

## **Section 2. - FULL INDIVIDUAL AND INITIAL EVALUATION**

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## **Section 2. - FULL INDIVIDUAL AND INITIAL EVALUATION**

### **I. INITIAL EVALUATIONS**

#### **§300.301 Initial evaluations.**

- (a) **General.** Each public agency must conduct a full and individual initial evaluation, in accordance with §300.304 through §300.306, before the initial provision of special education and related services to a child with a disability under this part.
- (b) **Request for initial evaluation.** Consistent with the consent requirements in §300.300, either a parent of a child, or the public agency, may initiate a request for an initial evaluation to determine if the child is a child with a disability.
- (c) **Procedures for initial evaluation.** The initial evaluation--
  - (1) (i) Must be conducted within 60 days of receiving parental consent for the evaluation; or
  - (ii) If the State establishes a timeframe within which the evaluation must be conducted, within that timeframe; and
  - (2) Must consist of procedures--
    - (i) To determine if the child is a child with a disability under §300.8; and
    - (ii) To determine the educational needs of the child.
- (d) **Exception.** The timeframe described in paragraph (c)(1) of this section shall not apply to the public agency if--
  - (1) The parent of a child repeatedly fails or refuses to produce the child for the evaluation; or
  - (2) A child enrolls in a school of another public agency after the relevant timeframe in paragraph (c)(1) of this section has begun, and prior to a determination by the child's previous public agency as to whether the child is a child with a disability under §300.8.

*Tyler ISD will follow all state and federal regulations regarding initial evaluations before the provision of special education and related services can be provided to a child with a disability. The initial evaluation must attempt to evaluate the child in all areas of suspected disability and consist of procedures to determine the educational needs of the child. Following the written request for an initial evaluation for special education, the district will convene a Student Support Team meeting to review data in order to provide a Written Notice of Evaluation or a Prior Written Notice to decline evaluation. The evaluation specialist in charge of the evaluation will utilize district forms. All documentation and notes of communication will be stored in the student's eligibility folder.*

*The written report of the initial evaluation must be completed not later than the 45th school day following the date in which written consent from the child's parent was received. If the student has been absent from school during the evaluation period on three or more school days, then the due date of the evaluation must be extended by the number of the school days the student has been absent. If the district receives consent for the evaluation from the child's parent at least 35 but less than 45 school days before the last instructional day of the school year, the evaluation report must be provided to the parent not later than June 30th of that year. The student's ARD/IEP committee must meet not later than the 15th school day of the following school year to review the evaluation.*

*If the parent refuses to provide consent for the initial evaluation, Tyler ISD evaluation staff will provide clear written documentation of the repeated failure of the parent to produce the child for the evaluation or refusal to provide consent for the evaluation.*

- (e) The exception in paragraph (d)(2) of this section applies only if the subsequent public agency is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and subsequent public agency agree to a specific time when the evaluation will be completed. (Authority: 20 U.S.C. 1414(a))

*For an Initial Evaluation : When the district assessment staff has obtained written parental consent for the evaluation, Tyler ISD will complete a comprehensive full and individual evaluation for the initial evaluation of a student within state and federal timelines. An initial evaluation for eligibility for special education may not rely solely on a review of existing evaluation data unless there is existing evaluation data that was completed by a*

*private provider that meets the district criteria for establishing initial eligibility as a student with a disability under federal and state regulations.*

*Revoked Consent for Special Education and Related Services : If a parent has revoked consent for services and later requests to re-enroll the student, Tyler ISD must treat this as a request for an initial evaluation. On the basis of that review and input from the child's parents, the IEP Team and other qualified professionals must identify what additional data, if any, are needed to determine whether the child is a child with a disability and the educational needs of the child.*

**TEC §29.004. FIE Timeline.**

- (a) A written report of a full individual and initial evaluation of a student for purposes of special education services shall be completed as follows, except as otherwise provided by this section:
- (1) not later than the 45th school day following the date on which the school district, in accordance with 20 U.S.C. Section 1414(a), as amended, receives written consent for the evaluation, signed by the student's parent or legal guardian, except that if a student has been absent from school during that period on three or more days, that period must be extended by a number of school days equal to the number of school days during that period on which the student has been absent; or
  - (2) for students under five years of age by September 1 of the school year and not enrolled in public school and for students enrolled in a private or home school setting, not later than the 45th school day following the date on which the school district receives written consent for the evaluation, signed by a student's parent or legal guardian.
- (a-1) If a school district receives written consent signed by a student's parent or legal guardian for a full individual and initial evaluation of a student at least 35 but less than 45 school days before the last instructional day of the school year, the evaluation must be completed and the written report of the evaluation must be provided to the parent or legal guardian not later than June 30 of that year. The student's admission, review, and dismissal committee shall meet not later than the 15th school day of the following school year to consider the evaluation. If a district receives written consent signed by a student's parent or legal guardian less than 35 school days before the last instructional day of the school year or if the district receives the written consent at least 35 but less than 45 school days before the last instructional day of the school year but the student is absent from school during that period on three or more days, Subsection (a)(1) applies to the date the written report of the full individual and initial evaluation is required.
- (a-2) For purposes of this section, "school day" does not include a day that falls after the last instructional day of the spring school term and before the first instructional day of the subsequent fall school term. The commissioner by rule may determine days during which year-round schools are recessed that, consistent with this subsection, are not considered to be school days for purposes of this section.
- (a-3) Subsection (a) does not impair any rights of an infant or toddler with a disability who is receiving early intervention services in accordance with 20 U.S.C. Section 1431.
- (b) The evaluation shall be conducted using procedures that are appropriate for the student's most proficient method of communication.
- (c) If a parent or legal guardian makes a written request to a school district's director of special education services or to a district administrative employee for a full individual and initial evaluation of a student, the district shall, not later than the 15th school day after the date the district receives the request:
- (1) provide an opportunity for the parent or legal guardian to give written consent for the evaluation; or
  - (2) refuse to provide the evaluation and provide the parent or legal guardian with notice of procedural safeguards under 20 U.S.C. Section 1415(b). (Last amended September 1, 2013.)

SECTION 2. Section 29.004, Education Code, as amended by this Act, applies to completion of a report of a full individual and initial evaluation of a public school student for purposes of special education services only as to an initial evaluation performed on or after September 1, 2013.

*For an Initial Evaluation: If the student moves from one campus to another within the district, the timelines still apply.*

*If the initial evaluation process for special education eligibility was initiated in a school district prior to the student's enrollment in Tyler ISD and that process was not completed, Tyler ISD must coordinate with the previous school district to ensure timely completion of the evaluation. The timelines for completion as established by the previous school district may be changed only if the parent and new school district agree to a specific time for the completion of the evaluation.*

TAC §89.1011. Full Individual and Initial Evaluation.

