

Special Education

HANDBOOK



OKLAHOMA STATE DEPARTMENT OF
EDUCATION
— CHAMPION EXCELLENCE —

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HOW-TO GUIDE ON USING THIS MANUAL

Navigation

The Table of Contents (TOC) allows for easy navigation throughout the Manual. The TOC is broken down into Chapter Headings, Legal Citation Headings, Section Headings, and Section Subheadings. In order to navigate to a specific section of the manual, single click on the TOC listing and it will advance to the appropriate section.

In order to access the bookmarking features of Adobe Reader or Adobe Acrobat, click on the sidebar icon circled in red to display the Manual book markings. These book markings are based upon TOC Headings.

Legal Citations

Federal regulations found within a Chapter are hyperlinked to the *Electronic Code of Federal Regulations (CFR)*. Oklahoma Statutes and Regulations are also referenced within Chapters. In addition, a list of federal regulations and Oklahoma Statutes and Regulations pertaining to the content of the Chapter are found at the end of every Chapter.

- Direct hyperlink to [34 CFR §300](#) (Some of the regulations in the *Legal Citations* pages may refer to other federal education regulations, such as 81 (GEPA) or 99 (FERPA)).

Accessing Federal and State Regulations

After clicking the [Federal Regulations 34 CFR §300](#) link, click the desired federal regulation from the listed index to access it.

The Online Oklahoma Administrative Code & Register may be found [here](#).

ACRONYMS & ABBREVIATIONS

504	Section 504 of the Rehabilitation Act of 1973
ABA	Applied Behavior Analysis
ABC	Antecedent, Behavior, Consequence
ABS	Adaptive Behavior Scale
ADA	Americans with Disabilities Act
ADD	Attention Deficit Disorder
ADHD	Attention Deficit Hyperactivity Disorder
ADL	Activities of Daily Living
ADM	Average Daily Membership
AEM	Accessible Educational Materials
APR	Annual Performance Report
ASD	Autism Spectrum Disorder
ASHA	American Speech-Language-Hearing Association
ASL	American Sign Language
ATAP	Assistive Technology Act Program
AT	Assistive Technology
AYP	Adequate Yearly Progress
BIP	Behavior Intervention Plan
CAP	Corrective Action Plan
CBM	Curriculum-Based Measurement
CD	Conduct Disorder
CEC	Council for Exceptional Children
CEIS	Coordinated Early Intervening Services
CFR	Code of Federal Regulations
CIP	Continuous Improvement Plan
COTA	Certified Occupational Therapist Assistant
CP	Cerebral Palsy
DB	Deaf-Blindness
DD	Developmental Delay
DHS	Department of Human Services
DIBELS	Dynamic Indicators of Basic Early Literacy Skills
DOC	Department of Corrections
DP	Due Process
DSM	Diagnostic and Statistical Manual of Mental Disorders
EC	Early Childhood
ECE	Early Childhood Education
ED	Emotional Disturbance
ESEA	Elementary and Secondary Education Act
EL	English Learner
ESSA	Every Student Succeeds Act
ESY	Extended School Year

FAPE	Free Appropriate Public Education
FAS	Fetal Alcohol Syndrome
FBA	Functional Behavior Assessment
FERPA	Family Educational Rights and Privacy Act
GED	General Educational Development
GEPA	General Education Provisions Act
GPA	Grade Point Average
GT	Gifted/Talented
HI	Hearing Impairment
HOUSSE	High Objective Uniform State Standard of Evaluation
IAES	Interim Alternative Educational Setting
ID	Intellectual Disability
IDEA	Individuals with Disabilities Education Act 2004
IDELR	Individuals with Disabilities Education Law Report
IEE	Independent Educational Evaluation
IEP	Individualized Education Program
IFSP	Individual Family Service Plan
IQ	Intelligence Quotient
ISP	Individualized Service Plan
LEA	Local Education Agency
LEP	Limited English Proficiency
LRE	Least Restrictive Environment
MD	Multiple Disabilities
MEEGS	Multidisciplinary Evaluation and Eligibility Group Summary
MTSS	Multi-Tiered System of Supports
NAEP	National Assessment of Educational Progress
NASDSE	National Association of State Directors of Special Education
NS	Nonstandard Accommodation
OAC	Oklahoma Administrative Code
OAPP	Oklahoma Alternate Assessment Program
OCD	Obsessive-Compulsive Disorder
ODD	Oppositional Defiant Disorder
OCR	Office for Civil Rights
ODLC	Oklahoma Disability Law Center
OJA	Office of Juvenile Affairs
OHI	Other Health Impairment
OI	Orthopedic Impairment
OMB	Federal Office of Management and Budget
OPC	Oklahoma Parent Center
OSDE	Oklahoma State Department of Education
OSEP	Office of Special Education Programs
OSERS	Office of Special Education and Rehabilitative Services
OSTP	Oklahoma School Testing Program

