.

## Disabilities Categories

Students are eligible when they are evaluated and found to have one or more of the following disabilities and an educational need (19 TAC § 89.1040):

- Autism
- Deaf-Blind
- Deaf/Hard of Hearing
- Emotional Disturbance
- Intellectual Disability
- Multiple Disabilities
- Orthopedic Impairment
- Other Health Impairment
- Specific Learning Disability
- Speech or Language Impairment
- Traumatic Brain Injury
- Visual Impairment and Blindness
- Non-categorical early childhood (ages 3-5)

## Consent For Services

- Upon completion of the evaluation, and if the child is found to be a child with a disability, you will be asked to provide the school with your written consent for special education services and placement.
- If you refuse to consent to services, the local education agency may not provide special education and related services to the child.



## Review the Completed Evaluation Carefully

- Understand what the conclusions and recommendations are and why those are being made.
- Ask questions.
- If you disagree with the school's evaluation, you have the right to request an Independent Educational Evaluation (IEE).

## How Often Is a Student Evaluated?

- A re-evaluation shall not occur more than once a year unless you and the school agree otherwise, but must be conducted every three years unless you and district agree through a Review of Existing Evaluation Data (REED) that a re-evaluation is not needed.
- As part of any re-evaluation, a group that includes the ARD committee members, and other qualified professionals, as appropriate, shall conduct a REED, during which they may agree to continue eligibility without additional testing.
- Even with a REED being conducted, parents have the right to request an evaluation be conducted. (34 CFR § 300.305)

## Re-evaluation

In conducting a REED, the ARD committee must review:

- Evaluation and information provided by the parent;
- Current classroom-based assessments and observations;
- Local and state testing results; and
- Observations by teachers and related services providers.

The results of the re-evaluation will be used to determine:

- Whether the student continues to have a disability;
- Present levels of academic achievement and functional performance;
- Special education and related services; and
- Specific services needed to meet the IEP and participate in the general education curriculum.

# What Is an ARD Committee Meeting?

- ARD stands for Admission, Review and Dismissal.
- The ARD Committee determines a student's eligibility to receive special education services and develops the Individualized Education Program (IEP) of the student.
- ARD committees make most of the key decisions about special education services and general education placement.
- Each student has his or her own ARD committee.

## The ARD Committee Consists of:

- The parent, as defined by IDEA
- Teachers (general and special education)
- Administration representative
- Person knowledgeable about evaluation data
- The student, whenever appropriate
- Adult student
  - The adult student may invite his/her former surrogate parent or anyone else to attend the ARD meeting to assist him/her.
- Other persons who may be helpful to the committee

## ARD Committee Members

- An ARD committee member's attendance may not be necessary if the member's area of curriculum or related services is not being modified or discussed in the meeting.
- An excusal can only take place if you agree in writing to allow the member not to attend part or all of the ARD meeting.

## ARD Committee Members

- A member may also be excused from attending part or all of the meeting when the meeting involves a modification or discussion of the member's area of related services.
- If you and the ARD committee consent to this excusal in writing, the member must submit, in writing, to the parent and the ARD committee, input into the development of the IEP prior to the meeting.

## The ARD Committee:

- Develops, reviews, and revises the student's Individualized Education Program (IEP).
- Develops annual goals and objectives for the student.
- Selects appropriate accommodations or curriculum modifications for the student.
- Determines the student's placement.
- Determines the appropriate state assessment for the student.
- Determines the specific services the student needs.



## Tips for Preparing for the ARD Committee Meeting

- Have a good idea of what the purpose of the meeting is.
- Make sure you have copies of documents you need to fully participate.
- Be clear who is in attendance.
- You have the right to bring other people who you believe have knowledge or expertise about your child. Let the school know in advance.
- Take an active part.
  - Provide input.
  - Ask questions.

## What Is My Role In the ARD Process?

- Attend and look after the student's interest at the meeting.
  - The meeting is to be held at a time and place mutually agreeable to you and school officials.
  - The school must give you notice of an ARD meeting at least five school days before the meeting.
- You can ask for an ARD meeting whenever you believe it is needed.
  - Upon receipt of a written request for an ARD committee meeting, the school must schedule and convene a meeting or within five school days, provide you with written notice explaining why the district refuses to convene a meeting.
  - Remember, that many problems or concerns can be handled outside of the ARD process (e.g. in a parent conference.)