- (a) Referral of students for a full individual and initial evaluation for possible special education services must be a part of the district's overall, general education referral or screening system. Prior to referral, students experiencing difficulty in the general classroom should be considered for all support services available to all students, such as tutorial; remedial; compensatory; response to evidence-based intervention; and other academic or behavior support services. If the student continues to experience difficulty in the general classroom after the provision of interventions, district personnel must refer the student for a full individual and initial evaluation. This referral for a full individual and initial evaluation may be initiated by school personnel, the student's parents or legal guardian, or another person involved in the education or care of the student.
- (b) If a parent submits a written request to a school district's director of special education services or to a district administrative employee for a full individual and initial evaluation of a student, the school district must, not later than the 15th school day after the date the district receives the request:
  - (1) provide the parent with prior written notice of its proposal to conduct an evaluation consistent with 34 Code of Federal Regulations (CFR), §300.503; a copy of the procedural safeguards notice required by 34 CFR, §300.504; and an opportunity to give written consent for the evaluation; or
  - (2) provide the parent with prior written notice of its refusal to conduct an evaluation consistent with 34 CFR, §300.503, and a copy of the procedural safeguards notice required by 34 CFR, §300.504.
- (c) Except as otherwise provided in this section, a written report of a full individual and initial evaluation of a student must be completed as follows:
  - (1) not later than the 45th school day following the date on which the school district receives written consent for the evaluation from the student's parent, except that if a student has been absent from school during that period on three or more school days, that period must be extended by a number of school days equal to the number of school days during that period on which the student has been absent; or
  - (2) for students under five years of age by September 1 of the school year and not enrolled in public school and for students enrolled in a private or home school setting, not later than the 45th school day following the date on which the school district receives written consent for the evaluation from the student's parent.
- (d) The admission, review, and dismissal (ARD) committee must make its decisions regarding a student's initial eligibility determination and, if appropriate, individualized education program (IEP) and placement within 30 calendar days from the date of the completion of the written full individual and initial evaluation report. If the 30th day falls during the summer and school is not in session, the student's ARD committee has until the first day of classes in the fall to finalize decisions concerning the student's initial eligibility determination, IEP, and placement, unless the full individual and initial evaluation indicates that the student will need extended school year services during that summer.
- (e) Notwithstanding the timelines in subsections (c) and (d) of this section, if the school district received the written consent for the evaluation from the student's parent at least 35 but less than 45 school days before the last instructional day of the school year, the written report of a full individual and initial evaluation of a student must be provided to the student's parent not later than June 30 of that year. The student's ARD committee must meet not later than the 15th school day of the following school year to consider the evaluation. If, however, the student was absent from school three or more days between the time that the school district received written consent and the last instructional day of the school year, the timeline in subsection (c)(1) of this section applies to the date the written report of the full individual and initial evaluation is required. If an initial evaluation completed not later than June 30 indicates that the student will need extended school year services during that summer, the ARD committee must meet as expeditiously as possible.
- (f) If a student was in the process of being evaluated for special education eligibility by a school district and enrolls in another school district before the previous school district completed the full individual and initial evaluation, the new school district must coordinate with the previous school district as necessary and as expeditiously as possible to ensure a prompt completion of the evaluation in accordance with 34 CFR, §300.301(d)(2) and (e) and §300.304(c)(5). The timelines in subsections (c) and (e) of this section do not apply in such a situation if:
  - (1) the new school district is making sufficient progress to ensure a prompt completion of the evaluation; and
  - (2) the parent and the new school district agree to a specific time when the evaluation will be completed.
- (g) For purposes of subsections (b), (c), and (e) of this section, school day does not include a day that falls after the last instructional day of the spring school term and before the first instructional day of the subsequent fall school term.

(h) For purposes of subsections (c)(1) and (e) of this section, a student is considered absent for the school day if the student is not in attendance at the school's official attendance taking time or at the alternate attendance taking time set for that student. A student is considered in attendance if the student is off campus participating in an activity that is approved by the school board and is under the direction of a professional staff member of the school district, or an adjunct staff member who has a minimum of a bachelor's degree and is eligible for participation in the Teacher Retirement System of Texas.

*For purposes of 29.004 and 89.1011(b): In addition to the Executive Director Of Student Support, a district administrative employee is considered to be the local campus principal or assistant principal where a student attends.*

**§300.15 Evaluation.** Evaluation means procedures used in accordance with §§300.304 through 300.311 to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs. (Authority: 20 U.S.C. 1414(a)—(c))

**§300.302 Screening for instructional purposes is not evaluation.**

The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services. (Authority: 20 U.S.C. 1414(a)(1)(E))

*This screening of a student by a teacher or a specialist to determine appropriate instructional and/or behavioral strategies may occur without obtaining informed parental consent because it is not considered an evaluation for purposes of determining eligibility for special education. Tyler ISD will determine person(s) considered a "specialist". The term "instructional strategies for curriculum implementation" is generally used to refer to strategies a teacher may use to more effectively teach children. 71 Fed Reg 46639 (August 14, 2006)*

## **II. REEDs/RE-EVALUATIONS**

### **§300.305 Additional requirements for evaluations and reevaluations.**

- (a) **Review of existing evaluation data.** As part of an initial evaluation (if appropriate) and as part of any reevaluation under this part, the IEP Team and other qualified professionals, as appropriate, must--
- (1) Review existing evaluation data on the child, including—
    - (i) Evaluations and information provided by the parents of the child;
    - (ii) Current classroom-based local or State assessments, and classroom-based observations; and
    - (iii) Observations by teachers and related services providers; and
  - (2) On the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine--
    - (i) (A) Whether the child is a child with a disability, as defined in §300.8, and the educational needs of the child; or  
(B) In case of a reevaluation of a child, whether the child continues to have such a disability, and the educational needs of the child;
    - (ii) The present levels of academic achievement and related developmental needs of the child;
    - (iii) (A) Whether the child needs special education and related services; or  
(B) In the case of a reevaluation of a child, whether the child continues to need special education and related services; and
    - (iv) Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general education curriculum.
- (b) **Conduct of review.** The group described in paragraph (a) of this section may conduct its review without a meeting.
- (c) **Source of data.** The public agency must administer such assessments and other evaluation measures as may be needed to produce the data identified under paragraph (a) of this section.
- (d) **Requirements if additional data are not needed.**
- (1) If the IEP Team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child continues to be a child with a disability, and to determine the child's educational needs, the public agency must notify the child's parents of—
    - (i) That determination and the reasons for the determination; and
    - (ii) The right of the parents to request an assessment to determine whether the child continues to be a child with a disability, and to determine the child's educational needs.
  - (2) The public agency is not required to conduct the assessment described in paragraph (d)(1)(ii) of this section unless requested to do so by the child's parents.
- (e) **Evaluations before change in eligibility.**
- (1) Except as provided in paragraph (e)(2) of this section, the public agency must evaluate a child with a disability in accordance with §§300.304 through 300.311 before determining that the child is no longer a child with a disability.
  - (2) The evaluation described in paragraph (e)(1) of this section is not required before the termination of a child's eligibility under this part due to graduation from secondary school with a regular diploma, or due to exceeding the age eligibility for FAPE under State law.
  - (3) For a child whose eligibility terminates under circumstances described in paragraph (e)(2) of this section, the public agency must provide the child with a summary of the child's academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child's postsecondary goals. (Authority: 20 U.S.C. 1414(c))

*The group of qualified professionals in the Tyler ISD include the same members that are required for attendance is the ARD/IEP Team.*

### **§300.303 Reevaluations.**

- (a) **General.** A public agency must ensure that a reevaluation of each child with a disability is conducted in accordance with §§300.304 through 300.311
- (1) If the public agency determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or

**(2) If the child's parent or teacher requests a reevaluation.**

**(b) Limitation.** A reevaluation conducted under paragraph (a) of this section--

**(1) May occur not more than once a year, unless the parent and the public agency agree otherwise; and**

**(2) Must occur at least once every 3 years, unless the parent and the public agency agree that a reevaluation is unnecessary. (Authority: 20 U.S.C. 1414(a)(2))**

*The review of existing evaluation data (REED) is part of the reevaluation process and the Tyler ISD is not required to obtain parental consent before reviewing existing data as part of an evaluation or reevaluation. (Feb. 6, 2007, OSEP Letter to Anonymous)*

*DNQ – Did not Qualify: The Tyler ISD will present the evaluation information to the parent and conduct the ARD/IEP meeting to document findings and next steps recommended by the committee.*

*Based on the findings, the Tyler ISD appraisal staff will determine if an ARD/IEP meeting needs to be scheduled to review the information or if the information can be reviewed at the upcoming annual ARD meeting.*