OT	Occupational Therapy
OTISS	Oklahoma Tiered Intervention System of Support
PBIS	Positive Behavioral Interventions and Supports
PBS	Positive Behavioral Supports
PDD	Pervasive Developmental Delay
PP	Paraprofessional
PT	Physical Therapy
PTA	Physical Therapist Assistant
RDA	Results Driven Accountability
RED	Review of Existing Data
RtI	Response to Intervention
SBI	Serious Bodily Injury
SBE	State Board of Education
SBR	Scientifically-Based Research
SD	Standard Deviation
SEA	State Education Agency
SES	Special Education Services
SIG	School Improvement Grant
SLI	Speech/Language Impairment
SLP	Speech-Language Pathologist
SLPA	Speech-Language Pathologist Assistant
SOP	Summary of Performance
SLD	Specific Learning Disability
SPP	State Performance Plan
SS	Standard or Scaled Score
SSIP	State Systemic Improvement Plan
STN	Student Testing Number
WWC	What Works Clearinghouse
TBI	Traumatic Brain Injury
VI	Visual Impairment

GLOSSARY

Academic Achievement. A student's level of performance in basic school subjects, measured either formally or informally.

Accessible educational materials (AEM). Educational materials and technologies usable for learning across the widest range of individual variability, regardless of format or features; this includes technology designed to be accessible for all learners or is made accessible for learners with disabilities.

Accommodation. Changes in the curriculum, instruction, or testing format or procedures that enable students with disabilities to participate in the general education curriculum. Accommodations should be considered to include assistive technology as well as changes in presentation, response, timing, scheduling, and settings that do not fundamentally alter the requirements. Accommodations do not invalidate assessment results.

Adaptation. The broader application of altering curriculum to meet the needs of learners, either by providing accommodations or modifications to what is being taught. Changes to curriculum, instruction, or assessments that fundamentally alters the requirements, but that enable a student with an impairment an opportunity to participate in general education. Adaptations include strategies that change the level of learning expectation.

Adaptive Behavior. Behavior that displays an age-appropriate level of self-sufficiency and social responsibility which includes the following areas: communication, self-care, home living, social/interpersonal skills, use of community resources, direction, functional academic skills, work, leisure, health, or safety.

Adequate Progress. Based on an individual student's trajectory toward expected grade level performance within a reasonable time period, consistent with national or local growth rate comparisons.

Adverse Educational Impact. Any harmful or unfavorable influence that a disability has on a student's educational performance in academic (reading, math, communication, etc.) or non-academic areas (daily life activities, mobility, pre-vocational and vocational skills, social adaptation, self-help skills, etc.)

Adult Student. A student with a disability, age 18 or older, to whom rights have transferred under the IDEA and Oklahoma Administrative Code or a student under the age of 18 declared an adult by a court of law.

Age-Appropriate Activities. Activities that typically-developing children of the same age would be performing or would have achieved.

Age of Majority. The age at which, by law, a child assumes the responsibilities of an adult. In Oklahoma, the age of majority is 18. Beginning at least one year before the child reaches the age of majority; the IEP must include a statement that the student has been told of any rights that will transfer to him or her at the age of majority.

Aggregated Data. Information that is considered as a whole. In this manual, the term refers to collective data on all students, including students with disabilities.

Alternate Assessment. A specific assessment, developed by the state in lieu of statewide assessments or by the district in lieu of districtwide assessments, designed to measure functional skills within the same domains required by the regular statewide or districtwide assessments. It is designed for students who are unable to demonstrate progress in the typical manner and who meet the state-established criteria.