## What Does Least Restrictive Environment (LRE) Mean?

- Least Restrictive Environment refers to the placement or instructional arrangement in which the student is served. Students with disabilities have a right to be educated in the least restrictive environment and have access to the general education curriculum.
- More restrictive means less contact with students without disabilities.
- The ARD committee decides on the student's placement.

# Requirements of the Individualized Education Program (IEP)

- The student's Present Levels of Academic Achievement and Functional Performance (PLAAFP)
- Annual goals, both academic and functional goals
- Special education, related services, and supplementary aids and services to be provided and their frequency, duration, and location
- Program modifications and supports

## Requirements of the Individualized Education Program (IEP)

- Extent of participation with students without disabilities
- How the child's progress toward meeting the annual goals will be measured
- When periodic progress reports will be provided to the parents
- How the child will participate in state and district assessments
- Extended School Year (ESY) services
- Discipline
- Transition services, when age-appropriate

## Requirements of the Individualized Education Program (IEP)

- Select appropriate statewide assessments.
  - STAAR and STAAR-ALTERNATE 2
- Short term objectives for children who take alternate assessments.
- A statement must indicate why the ARD committee selected a particular alternate assessment and why it is appropriate for the child.

## What Is My Role in Developing and Reviewing an IEP?

- Take an active interest.
- Make recommendations that will benefit the student.
- Ask questions.
- If you disagree, speak up, and let the school know why you are in disagreement, and offer suggestions to the ARD Committee to consider as a possible remedy to address the concern

# Development, Review, and Revision of the IEP

## 34 CFR §300.324

- However, once the annual ARD meeting has been held, and an annual IEP is developed, the parent of a child with a disability and the school may agree not to convene an ARD meeting for the purpose of making any changes, and instead may develop a written document to amend or modify the child's current IEP. The IEP can be changed without an ARD meeting.
- You and the school must agree to change the IEP.
- If changes are made to the child's IEP, the school must ensure that the child's ARD committee is informed of those changes.
- Eligibility, placement decisions, and manifestation determinations cannot be changed without an ARD committee meeting.



## What is My Role in the Implementation of the IEP?

- If you have reason to suspect the IEP is not being properly implemented, express your concerns to the child's teacher(s) and to the campus principal. If you continue to have concerns, contact the school district's special education director.
- School district personnel have the responsibility of implementing the IEP.
- Review the *Notice of Procedural Safeguards* to learn about and know your rights.
  - Surrogate parents have the same rights as parents.

## At the Conclusion of an ARD Committee Meeting

- You will be asked if you agree or disagree with the recommendations and IEP.
- If you disagree, share the item(s) in which you disagree and the reason why.
- If consensus is still not reached, consider accepting the 10-day recess you will be offered.
- Be sure you understand what will happen next through dispute resolution processes.

## Special Factors

The ARD committee may need to address the following special factors for some students.

- Assistive Technology
- Autism
- Behavior
- Communication
- Limited English Proficiency
- For students that are deaf/hard or hearing, opportunities for direct communications with peers and professional personnel in the student's language and communication mode
- For students with visual impairments, appropriate reading and writing media and an evaluation of the student's future needs for instruction in Braille

## Can a School Take Disciplinary Actions That Can Change a Student's 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.

## Can a School Take Disciplinary Actions That Can Change a Student's Placement?

A school is permitted to remove a student with a disability to an alternative educational setting for not more than 45 calendar days without regard to whether the behavior is determined to be caused by the student's disability, in cases where a student:

- Carries or possesses a weapon at school, on school premises, or at a school function
- Knowingly possesses or uses illegal drugs, or solicits the sale of controlled substance, while at school, on the school premises, or at a school function.
- Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function.

## Can a School Take Disciplinary Actions That Can Change a Student's Placement?

If a student violates the student code of conduct, and the school is recommending a change of placement, within 10 school days, the ARD committee must convene and determine if the student's conduct was caused by direct and substantial relationship to the student's disability, or a direct result of the school's failure to implement the IEP.  
(Manifestation Determination ARD)

## Extended School Year (ESY) Services

- The need for ESY services must be documented from formal and/or informal evaluations provided by the district or the parents.
- The documentation must demonstrate that in one or more critical areas address in the current IEP goals and objectives, the student has exhibited, or reasonably may be expected to exhibit, severe or substantial regression that cannot be recouped within a reasonable period of time.
  - Severe or substantial regression means that the student has been, or will be, unable to maintain one or more acquired critical skills in the absence of ESY services.
- The reasonable time for recoupment of acquired critical skills must be determined on the basis of needs identified in each student's IEP but must not exceed eight weeks.