- 1. If the reevaluation is a scheduled 3 year reevaluation and change is noted that would require discussion of eligibility or services, the ARD/IEP meeting will be scheduled within 30 calendar days from the date of the completion of the written full and individual evaluation report, unless otherwise noted in a previous ARD meeting. If the 30th day falls during the summer and school is not in session, the ARD committee shall have until the first week of classes in the fall to meet, unless the full and individual initial evaluation indicates that the student will need extended school year (ESY) services during that summer.*
- 2. If the reevaluation is a scheduled 3 year reevaluation and no change is noted that would require discussion of eligibility or services, the ARD/IEP meeting may be conducted at the regular annual ARD scheduled timeframe.*
- 3. If the reevaluation is for additional assessments requested by the ARD to determine behavioral, related services such as therapies or other needs and change is noted that would require discussion of eligibility or services, the ARD/IEP meeting will be scheduled within 30 calendar days from the date of the completion of the written full and individual evaluation report, unless otherwise noted in a previous ARD meeting.*



### **III. EVALUATION PROCEDURES**

#### **§300.304 Evaluation procedures.**

- (a) Notice.** The public agency will provide notice to the parents of a child with a disability, in accordance with §300.503, that describes any evaluation procedures the agency proposes to conduct.
- (b) Conduct of evaluation.** In conducting the evaluation, the public agency will --
  - (1)** Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, that may assist in determining--
    - (i)** Whether the child is a child with a disability under §300.8; and
    - (ii)** The content of the child's IEP, including information related to enabling the child to be involved in and progress in the general education curriculum (or for a preschool child, to participate in appropriate activities);
  - (2)** Not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child; and
  - (3)** Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.
- (c) Other evaluation procedures.** Each public agency must ensure that--
  - (1)** Assessments and other evaluation materials used to assess a child under this part--
    - (i)** Are selected and administered so as not to be discriminatory on a racial or cultural basis;
    - (ii)** Are provided and administered in the child's native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to so provide or administer;
    - (iii)** Are used for the purposes for which the assessments or measures are valid and reliable;
    - (iv)** Are administered by trained and knowledgeable personnel; and
    - (v)** Are administered in accordance with any instructions provided by the producer of the assessments.
  - (2)** Assessments and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.
  - (3)** Assessments are selected and administered so as best to ensure that if an assessment is administered to a child with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).
  - (4)** The child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities;
  - (5)** Assessments of children with disabilities who transfer from one public agency to another public agency in the same school year are coordinated with those children's prior and subsequent schools, as necessary and as expeditiously as possible, consistent with §300.301 (d)(2) and (e), to ensure prompt completion of full evaluations.
  - (6)** In evaluating each child with a disability under §§300.304 through 300.306, the evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.
  - (7)** Assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided.

#### **§89.1230 (a) Eligible Students with Disabilities**

School districts shall implement assessment procedures that differentiate between language proficiency and handicapping conditions in accordance with Subchapter AA of this chapter (relating to Commissioner's Rules Concerning Special Education Services) and shall establish placement procedures that ensure that placement in a bilingual education or English as a second language program is not refused solely because the student has a disability.



#### §29.310 Procedures and Materials for Assessment and Placement.

- (a) Procedures and materials for assessment and placement of students who are deaf or hard of hearing shall be selected and administered so as not to be racially, culturally, or sexually discriminatory.
- (b) A single assessment instrument may not be the sole criterion for determining the placement of a student.
- (c) The procedures and materials for the assessment and placement of a student who is deaf or hard of hearing shall be in the student's preferred mode of communication. All other procedures and materials used with any student who is deaf or hard of hearing and who has limited English proficiency shall be in the student's preferred mode of communication.

*The Tyler ISD ensures evaluation procedures are followed by hiring qualified, certified and licensed professionals. Continual training is offered through a variety of resources including but not limited to the following: the education service center, the TEA TETN, state wide conferences, and legal academies. In addition, at each annual job evaluation, any areas needing improvement or additional training are identified and documented as an area for professional growth. The professional development office maintains online files of additional training attended.*

#### §300.310 Observation.

- (a) The public agency must ensure that the child is observed in the child's learning environment, including the regular classroom setting, to document the child's academic performance and behavior in the areas of difficulty.
- (b) The group described in §300.306(a)(1), in determining whether a child has a specific learning disability, must decide to—
  - (1) Use information from an observation in routine classroom instruction and monitoring of the child's performance that was done before the child was referred for an evaluation; or
  - (2) Have at least one member of the group described in §300.306(a)(1) conduct an observation of the child's academic performance in the regular classroom after the child has been referred for an evaluation and parental consent, consistent with §300.300(a), is obtained.
- (c) In the case of a child of less than school age or out of school, a group member must observe the child in an environment appropriate for a child of that age.

*Parental consent is not required for observations conducted as part of routine classroom instruction and monitoring of the child's performance as long as that observation is not conducted as part of the full and individual evaluation of the child.*

#### TEC § 38.003. Screening and Treatment for Dyslexia and Related Disorders.

Current TEA Dyslexia Handbook: <https://tea.texas.gov/academics/dyslexia/>

- (a) Students enrolling in public schools in this state shall be tested for dyslexia and related disorders at appropriate terms in accordance with a program approved by the State Board of Education.
- (b) In accordance with the program approved by the State Board of Education, the board of trustees of each school district shall provide for the treatment of any student determined to have dyslexia or a related disorder.
- (c) The State Board of Education shall adopt any rules and standards necessary to administer this section.
- (d) In this section:
  - (1) "Dyslexia" means a disorder of constitutional origin manifested by a difficulty in learning to read, write, or spell, despite conventional instruction, adequate intelligence, and sociocultural opportunity.
  - (2) "Related disorders" includes disorders similar to or related to dyslexia, such as developmental auditory imperception, dysphasia, specific developmental dyslexia, developmental dysgraphia, and developmental spelling disability.

For additional state rules on Dyslexia, please see Section 1. TAC §74.28. Students with Dyslexia and Related Disorders.

Current TEA Dyslexia Handbook: <https://tea.texas.gov/academics/dyslexia/>

#### TEC § 38.016. Psychotropic Drugs and Psychiatric Evaluations or Examinations.

- (a) In this section:
  - (1) "Parent" includes a guardian or other person standing in parental relation.

- (2) "Psychotropic drug" means a substance that is:
  - (A) used in the diagnosis, treatment, or prevention of a disease or as a component of a medication; and
  - (B) intended to have an altering effect on perception, emotion, or behavior.
- (b) A school district employee may not:
  - (1) recommend that a student use a psychotropic drug; or
  - (2) suggest any particular diagnosis; or
  - (3) use the refusal by a parent to consent to administration of a psychotropic drug to a student or to a psychiatric evaluation or examination of a student as grounds, by itself, for prohibiting the child from attending a class or participating in a school related activity.
- (c) Subsection (b) does not:
  - (1) prevent an appropriate referral under the child find system required under 20 U.S.C. Section 1412, as amended; or
  - (2) prohibit a school district employee who is a registered nurse, advanced nurse practitioner, physician, or certified or appropriately credentialed mental health professional from recommending that a child be evaluated by an appropriate medical practitioner; or
  - (3) prohibit a school employee from discussing any aspect of a child's behavior or academic progress with the child's parent or another school district employee.
- (d) The board of trustees of each school district shall adopt a policy to ensure implementation and enforcement of this section.
- (e) An act in violation of Subsection (b) does not override the immunity from personal liability granted in Section 22.0511 or other law or the district's sovereign and governmental immunity.