Alternative School. A public school placement option that may be utilized for students who are not succeeding in the traditional school environment but may benefit through the use of modified curriculum or flexible programming.

Annual Goals. The student can reasonably accomplish these goals in a year. The goals can be broken down into short-term objectives or benchmarks. Goals may be academic, address social or behavioral needs, relate to physical needs, or address other educational needs. The goals must be measurable-meaning that it must be possible to measure whether the student has achieved the goals.

Articulation. The ability to speak distinctly and connectedly. The formation of clear and distinct sounds in speech.

Articulation Disorder. Incorrect productions of speech sounds, including omissions, distortions, substitutions and/or additions that may interfere with intelligibility.

Assessment. The formal or informal process of systematically observing, gathering, and recording credible information to help answer evaluation questions and make decisions. It is an integral component of the evaluation process. A test is one method of obtaining credible new information within the assessment process. Assessment data may also include observations, interviews, medical reports, data regarding the effects of general education accommodations and adaptations and interventions, and other formal or informal data.

Assistive Technology Device. Any item, piece of equipment, or product system whether acquired commercially, off a shelf, modified, or customized that is used to increase, maintain, or improve the functional capabilities of a student with a disability. Excludes surgically implanted medical devices.

Assistive Technology Service. Any service that directly assists a student with a disability with the assessment, selection, acquisition, or use of an assistive technology device.

Attention Deficit Disorder (ADD). A biologically based mental disorder that has these typical characteristics: short attention span; distractive behavior; difficulty following directions and staying on task; and an inability to focus behavior. The disorder comprises many skills needed for academic success, including starting, following through with, and completing tasks; moving from task to task; and following directions.

Attention Deficit Hyperactivity Disorder (ADHD). A biologically based mental disorder in which a person has inappropriate degrees of inattention, impulsiveness and hyperactivity.

Audiologist. A licensed health care professional who diagnoses hearing loss and selects and fits hearing aids.

Autism. An IDEA disability category in which a developmental disability, generally evident before age 3, significantly affects verbal and nonverbal communication skills and social interactions and adversely affects educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. Autism is a neurodevelopmental disorder characterized by impaired social interaction, impaired verbal and non-verbal communication, and restricted and repetitive behavior. Parents usually notice signs in the first two years of their child's life. These signs often develop gradually, though some children with autism reach their developmental milestones at a normal pace and then regress.

Behavioral Intervention Plan (BIP). An individualized plan comprised of a student's functional behavior assessment designed to teach and reward positive behaviors. The BIP describes the problem behavior, the reasons the behavior occurs and the intervention strategies that will address the problem behavior. These strategies address preventative techniques, teaching replacement behaviors, how to respond or resolve behaviors, and crisis management, if necessary.

Benchmark. A standard or point of reference against which things may be compared or assessed. A major milestone which describes the progress the student is expected to make toward annual goals within a specified time-period.

Braille. A tactile system of reading and writing, used by students who are blind or visually impaired, with an official code composed of Braille characters or cells that consist of various patterns of raised dots that correspond to alphabetic letters, punctuation marks and other symbols.

Certified Occupational Therapy Assistant (COTA). A professional who possesses an Oklahoma license and are charged with developing, recovering, and improving the skills needed for daily living and working. COTAs are directly involved in providing therapy to patients; COTAs typically perform support activities. COTAs work under an Occupational Therapist.

Change of Placement. Removal of a child with a disability from the child's current educational placement. When the removal is for disciplinary purposes, regulations apply, [34 CFR §300.536](#).

Change of Placement for Disciplinary Reasons. A removal from the current educational placement for more than 10 consecutive school days or a series of removals that constitute a pattern when they total more than 10 school days in a school year. Factors such as the length of the removal, the proximity of the removals to one another, and the total amount of time the student is removed are indicators of a pattern.

Charter School. A publicly funded, nonprofit, nonsectarian public school that is created by a formal agreement (charter) between a group of individuals and the board of trustees of the local school district and operates independently within the district. It is governed by the conditions of its approved charter and federal and state laws.