## What Are Transition Services?

Transition services mean a coordinated set of activities for a child with a disability that is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability, to facilitate the child's movement from school to post-school activities, including:

- post-secondary education;
- vocational education;
- integrated employment (including supported employment);
- continuing and adult education;
- adult services;
- independent living; or
- community participation.



## Transition Services

Are based on the individual child's needs, taking into account the child's strengths, preferences and interests, and includes:

- instruction;
- related services;
- community experiences;
- the development of employment;
- other post-school adult living objectives;
- when appropriate, acquisition of daily living skills; and
- when appropriate, functional vocational evaluation.

## Transition Planning

Appropriate state transition planning under the procedure adopted under TEC Section 29.011 must begin for a student not later than when the student reaches **14 years of age**.

## Transition Planning

The procedures must specify the manner in which a student's ARD committee must consider, and if appropriate, address the following issues in the student's IEP:

- appropriate student involvement in the student's transition to life outside the public school system;
- if the student is younger than 18 years of age, appropriate parental involvement in the student's transition;
- if the student is at least 18 years of age, appropriate parental involvement in the student's transition, if the parent is invited to participate by the student or the school district in which the student is enrolled;
- any postsecondary education options;
- a functional vocational evaluation;
- employment goals and objectives;
- if the student is at least 18 years of age, the availability of age-appropriate instructional environments;
- independent living goals and objectives; and
- appropriate circumstances for referring a student or the student's parents to a governmental agency for services.

## Transition Services

Beginning not later than the first IEP to be in effect when the child is 16, or younger if determined appropriate by the ARD committee, and updated annually thereafter, the IEP must include:

- Appropriate measurable post-secondary goals based upon age-appropriate transition assessment related to training, education, employment, and independent living skills, where appropriate; and
- Transition services needed to assist the child in reaching those goals, including courses of study.

## What Is My Role In Developing and Reviewing Transition Services?

- Help the student plan for life as an adult.
- Encourage the student to actively participate.
- Help the student understand the importance of planning for life after high school.
- Ask questions.

## Transition Services Redefined

- For students younger than 18 years of age, “appropriate parental involvement” has been redefined as involvement by the student’s parents and other persons invited to participate by the student’s parents or the school district.
- If the student is at least 18 years of age, “appropriate parental involvement” has been redefined as the student’s parents and other persons, if the parent or other person:
  - Is invited to participate by the student or school district; and
  - Has the student’s consent to participate pursuant to a supported decision-making agreement.
- The student’s ARD committee must also address the use and availability of appropriate:
  - Supplementary aids, services, curricula, and other opportunities to assist the student in developing decision-making skills; and
  - Supports and services to foster the student’s independence and self-determination, including a supported decision-making agreement.
- The transition and employment guide must contain information regarding guardianship and alternatives to guardianship, including a supported decision-making agreement.

## Transition Services

- Not later than one year before the 18<sup>th</sup> birthday of a student with a disability, the school district shall:
  - Provide to the student and the student's parents written notice regarding the transfer of rights under this section;
  - Provide to the student and the student's parents information and resources regarding guardianship, alternatives to guardianship, including a supported decision-making agreement, and other supports and services that may enable the student to live independently; and
  - Ensure that the student's IEP includes a statement that the district provided the notice, information, and resources required.
- The student may enter into a supported decision-making agreement after the transfer of rights.

# Graduation for Students Receiving Special Education Services

In Texas, students receiving special education services may graduate and be awarded a regular high school diploma under the Foundation High School Program.

Students receiving special education services may also earn an endorsement.



# Foundation High School Program

## 19 TAC §89.1070(b)(1)

A student entering Grade 9 in the 2014-2015 school year and thereafter who receives special education services may graduate and be awarded a regular high school diploma if the child meets the following criteria:

- demonstrated mastery of required state standards;
- satisfactorily completed credit requirements for graduation under the Foundation High School Program; and
- performed satisfactorily on the required state assessment, unless the student's ARD committee has determined that satisfactory performance on the required state assessments is not necessary for graduation.