#### **IV. DETERMINATION OF ELIGIBILITY**

##### **§300.306 Determination of eligibility.**

##### **(a) General. Upon completion of the administration of assessments and other evaluation measures-**

- (1) A group of qualified professionals and the parent of the child determines whether the child is a child with a disability, as defined in §300.8, in accordance with paragraph (c) of this section and the educational needs of the child; and**
- (2) The public agency provides a copy of the evaluation report and the documentation of determination of eligibility at no cost to the parent.**

*A draft copy of the evaluation report will be provided to the parent by the appraisal staff 5 days prior to the ARD/IEP meeting. It is important to review the information with the parent, prior to the ARD/IEP meeting. The parent will be provided a signed copy at the ARD/IEP meeting. If the parent is not in attendance, a copy will be mailed to the parent with an opportunity to discuss the report on the phone or in a conference.*

##### **(b) Special rule for eligibility determination. A child must not be determined to be a child with a disability under this part--**

- (1) If the determinant factor for that determination is--**
  - (i) Lack of appropriate instruction in reading, including the essential components of reading instruction (as defined in section 1208(3) of the ESEA) “as such section was in effect on the day before the date of enactment of the Every Student Succeeds Act (December 9, 2015);**
  - (ii) Lack of instruction in math; or**
  - (iii) Limited English proficiency; and**
- (2) If the child does not otherwise meet the eligibility criteria under §300.8(a).**

##### **(c) Procedures for determining eligibility and educational need.**

- (1) In interpreting evaluation data for the purpose of determining if a child is a child with a disability under §300.8, and the educational needs of the child, each public agency must--**
  - (i) Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, teacher recommendations, as well as recommendations about the child’s physical condition, social or cultural background, and adaptive behavior; and**
  - (ii) Ensure that information obtained from all of these sources is documented and carefully considered.**
- (2) If a determination is made that a child has a disability and needs special education and related services, an IEP must be developed for the child in accordance with §§300.320 through 300.324.**

**§300.306(b)(1).** - referring to (section 1208 of ESEA – NCLB *from above* ) are the Reading components meaning explicit and systematic instruction in

- (A.) phonemic awareness;**
- (B.) phonics;**
- (C.) vocabulary development;**
- (D.) reading fluency, including oral reading skills; and**
- (E.) reading comprehension strategies.**

*Following the required timelines, the ARD/IEP Committee will meet to review the FIE and determine if the child is a child with a disability and if there is an educational need in order for the student to be eligible for special education services.*

## **V. WRITTEN EVALUATION REPORTS (including Related Service Reports)**

### **TAC §89.1011. Full Individual and Initial Evaluation.**

(c) Except as otherwise provided in this section, a written report of a full individual and initial evaluation of a student must be completed as follows:

- (1) not later than the 45th school day following the date on which the school district receives written consent for the evaluation from the student's parent, except that if a student has been absent from school during that period on three or more school days, that period must be extended by a number of school days equal to the number of school days during that period on which the student has been absent; or
- (2) for students under five years of age by September 1 of the school year and not enrolled in public school and for students enrolled in a private or home school setting, not later than the 45th school day following the date on which the school district receives written consent for the evaluation from the student's parent.

For TAC §89.1011 in its entirety, see I. EVALUATION - in this Section 2.

*A written evaluation report for any disability or eligibility for related services will include all of the requirements listed above in §300.311 Written Report (a – b) and documented on the district forms. In addition, specific requirements for each specific disability category found in Section 3-Disability Criteria will also be documented in the written evaluation report.*

*Assessment protocols will be filed in the student eligibility folder and will not be filed with the written evaluation report. Parents or adult students have access to educational records including a review of test protocols. Please contact the school's Educational Diagnostician or the Special Education Coordinator of Assessment in writing in order to review test protocols. Arrangements will be made to have the appropriate professional review the protocol with the parent or adult student.*

## **VI. EVALUATION OF LANGUAGE, PHYSICAL, SOCIOLOGICAL, AND OTHER CONDITIONS**

### *A. Primary Language*

*The evaluation team will ensure that assessments are conducted using procedures that are appropriate for the student's most proficient method of communication (expressive and receptive). For students whose home language is not English, LPAC recommendations and oral language proficiency assessment results will be considered when determining the student's most proficient method of communication.*

- B. For students who are classified as Limited English Proficient (LEP), a language proficiency assessment will be administered in order to determine the student's most proficient method of communication. Language proficiency assessment will indicate the student's skill in understanding and using receptive and expressive domains, such as oral and written language, reading comprehension, and listening comprehension, when appropriate. For students whose home language is Spanish, proficiency will be measured in both English and Spanish. For students whose home language is another language, language proficiency measures will be administered in English. (See guidelines in the referral section 1 and coordination with the LPAC to differentiate between proficiency and disability)*

### **TAC §89.1230. Eligible Students with Disabilities. (language proficiency)**

- (a) School districts shall implement assessment procedures which differentiate between language proficiency and disabling conditions in accordance with Subchapter AA of this chapter (relating to Commissioner's Rules Concerning Special Education Services), and shall establish placement procedures which ensure that placement in a bilingual education or English as a second language program is not refused solely because the student has a disability.*

### *C. Physical*

*The evaluation of an individual's physical factors (including health, vision, hearing, and psycho-motor abilities) must consist of an examination of physical conditions that directly affect the student's ability to profit from the educational process. A general medical examination will be required only when specified by eligibility criteria or when abnormal physical factors have been identified as part of the evaluation of physical factors. The health information collected during the referral process will be sufficient if a complete medical examination is not required by specific eligibility criteria and if there are no indications of need for further physical evaluation.*

*When requesting a medical examination these steps are required:*

- 1. Evaluation personnel are to obtain a Notice of Release of Confidential Information release of confidential information from the parents.*
- 2. Evaluation personnel are to submit the following forms to intervention services personnel designated responsible for securing contract services:*
  - a. Notice of Release of Confidential Information with contact information, signed by parent*
  - b. Eligibility form(s) for area of suspected disability*
  - c. And verification of consent for assessment*
- 3. Intervention personnel will contact appropriate service providers. Intervention personnel will then contact evaluation personnel to notify parent.*

### *D. Emotional/Behavioral*

*The evaluation of an individual's emotional and behavioral factors will consist of formally or informally identifying those characteristics manifested in in-school or out-of-school behavior, or both, which may influence learning. The evaluation will include behaviors relative to the disability that may affect educational*

*placement, programming, or discipline. Adaptive behavior of all students must be considered to some degree, formal measures are required only when establishing a diagnosis of an intellectual disability.*

*E. Sociological*

*The evaluation of an individual's sociological variables must consist of identifying the child's family and community environmental situation influencing learning and behavioral patterns. Students will not be eligible for special education if the only deficiencies identified are directly attributable to a different cultural lifestyle or to the child not having had educational opportunities.*

*F. Cognitive*

*The evaluation of an individual's cognitive functioning must include an evaluation of verbal ability or performance or both. While the adaptive behavior of all students must be considered to some degree, formal measures of adaptive behavior will be required only when a student is being assessed for an intellectual disability. A formal evaluation of Intelligence must always be addressed when evaluating the possibility of an intellectual disability. An informal evaluation of cognitive ability may be used to determine cognitive functioning as a part of eligibility for certain disabilities at the discretion of the evaluation team.*

All students who are graduating under 89.1070 must be provided with a summary of academic achievement and functional performance as describe in 300.305(e)(3). The summary must consider, as appropriate the view of the parent and student and written recommendations from adult service agencies on how to assist the student in meeting postsecondary goals. Students who participate in graduation ceremonies but who are not graduating under the guidelines of this section do not have to have a Summary of Academic Achievement and Functional Performance.