Child. An individual who has not reached age 18.

Child Find. A process to locate, identify, and evaluate students who reside in the district and may be in need of special education. Mandated through IDEA, Child Find requires all school districts to identify, locate and evaluate all children with disabilities, regardless of the severity of their disabilities. This obligation to identify all children who may need special education services exists even if the school is not providing special education services to the child.

Civil Action. A judicial action that any party who is aggrieved by the final decision of a due process hearing officer may bring in either a federal district court or a state court of competent jurisdiction (as designated by the state).

Compensatory Education. Educational services which are above and beyond those normally due a student under his or her state's education law. The principle is acknowledged by most courts that have considered the issue to be an appropriate remedy when a student has been denied a Free Appropriate Education (FAPE).

Compensatory Remedy. A judicial order or administrative action intended to redress a violation of the rights of a student with a disability who has suffered a loss as a result of the wrongful or negligent act of another and to restore the student to the position he or she would have been in if the wrongful or negligent act had not occurred. The remedy may include the award of monetary reimbursement or other corrective actions as appropriate to the needs of the student.

Complaint. A formal written statement submitted to the Oklahoma State Department of Education by an individual or organization that contains one or more allegations and the facts on which the statement is based that a district or agency has violated a requirement of Part B of the IDEA.

Comprehensive Early Intervening Services (CEIS). Services for students who need additional academic and behavioral support to succeed in a general education environment. These students have not been identified as having a disability.

Consensus. Has two common meanings.

1. A general agreement among the members of a given group or community, each of which exercises some discretion in decision making and follow-up action.
2. A decision-making process that not only seeks the agreement of most participants, but also to resolve or mitigate the objections of the minority to achieve the most agreeable decision.

Consensus is usually defined as meaning both: a) general agreement, and b) the process of getting to such agreement. Consensus decision-making is thus concerned primarily with that process.

Consent. Voluntary, written approval of a proposed activity, as indicated by a parent/adult student signature. The parent/adult student must be fully informed in his or her native language or other mode of communication and must understand all information relevant to the activity to make a rational decision.

Conservator. A person appointed by the court to handle financial decisions for a person who is incapacitated or debilitated.

Controlled Substance. Any drug so designated by law whose availability is restricted; i.e., so designated by federal Controlled Substances Acts. Included in such classifications are narcotics, stimulants, depressants, hallucinogens, and marijuana.

Core Academic Subjects. These include English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography non-compliance defined in the [ESEA](#).

Corrective Action Plan (CAP). LEAs are required to develop a CAP when an issuance of findings has been received as part of a compliance review. CAPs address areas of noncompliance for child-specific areas, systemic areas, and data accuracy issues. The OSDE-SES conducts a Continuous Compliance Review which consists of random file selections for review of compliance to IDEA Part B requirements.

Critical Life Skill. Skills that lead to independent functioning. Development of these skills can lead to reduced dependency on future caretakers and enhance students' integration with nondisabled individuals. Skills may include such things as toileting, feeding, mobility, communication, dressing, self-help, and social/emotional functioning.

Curriculum Based Measurements (CBM). Is a method teachers use to find out how students are progressing in basic academic areas such as math, reading, writing, and spelling.

Dangerous Weapon. A weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2 ½ inches in length.

Data-Based Decision Making. The collecting of information that can be charted or graphed to document performance over time followed by an analysis of the information to determine needed changes in policies, programs, or procedures.

Deaf-Blindness. An IDEA disability category in which a student demonstrates hearing and visual impairments, and where the combination of these two disabilities causes such severe communication and other developmental and educational needs that the student cannot be accommodated with special education services designed solely for students with deafness or blindness.

Deafness. An IDEA disability category in which a hearing impairment is so severe that the student, with or without amplification, is limited in processing linguistic information through hearing, which adversely affects educational performance.

Detained Youth. Anyone ages 3 through 21 who is being held for a crime regardless of whether or not that person has appeared before the court.

Developmental Achievement. Gains a student makes which follow the pedagogic theory that all children learn in the same basic way and in the same sequence, although at different rates.