# Foundation High School Program

## 19 TAC §89.1070(b)(2)

A student entering Grade 9 in the 2014-2015 school year and thereafter who receives special education services may also graduate and be awarded a regular high school diploma if the child meets the following criteria:

- demonstrated mastery of required state standards;
- satisfactorily completed credit requirements for graduation under the Foundation High School Program through courses, one or more of which contained modified curriculum;
- performed satisfactorily on the required state assessment, unless the student's ARD committee has determined that satisfactory performance on the required state assessments is not necessary for graduation; and
- successfully completed the IEP and meets one of the following conditions:
  - has obtained full-time employment and mastered sufficient self-help skills to enable maintenance of employment without direct and ongoing educational support;
  - has demonstrated mastery of specific employability skills and self-help skills that do not require direct ongoing educational support;
  - has access to services that are not within the legal responsibility of public education or educational options for which the student has been prepared by the academic program; or
  - no longer meets age eligibility requirements.

## Endorsements

[House Bill 165](#), as voted by the 86<sup>th</sup> Legislature in June 2019, incorporates these changes for endorsements, as listed in TEC 28.025 Section 1, subsection c-7 and c-8.... **Beginning in the 2019-2020 school year:**

- A student “may earn an endorsement on the student’s transcript.... with modification of the curriculum, provided that the curriculum, as modified, is sufficiently rigorous as determined by the student’s [ARD] committee.”
- The ARD committee *“shall determine whether the student is required to achieve satisfactory performance on an end-of-course assessment instrument to earn an endorsement on the student’s transcript.”*

# Summary of Performance

## 19 TAC §89.1070(h)

A student graduating under this section must be provided with a summary of academic achievement and functional performance. This summary must consider, as appropriate, the views of the parent and the student and written recommendations from adult services agencies on how to assist the student in meeting postsecondary goals. An evaluation must be included as part of the summary for a student graduating under subsections (b)(2)(A), (B), or (C) of this section.

## Age Eligibility Requirements

A child who receives a diploma and has completed one or more courses with modified curriculum or content may return to school as long as the child meets the age eligibility requirements and has educational need.

## Graduation Ceremony Participation for Non-Graduates

The state of Texas allows high school students receiving special education services to participate in graduation ceremonies if they have been in high school for four years and not completed graduation requirements.

- Parents will be notified their child is eligible to participate in the ceremony. The parents may decide to allow or not allow their child to participate.
- The students will receive a certificate of attendance and not a diploma. The students will receive a diploma once they have met the district and IEP requirements.
- The students will continue with their education.
- The student can only participate in one graduation ceremony.

## What is the Transfer of Rights?

- Beginning not later than one year before a student reaches the age of majority under the state law, age 18, the IEP must include a statement that the child has been informed of the student's rights, and if any that will transfer to him or her on reaching the age of majority.
- The student's IEP must include a statement that the student has been informed, unless the student's parent or other individual has been granted guardianship of the student under the Probate Code.
- All rights granted to the parent under IDEA, other than the right to receive any notice required under IDEA, will transfer to the student upon reaching age 18.

## Transfer of Rights

A school district must notify, in writing, the adult student and parent of the transfer of parental rights at the time the student reaches the age of 18.

- This notification is separate and distinct from the requirement that the student's IEP include a statement relating to the transfer of parental rights beginning at least one year before the student reaches the age of 18.
- This notification must include a statement that parental rights have transferred to the adult student, as well as information and resources regarding guardianship, alternatives to guardianship, including a supported decision-making agreement, and other supports and services that may enable the student to live independently, and must provide contact information for the parties to use in obtaining additional information.



## What Can I Do if I Am Dissatisfied with the Program or Services?

1. Contact someone at the school to address your concerns.
2. Ask for an ARD meeting.
3. Request a facilitated ARD meeting.
4. Seek mediation through TEA or meet with a disinterested third party.
5. File a special education complaint with TEA.
6. Be willing to participate in a resolution meeting with the school.
7. Request an impartial special education due process hearing.