**VII. EVALUATION OF LEARNING COMPETENCIES (Academic Achievement and Functional Performance)**

*The evaluation report will include:*

- A. criterion-referenced or curriculum-referenced assessments designed to aid in the development of the student's IEP; (include any district wide and state testing, benchmarks, MAP data)*
- B. information about the student's strengths and weaknesses; and*
- C. the specific modifications of instructional content, accommodations, methods and/or materials required by the student to achieve and maintain satisfactory progress, including those that can only be provided through special education services, and those adaptations necessary for the student's progress in general classes and other special and compensatory education programs.*

*See also Section IV. previously for **§300.305. Additional requirements for evaluations and reevaluations***



## VIII. ASSISTIVE TECHNOLOGY DEVICES AND SERVICES

**§300.5 Assistive technology device.** Assistive technology device means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability. The term does not include a medical device that is surgically implanted, or the replacement of such device.

**§300.6 Assistive technology service.** Assistive technology service means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. The term includes-

- (a) The evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment;
- (b) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities;
- (c) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;
- (d) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;
- (e) Training or technical assistance for a child with a disability or, if appropriate, that child's family; and
- (f) Training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of that child. (Authority: 20 U.S.C. 1401(2))

**§300.105 Assistive technology; proper functioning of hearing aids.**

- (a) The public agency must ensure that assistive technology devices or assistive technology services, or both, as those terms are defined in §§300.5 and 300.6, respectively, are made available to a child with a disability if required as a part of the child's--
  - (1) Special education under §300.39;
  - (2) Related services under §300.34; or
  - (3) Supplementary aids and services under §§300.42 and 300.114(a)(2)(ii).
- (b) On a case-by-case basis, the use of school-purchased assistive technology devices in a child's home or in other settings is required if the child's IEP Team determines that the child needs access to those devices in order to receive FAPE. (Authority: 20 U.S.C. 1412(a)(1), 1412(a)(12)(B)(i))

Click link to review the Assistive Technology Region 4 ESC Leadership Function/Project which TEA supports.  
[www.texasat.net](http://www.texasat.net) <http://www.texasat.net/>

*Each student assessed for determination of a disability will be assessed for assistive technology needs.*

*The assistive technology evaluation team may include any of the following professionals: Occupational Therapist, Physical Therapist, Speech Pathologist, Diagnostician, Teacher of Visually Impaired, Assistive Technology Specialist and others as needed. [Additional information in Referral section.](#) The decentralized function of TEA for assistive technology is assigned to Region 4 ESC. <http://www.esc4.net/default.aspx?name=sas.home> They provide statewide leadership through the Texas Assistive Technology Network (TATN). Online training modules are provided in a variety of areas including evaluation, reading, writing, etc.*

## **IX. SPECIAL PROVISIONS**

*The following categories of evaluations have special provisions and may require specific evaluation personnel to be included.*

### **A. Adapted Physical Education**

*Assessment Guidelines For Adapted Physical Education (APE):*

*APE evaluations will be administered by appropriately trained physical education or special education personnel. Results from the evaluation will be included in the written evaluation report and should address the student's physical strengths and weaknesses and recommendations for specific services to be considered by the ARD/IEP committee.*

### **B. Attention Deficit Disorder (ADD-ADHD) see also Section 3 – Disability Criteria for OHI**

*Remember when conferencing with parent:*

- 1. discuss the educational needs with parent and possible strategies*
- 2. discuss possible need for further evaluation,*
- 3. discuss other relevant information regarding testing including timelines and testing instruments*
- 4. the general education staff does not provide the parent a copy of the OHI Disability Report for the physician*

### **C. Deaf or Hard of Hearing**

*When considering students who have auditory impairments, a professional certified in the education of students with auditory impairments will be assigned to assist in:*

- 1. determining appropriate areas of evaluation;*
- 2. developing or determining appropriate evaluation techniques;*
- 3. conducting evaluations when appropriate; and*
- 4. interpreting data to ensure consideration and understanding of the educational, psychological, and social implications of the disability.*

*Birth – 2 years or Deaf-Blind:*

*When considering students from birth through age two that have auditory impairments, or students who are deaf-blind, a teacher of infants who have auditory impairments or a teacher of students who are deaf-blind, as appropriate, may perform the evaluation specified above.*

*(See Local MOU with ECI located with the Coordinator of AI/VI Services)*

### **D. Autism**

*The team of professionals that completes the evaluation process for autism will include a psychologist or LSSP, a speech/language pathologist, an educational diagnostician, and any other professional appropriate. The parent is also a critical member of the team.*

Click link to review the Region 13 ESC Autism Statewide Leadership Function/Project which TEA supports.  
<http://www.txautism.net>

### **E. Evaluation of Very Young or Students with Severe Disabilities**

#### Assessment Guidelines for the Evaluation of Students Who Have Severe Disabilities and/or Who are 0-5 Years of Age

*If the evaluation team cannot test these students in accordance with the procedures listed under the individual evaluation section of this procedure manual, the team must document the rationale for deviating from the standard procedure, as well as, the modifications used to complete the evaluation. The written report will specify the nature and extent of the disability. The educational evaluation of such a student may be limited to competency based or criterion referenced measures. Outside evaluations will also be considered.*

#### **F. Functional Behavioral Assessment**

*Functional Behavioral Assessment is completed when a student's behavior impedes educational progress for the student or other students in the classroom. Include the general education teacher in gathering the information below in order to develop the Behavior Intervention Plan (BIP):*

- 1. target the specific behavior that is impeding learning by clearly defining and describing the observable behavior(s).*
- 2. obtain information from a variety of sources including but not limited to: discussions, interviews, records, and direct observation. Also use any standardized instruments if available. Determine duration, frequency, and intensity of any patterns of behavior.*
- 3. identify and describe any antecedents - events that logically serve as the stimulus for the behavior.*
- 4. identify and describe any consequences - this is the action that is following and causes the student to maintain specific behavior - determine effectiveness of each.*
- 5. determine the purpose of the student's behavior - usually to get something, avoid or escape something, or to control the antecedent event.*
- 6. describe the relationship of the behavior to the event and provide possible variables that can be changed in the setting or the situation.*
- 7. if warranted, develop the behavioral intervention plan (BIP). Teach alternatives to the behavior and include positive reinforcement along with consequences.*
- 8. consistently implement, allow enough time for the BIP to work, and then review as needed.*

*Federal Guidelines stipulate required timelines. If the student's ARD committee agrees that there is a need for a functional behavior assessment, the committee may determine that there is enough data to complete the assessment at the ARD/IEP. If there is insufficient data to complete the assessment at the ARD/IEP, the ARD/IEP committee determines the timeline for the assessment(s) to be completed, which may be more than 10 days if warranted. A review of existing behavioral data does not constitute an FBA and does not require consent. BIPs may be written without an FBA in circumstances not stipulated in statute. Data will drive the timeframe for length of behavioral interventions.*

#### **G. Homebound or Hospitalized**

TAC §89.63. Any student who is placed in the special education homebound instructional arrangement/setting must meet the following four criteria:

- be eligible for special education and related services as determined by an ARD committee;
- is expected to be confined at home or hospital bedside for a minimum of four consecutive weeks (instruction may, as provided by local district policy, also be provided to chronically ill students who are expected to be confined for any period of time totaling at least four weeks throughout the school year as documented by a physician licensed to practice in the United States);
- be confined for medical reasons only (unless the child is 0 – 5 years of age); and
- a medical condition is documented by a physician licensed to practice in the United States. 19 TAC §89.63(c)(2)(A)

*In making eligibility and placement decisions, the ARD/IEP committee must consider the physician's information. However, the physician's note/information is not the sole determining factor in the committee's decision making process.*

## **General Education Homebound (GEH)**

Any general education student should be referred to the local campus GEH committee. For more information see the Student Attendance Accounting Manual: <http://tea.texas.gov/index2.aspx?id=25769817607>

## **H. English Learner**

See Section 1. and Section 4a. for more information.