# Dispute Resolution

Texas Education Agency  
[Special Education Dispute Resolution Handbook](#)

## Facilitated ARD Meeting

- IEP facilitation involves the use of a trained, impartial facilitator to assist the ARD committee in developing an IEP for a student with a disability. The facilitator helps ARD committee members communicate and collaborate effectively.
- The facilitator is not a member of the student's ARD committee and does not have any decision-making authority over the ARD committee.
- Schools are not required to offer IEP facilitation as an alternative dispute resolution method. But parents interested in having a facilitator attend an ARD committee meeting should contact their school to discuss the matter.

# What Happens When I Ask For Mediation?

- Mediation is a process where the parent and the school work with the help of a trained mediator toward a solution to a disagreement involving any matter related to a student's identification, evaluation, educational placement, and FAPE.
- Mediation must be entered into voluntarily by both sides.
- A trained mediator travels to your community.
- Mediation can lead to an agreed solution enforceable through the judicial process.

## What is a Disinterested Party?

A district may establish procedures to offer 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 who is under contract with:

- a parent training and information center, or community parent resource center in the State established under federal guidelines
- an appropriate alternative dispute resolution entity, to encourage the use, and to explain the benefits, of the mediation process to the parents.

## What Happens When I File a Complaint with TEA?

- TEA will give you the opportunity to enter into voluntary mediation.
- TEA will give the school an opportunity to respond to the complaint and the opportunity to submit a proposal to resolve the complaint.
- Within 60 calendar days after receiving the written complaint, TEA will conduct an investigation, including an on-site investigation, if necessary.
- TEA will review all relevant information and determine whether the school has violated a special education requirement.
- You will be given a written decision addressing each of the allegations including the findings of fact, conclusions, and reasons for the decision.
- If TEA determines that the school has violated a special education requirement, it must require the school to take appropriate steps to address the violations, including engaging in technical assistance activities, negotiations, and corrective actions.

## What Happens When I File a Complaint with TEA?

- You must file a complaint complying with the applicable IDEA requirements
- You can contact the Division of Special Education at (512) 463-9414 for additional assistance.
- When sending a written Special Education complaint, address your letter to:

Texas Education Agency  
Division of Special Education  
1701 North Congress Avenue  
Austin, TX 78701-1494  
FAX: (512) 463-9560

## What Is a Resolution Meeting?

- Upon filing for an impartial due process hearing, the school shall convene a resolution meeting with you and relevant members of the ARD committee.
- The resolution meeting allows you to discuss your due process hearing request and the facts that form the basis of the due process hearing, and the school is provided the opportunity to resolve the due process hearing request.
- If you and the school agree in writing to waive such a meeting or to use mediation, the resolution meeting isn't required.



## What Happens When I Ask For a Due Process Hearing?

- An impartial hearing officer is appointed. He or she will conduct the hearing in your community.
- The hearing officer will contact you and probably will seek a pre-hearing conference.
- The hearing officer is required to render a written decision no later than 45 calendar days after the date TEA receives your request.
- The timeline can be extended by the hearing officer if both parties agree.
- The hearing officer's decision is final unless a party appeals the decision to a state or federal court.

## What Happens When I Ask For a Due Process Hearing?

- You must file a request complying with TEA's rules for such requests.
- You must submit a due process hearing request in writing, and it must be mailed, hand-delivered, or faxed to:

Texas Education Agency  
Office of Legal Services  
1701 North Congress Avenue  
Austin, TX 78701-1494  
FAX: (512) 463-6027

## Where Can I Get Help Understanding the Special Education Process?

- Your student's teacher
- The campus administrator
- The district's Special Education Director
- Your regional Education Service Center

## Where Can I Get Help Understanding the Special Education Process?

- [SPEDTex](#), the state's Special Education Information Center
  - Phone: 1-855-773-3839
  - Email: [inquire@spedtex.org](mailto:inquire@spedtex.org)
  - Website: [www.spedtex.org](http://www.spedtex.org)
- Texas Education Agency
  - Phone: (512) 463-9414
  - Website: [www.tea.texas.gov](http://www.tea.texas.gov)

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Contact:



Phone: 1-855-773-3839

Email: [inquire@spedtex.org](mailto:inquire@spedtex.org)

[www.spedtex.org](http://www.spedtex.org)