### **§300.27 English Learner. English Learner has the meaning given the term in section 8101 of the ESEA.**

*For all LEP (Limited English Proficient) Students:*

- a. *In addition to the referral documents required for all referred students, the referral packet for students with Limited English Proficiency will include the following:*
  - *A copy of the LPAC recommendations from the student's most recent End-of-Year or Initial Placement (for new students) LPAC meeting*
  - *The student's Individual Learning Plan (ILP) for the current school year and the previous school year (if available)*
  - *A copy of recent language proficiency assessment results in English and Spanish, if the student's primary language is Spanish. If the student's primary language is not Spanish, language proficiency assessment results in English will be included in the referral packet.*
  - *The language proficiency assessment must have been administered during the current school year.*
  - *Language proficiency may be assessed with the Woodcock-Muñoz Language Survey-Revised, Normative Update (listening, speaking, reading/writing) or the Pre-IPT or IPT-1 (listening, speaking) and IOWA (reading, writing).*
  - *A copy of the student's original Home Language Survey*
  - *Other available data, such as number of years in U. S. schools, history of formal schooling, and language of instruction*
- b. *When all of the referral documents have been collected and verified by the campus Educational Diagnostician, the campus diagnostician will submit the packet to the Tyler ISD LPAC Liaison/Educational Diagnostician.*

*Speech Referral:*

- a. *When more than one language is present or suspected, speech language pathologists follow ASHA recommendations and base assessment decisions on formal measures, informal measures, and clinical judgment about all languages present. The child's cumulative communication system is evaluated collaboratively by a bilingual speech language pathologist and the student's campus speech language pathologist to determine whether articulation and/or language concerns are due to a language difference or disorder.*
  - *Bilingual assessment instruments are normed from samples of examinees with similar linguistic and cultural backgrounds as the typical Spanish-speaking English language learner.*
  - *Assessment results are analyzed to determine the nature of the student's errors, including developmental errors (appropriate), linguistic errors (appropriate), or atypical errors (disordered).*

*Other Referrals (LD, ID, etc.):*

- a. *Tyler ISD evaluation personnel will consider the student's language proficiency assessment results in conjunction with all other available data, including number of years in U. S. schools, history of formal schooling, and language of instruction, while carrying out the following best practices:*
  - *The selection of linguistically appropriate tools and techniques will result from examination and review of existing data, the unique characteristics of the student, and referral concerns.*
  - *In addition to any English language testing that may be appropriate, students who are not proficient in English will be administered assessments in the primary language (when available) as well as other assessments that present minimal linguistic demands. Spanish-language assessments are normed from samples of examinees with similar linguistic and cultural backgrounds as the typical Spanish-speaking English language learner.*
  - *Students with diverse linguistic backgrounds who are not classified as having Limited English Proficiency may be administered assessments with minimal linguistic demands and/or assessments in their primary language in addition to English language measures.*
  - *When English-language measures are utilized, the student's performance on these measures will be analyzed nondiscriminatorily and with careful consideration of the impact presented by linguistic and cultural factors using research-based tools and protocols, such as the Culture-Language Interpretive Matrix.*

- The assessment process of English learners will follow the recommended evaluation procedures for addressing assessment validity with ELL
  1. Selection of assessment battery will address the referral concern
  2. All tests will be administered in standardized manner without modifications
  3. Test scores will be analyzed for linguistic and cultural factors
  4. If English-language measures yield scores indicating weaknesses or possible disabilities, re-evaluation of these areas in the native language is necessary in order to validate or invalidate suspected deficiencies.
- If it is necessary to administer tests in a non-standardized manner or with modifications not indicated by the assessment authors, these deviations or modifications will be reported, and the results should be interpreted with caution and with consideration of multiple sources of additional data.

## **I. Speech Impairment**

*For students referred for speech/language suspected disability, the evaluation will be performed and documented by a certified speech and language pathologist, certified speech and hearing therapist, or a licensed speech/language pathologist. In addition to the speech and language components of the evaluation, the physical, mental, and emotional conditions and learning competencies will be addressed in the evaluation. The written report of evaluation will include the level of severity of the impairment and will state how the communication disorder affects the student's performance in the classroom resulting in an educational need for speech therapy services.*

## **J. Visual Impairment (see also Section 3. DISABILITY and Section 4b)**

*When considering students who have visual impairments, a professional certified in the education of students with visual impairments will be assigned to assist in:*

1. determining appropriate areas of evaluation including Orientation & Mobility;
2. developing or determining appropriate evaluation techniques;
3. conducting evaluations when appropriate; and
4. interpreting data to ensure consideration and understanding of the educational, psychological, and social implications of the disability; and
5. collecting appropriate medical documentation.

*When considering students from birth through age two that have visual impairments, or students who are deaf-blind, a teacher of infants who have visual impairments or a teacher of students who are deaf-blind, as appropriate, may perform the evaluation specified above.*

*(See Local MOU with ECI available in the office of the Special Education Coordinator of AI/VI Services)*

## **K. Vocational Evaluation (including FVE)**

*Special education will collect vocational evaluation data when appropriate. As the ARD/IEP committee begins discussion and planning for entry into the high school curriculum and discusses the graduation plan of the student, vocational evaluation may be determined appropriate. (For information on the Vocational Adjustment Coordination Program see Instructional Arrangements Section.)*

1. The ARD/IEP committee may recommend vocational evaluation when:
  - A. the student has no specific identified skills which are determined necessary for employment, or
  - B. the student has limited knowledge of vocational opportunities or careers of any interest.
2. Based on ARD/IEP committee recommendation, occupational preparation needs may be reviewed and may include the following:
  - A. the Full and Individual Evaluation;

- B. the current IEP;*
  - C. information about past school performance;*
  - D. work training history; and*
  - E. interviews with student, parent, and teacher(s). The interviews include attitudes, work habits, behaviors, job readiness, work-related skills, and post-school expectations.*
- 3. The assigned special education staff member will explain to parents the purpose of the vocational review. Results of the vocational evaluation may be discussed with the student prior to being filed in the student's special education folder. The results will also be discussed at the annual ARD/IEP committee meeting.*
  - 4. If the review of the records in #2. above indicates, additional vocational interest and aptitude evaluation may be recommended by the ARD/IEP committee. The diagnostician is responsible for sending the Notice and Consent for a Full and Individual Evaluation to the parent prior to the evaluation. Evaluation will begin no earlier than five school days after notification in accordance with Tyler ISD guidelines.*
  - 5. For students with disabilities whose initial vocational evaluation, does not yield measurable results or sufficient information for planning appropriate occupational preparation, additional vocational evaluation may be required such as: review of work samples, situational evaluations, and work behaviors analysis. Observation, training sites, or other instructional programs and settings may be used to provide part of this data.*
  - 6. Situational assessment of students placed in campus-based and community-based job-training options as a part of the student's educational program will be conducted by special education instruction staff on an ongoing basis. Reports will be filed in the teacher's student folder and reviewed at each annual ARD/IEP meeting.*

#### *Functional Vocational Evaluation.*

*The ARD/IEP committee will consider any recommendations as a result of Transition Planning. Transition services means a coordinated set of activities for a student with a disability that includes if appropriate a functional vocational evaluation. If the ARD/IEP committee recommends this, a qualified professional will conduct the evaluation.*

- 1. The evaluation will include but not be limited to: observation in vocational settings, interview with teacher and parents, and other formal or informal evaluations as appropriate.*
- 2. Results of the evaluation including strengths and weaknesses will be addressed in a written report maintained in the eligibility file.*

*A Functional Vocational Evaluation is just one component of transition planning that is included "if appropriate". The IEP committee determines if a functional vocational evaluation is appropriate. It may be necessary if the student cannot determine a career interest area or if it is difficult determining the student strengths and needs. It may be considered appropriate for:*

- 1. Students who would benefit from the "hands-on" experience afforded by work sampling, observations, situational assessment,*
- 2. Students who are having difficulty determining career interests, and*
- 3. Those who may need to showcase talents other than those limited to academic classes where they traditionally have been unsuccessful.*

*A Functional Vocational Evaluation (FVE) is a systematic assessment process used to identify practical useable career and employment-related information about an individual. A FVE can incorporate multiple formal and informal assessment techniques to observe, describe, measure, and predict vocational potential. A distinctive feature in all FVE's is that the FVE includes (and may emphasize) individualized experiential and performance-based opportunities, in natural vocational or work environments. The systematic method used to collect and organize the information from the assessment is more important than the type of assessment utilized. The process may begin early and be quite broad during the middle school years, but becomes increasingly more specific as the student moves closer to graduation. This is not a task that will be done one time only, but rather will be built upon as the student has new experiences and can be documented with data over time.*

*This Functional Vocational Evaluation procedure considers and documents the interactions of the student with instructors, peers, and employer and includes:*

- 1. Interviews;*
- 2. Observation, inventories, surveys, and record reviews; personality and temperament;*
- 3. Career exploration of student's interests, values, attitudes, and social skills;*

4. *Situational assessment of student's interests, skills, strengths, temperaments; work demands environmental factors abilities, motivation, physical capacity, and work tolerance work habits;*
5. *Training needs;; assistive technology; necessary adaptations and*
6. *Multi-agency planning and assessment.*



## **X. APPRAISAL PERSONNEL** *(see also Personnel in Section 8-Administration)*

### **§300.156 Personnel qualifications.**

- (a) **General.** The SEA must establish and maintain qualifications to ensure that personnel necessary to carry out the purposes of this part are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities.
- (b) **Related services personnel and paraprofessionals.** The qualifications under paragraph (a) of this section must include qualifications for related services personnel and paraprofessionals that--
- (1) Are consistent with any State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services; and
  - (2) Ensure that related services personnel who deliver services in their discipline or profession--
    - (i) Meet the requirements of paragraph (b)(1) of this section; and
    - (ii) Have not had certification or licensure requirements waived on an emergency, temporary, or provisional basis; and
    - (iii) Allow paraprofessionals and assistants who are appropriately trained and supervised, in accordance with State law, regulation, or written policy, in meeting the requirements of this part to be used to assist in the provision of special education and related services under this part to children with disabilities.
- (c) **for remaining portion**

### **22 TAC § 465.38. Psychological Services in the Schools.** [Excerpt]

This rule acknowledges the unique difference in the delivery of school psychological services in the public schools from psychological services in the private sector. The Board recognizes the purview of the State Board of Education and the Texas Education Agency in safeguarding the rights of public school children in Texas. The mandated multidisciplinary team decision making, hierarchy of supervision, regulatory provisions, and past traditions of school psychological service delivery both nationally and in Texas, among other factors, allow for rules of practice in the public schools which reflect these occupational distinctions from the private practice of psychology.

#### **(1) Definition.**

- (C) The assessment of emotional or behavioral disturbance, for educational purposes, using psychological techniques and procedures is considered the practice of psychology.

*Appraisal/evaluation personnel will review referral data, determine which disability is being suspected, and route the referral to the appropriate special education evaluation staff. Professionals will be assigned to conduct evaluations only in the areas for which they have been trained. Evaluation staff will provide evaluation and educational information to the ARD/IEP committee as needed. Tyler ISD evaluation personnel and their responsibilities include:*

#### **a. Adapted P.E. teacher, Educational Diagnostician:**

- 1. administers screening/evaluation for possible adapted physical education services, and*
- 2. completes a written report with recommendations.*

#### **b. Auditory Impairments (AI):**

*Evaluation and services for students with auditory impairments will be provided by appropriately qualified personnel. Personnel from the Regional Day School for the Deaf or other appropriate personnel may be used as needed.*

#### **c. Educational Diagnostician:**

- 1. administers cognitive and academic/developmental evaluations;*
- 2. administers evaluations of learning competencies for initial evaluations and re-evaluations;*
- 3. participates on multidisciplinary team evaluations for autistic, learning disabled, multiple disabilities, etc.;*
- 4. assists in evaluation of vocational skills and needs;*
- 5. may serve as consultant on the Student Support Team or 504 Committee on assigned campus; and*
- 6. interprets evaluation data orally and in a written report to the ARD/IEP committee.*

#### **d. In Home/Parent Trainer:**

1. participates on ARD/IEP committee as appropriate;
2. provide In-Home/Parent Training;
3. provide present levels of performance;
4. and assist in updating in-home training goals.

e. Licensed Specialist in School Psychology (LSSP):

1. administers psychological evaluations;
2. participates on multidisciplinary team evaluations for autistic referrals;
3. develops behavior intervention plans and consults with staff as needed;
4. provide counseling as a related service;
5. participates on ARD/IEP committee as appropriate; and
6. may serve as consultant on the Student Success Team or 504 Committee on assigned campus, as appropriate.

f. Occupational Therapist/Physical Therapist:

1. review OT/PT checklist to determine the need for evaluation;
2. evaluate for possible OT/PT services;
3. assures annual medical release is obtained for continuation of services; and,
4. participate on ARD/IEP committee as appropriate.
5. interprets evaluation data orally and in a written report to the ARD/IEP committee.
6. participates on the multidisciplinary team evaluations for autistic, learning disabled, multiple disabilities, etc

h. Special Education Teachers:

*Annually assess student present level of academic achievement and functional performance to update the student's IEP. This will include the review of the State or district wide assessments. Consideration of any benchmark tests will be used as well. This could also be an informal criterion/curriculum based evaluation. Identify areas of growth toward grade level standards. Information for the three year re-evaluation will be provided to the diagnostician and / or ARD/IEP committee for inclusion in the written eligibility report.*

i. Speech/Language Pathologist:

1. administers evaluations for all speech language referrals;
2. screens referrals as appropriate upon request;
3. participates on the multidisciplinary team evaluations for autistic, learning disabled, multiple disabilities, etc.; ; and
4. may serve as consultant on the Student Support Team or 504 Committee on assigned campus.
5. interprets evaluation data orally and in a written report to the ARD/IEP committee.

j. Visual Impairments (VI):

*Evaluations and services for students with visual impairments will be conducted by appropriately qualified school personnel.*

## **XI. INDEPENDENT EDUCATIONAL EVALUATION (IEE).**

### **§300.502 Independent educational evaluation.**

#### **(a) General.**

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

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

*The parents of a child with a disability have the right to obtain an independent educational evaluation (IEE) of the child at public expense if the parent disagrees with an evaluation completed by the district.*

*Information on where an IEE may be obtained will be provided to parents on request. A list of individuals who can provide an IEE is available from the Special Education Office. The district criteria (State/Federal requirements) for all evaluations must also be followed for the IEE. Evaluator Requirements are listed below. Contract evaluation personnel (which includes personnel who complete evaluations for Independent Educational Evaluations) must provide assessment results, recommendations and a written report to Tyler ISD prior to or at the same time the information is provided to parents.*

**(3) For the purposes of this subpart--**

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

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

#### **(b) Parent right to evaluation at public expense.**

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

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

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

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

*If the parent requests an IEE from any staff member or campus Principal, the parent will be provided the name and phone number of the Special Education Director and asked to notify that administrator immediately so that proper steps may be taken to address their request for an IEE. The Special Education Director, in consultation with appropriate Tyler Independent School District staff, will determine whether to pay for the IEE or file for a due process hearing. The Special Education Administration will respond to the parent regarding the IEE request within 15 school days, following all required Notice procedures.*

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

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

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

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

*reason, that also will be documented in the minutes. The ARD Administrator or designee will immediately notify the Special Education Administrator of the parent request for an IEE in order to determine the district's response to the request. The district will not delay and will respond within the determined school days noted above.*

- (c) Parent-initiated evaluations.** If the parent obtains an independent educational evaluation at public expense or shares with the public agency an evaluation obtained at private expense, the results of the evaluation--
  - (1) Must be considered by the public agency, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the child; and**
  - (2) May be presented by any party as evidence at a hearing on a due process complaint under subpart E of this part regarding that child.**
- (d) Requests for evaluations by hearing officers.** If a hearing officer requests an independent educational evaluation as part of a hearing on a due process complaint, the cost of the evaluation must be at public expense.
- (e) Agency criteria.**
  - (1) If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the public agency uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation.**
  - (2) Except for the criteria described in paragraph (e)(1) of this section, the public agency may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.**

#### ***District Steps as Soon as Notified of IEE Request***

*Special Education Administration will notify parent the IEE request is received. Inform the parent that within 15 school days a decision will be made to either request a Due Process Hearing to defend district evaluation or pay parent for an IEE. If decision is to pay for an IEE, Special Education Administration will:*

- 1. Provide the parent with Procedural Safeguards and the district IEE guidelines.*
- 2. Designate the local district contact person for the parents to coordinate the IEE process. Encourage the parent pay close attention to the Evaluator Requirements and the district process for payment of the IEE.*
- 3. Provide the parent a list of qualified examiners in the area.*
- 4. Once the parent has selected the independent evaluator they will provide the district with contact information for the evaluator.*
- 5. The district will contact the independent evaluator chosen by the parent and provide a written contract with IEE criteria and Evaluator Requirements. Once the contract is signed the Special Education Administrator will ensure that the Purchase Order Procedures for the district are followed to ensure payment once the evaluation is completed and provided to the district with an invoice for services.*

#### **Evaluator Requirements**

- 1. The independent evaluator will coordinate activities with the district designee whose name was provided to the parent by the Special Education Administration.*
- 2. The independent evaluator will have the same qualifications as the Tyler Independent School District assessment personnel (e.g., psychologist, associate psychologist, Licensed Specialist in School Psychology, or educational diagnostician) and as required by Texas law and also described in Section 8)*
- 3. Each independent evaluator must provide to the district a copy of of his or her license(s) or certificate(s).*
- 4. The independent evaluator may be requested to complete a conflict of interest form provided by the Tyler Independent School District indicating whether the examiner has a personal monetary interest in any service or program recommended by the examiner.*
- 5. The independent evaluator will be provided access to the student's cumulative folder and special education folders upon request.*
- 6. The independent evaluator may meet with district by appointment to gather information about a student prior to the assessment or to share information following the completion of the evaluation by contacting the special education administrator or designee.*
- 7. The independent evaluator will follow federal and state assessment regulations and rules, reporting requirements and established eligibility criteria for the diagnosis of students with disabilities.*
- 8. The independent evaluator will consider data obtained from the student's teacher or service provider through consultation and/or interview.*

9. *The independent evaluator will provide a written assessment report that shall address the presence or absence of those symptoms or conditions included in the specific eligibility criteria for the disability for which the student is being assessed. The report shall include the type and severity of the impairment and the functional implications for the educational process. The report must provide the ARD committee with sufficient information to determine whether or not the student has a disability and is in need of special education services.*
10. *The independent evaluation may be restricted to one assessment area upon mutual agreement by the Tyler Independent School District and parent.*
11. *The independent evaluator must be located within a 100 mile radius of the Tyler Independent School District.*
12. *If the independent evaluator is going to be conducting the evaluation on school property then Per Senate Bill 9, they must complete a state and national criminal history background search and the district must receive those results through the DPS criminal history clearinghouse (Fingerprint-based Applicant Clearinghouse of Texas – FACT prior to the assessment.*
13. *The evaluator must provide information in the same timely manner as required by Tyler Independent School District personnel including an original typed report to the Tyler Independent School District within 30 calendar days from the date that an IEE is approved by Tyler Independent School District and 10 days prior to the ARD meeting. The report must address the Tyler Independent School District format (which will be provided to the evaluator) for assessment and eligibility. Protocols must be available for review and the report must include an original signature and title of all assessment personnel involved in the evaluation. The report must comply with all requirements of state and federal regulations.*
14. *The IEE evaluation must be completed by the end of the district's fiscal year (last business day in August) or a new contract with the evaluator will need to be completed.*
15. *The parent will work with the independent evaluator to schedule dates/times for the evaluation unless the evaluation is to take place on school property.*
16. *Upon completion of evaluation, the written report will be submitted to the parent and the district along with the Invoice for payment.*

#### **Reimbursement or Payment**

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

*Reimbursement/payment will be made directly to evaluator upon receipt of an invoice and the IEE which meets all of the Tyler Independent School District assessment criteria. Parents obtaining an IEE without following these procedures risk payment. Whenever an IEE is at public expense, the criteria under which the IEE is obtained, must be the same as the criteria which the school uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's rights to an IEE.*

#### **Criteria for Fee Setting**

1. *The Tyler Independent School District will pay a fee for the IEE which allows a parent to choose from among the qualified professionals in the area.*
2. *The Tyler Independent School District will not pay unreasonably excessive fees. An unreasonably excessive fee is one which is (this percentage needs to be determined based on your area and data available for reasonable cost for an evaluation. Thirty five percent above the Medicaid rate is now the acceptable rate) above the average rate in the local area for the services required to complete the IEE.*
3. *Upon receipt of an invoice for payment of an unreasonably excessive fee, the Tyler Independent School District will notify the parent of the unreasonable rate.*
4. *Parents will be allowed the opportunity to demonstrate to an ARD committee that unique circumstances justify an IEE that does not fall within the Tyler Independent School District fee criteria. However, the payment decision will remain with the district.*
5. *When service providers have a sliding scale fee based on parent income, the Tyler Independent School District will pay the amount charged to the parent.*
6. *In the event that a parent pursues an IEE independently, an original billing form must be submitted to the Tyler Independent School District prior to payment. Before reimbursement or direct payment is authorized, criteria*

*must be met not only regarding the fee, but also the evaluator criteria and the written report received by the district and the evaluation meet the district's IEE criteria.*

- 7. Any Travel costs for examiner and/or parents will not exceed Tyler Independent School District rates for travel as established by state guidelines.*

#### **Parents Seeking Reimbursement for a Unilaterally Obtained IEE**

- 1. The Tyler Independent School District will not consider a parent request for payment for a unilaterally parent-initiated IEE unless the request is made within a reasonable time after receipt of the results of the evaluation. A reasonable time is defined as 90 calendar days.*
- 2. The Tyler Independent School District can request a due process hearing to prove its own evaluation is appropriate. This can occur before an IEE is conducted or, in this scenario, after the parent has obtained the IEE and is seeking reimbursement.*
- 3. Parent must submit Invoice for payment, the evaluator's name and qualifications, the completed IEE that meets all criteria.*
- 4. The Tyler Independent School District will review all information submitted by the parent.*
- 5. The Tyler Independent School District will deny payment of an IEE conducted by an evaluator who does not meet minimum qualifications.*
- 6. The Tyler Independent School District will deny payment of an IEE which does not meet minimum Texas Education Agency criteria for the specific disability identified.*
- 7. The Tyler Independent School District will deny payment of an IEE which does not meet substantial compliance with all state and federal requirements.*
- 8. The Tyler Independent School District will deny payment of an IEE that exceeds the maximum cost criteria.*

#### **Consideration of Parent Initiated IEE**

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

#### **Number of IEEs**

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