Developmental Delay (DD). An IDEA disability category used only for students ages 3 through 9 for whom a significant delay exists in one or more of the following skill areas: receptive/expressive language; cognitive abilities; gross/fine motor functioning; social/emotional development; or self-help/adaptive functioning. The use of this category is optional for districts.

Disaggregated Data. Information that is reported and/or considered separately on the basis of a particular characteristic. In this manual, the term refers to data on special education students as a group that is reported and/or considered separately from the same data on all students in a school, district, or state.

Discipline. A set of rules or techniques designed by a district for the purpose of minimizing disruption and promoting positive interaction.

Disclosure. The access to or the release, transfer or other communication of education records, or personally identifiable information contained in these records by oral, written, electronic, or other means.

Discrepancy Formula. A method of determining the difference between a student's expected level of academic achievement and intellectual ability used to establish eligibility for special education under the category of specific learning disability.

Disproportionality. A disparity or inequality. In this manual, the term refers to a statistical range of data where students of a specific race or ethnicity are identified in either greater or fewer numbers than expected when compared to the representation of that race or ethnicity within the general school population. The areas addressed in the IDEA 2004 are: (1) identification as a student with a disability; (2) identifications a student with a specific category of disability; and (3) placement in a particular educational setting.

Dropout. A student who has left an education system before completion of requirements and is not known to be enrolled in any other educational program.

Due Process Hearing. An administrative hearing conducted by an OSDE-appointed hearing officer to resolve disputes on any matter related to identification, evaluation, educational placement, or the provision of a free appropriate public education.

Early Intervention. Services for at-risk children from birth to their third birthdays, as mandated by the Individuals with Disabilities Education Act (IDEA).

Education Record. A student's record maintained by an educational agency or institution, or by a party acting for the agency or institution, which may include, but is not limited to print, handwriting, computer media, video or audio tape, film, microfilm, and microfiche, but is not within the exceptions set out in FERPA.

Educational Services Agency, other public institution or agencies. (1) An educational service agency, as defined in [34 CFR §300.12](#); and (2) Any other public institution or agency having administrative control and direction of a public elementary school or secondary school, including a public nonprofit charter school that is established as an LEA under State law.

Elementary School. The term 'elementary school' means a nonprofit institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined under State law, [34 CFR §300.13](#).

Emotional Disturbance. An IDEA disability category in which a student has a condition exhibiting one or more of five behavioral or emotional characteristics over a long period of time, and to a marked degree, that adversely affects educational performance. The term does not include students who are socially maladjusted unless it is determined they have an emotional disturbance. The term emotional disturbance does include students who are diagnosed with schizophrenia.

Essential Components of Reading Instruction. The term means 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.

Evaluation. A term that means using all required procedures to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs.

Evaluation Group. A group of people, including the parent/adult student, charged with the responsibility to make decisions regarding evaluation, assessments, and eligibility. This team includes the same membership as the IEP team (although not necessarily the same individuals) and other qualified professionals as appropriate.

Expedited Due Process Hearing. An administrative hearing conducted by an Oklahoma Special Education Resolution Center (RESC)-appointed hearing officer to resolve disputes concerning discipline for which shortened timelines are in effect in accordance with the IDEA.

Extended School Year (ESY). A program to provide special education and related services to an eligible student with a disability beyond the conventional number of instructional days or minutes in a school year and at no cost to the parents. An ESY program must be based on an IEP team decision.

Extracurricular Activities. Programs sponsored by a district that are not part of the required curriculum but are offered to further the interests and abilities of students.

Family Educational Rights and Privacy Act (FERPA). A federal law protecting the privacy of students and parents by mandating that personally identifiable information about a student contained in education records must be kept confidential. FERPA also contains provisions for access to records by parents, students, staff, and others.

Fluency Disorder. Stoppages in the flow of speech that are abnormally frequent and/or abnormally long. These interludes take the form of repetitions of sounds, syllables, or single syllable words; prolongations of sounds; or blockages of airflow and/or voicing in speech.

Free Appropriate Public Education (FAPE). A basic IDEA requirement which states that special education and related services are provided at public expense (free); in conformity with an appropriately developed IEP (appropriate); under public supervision and direction (public); and include preschool, elementary, and secondary education that meets the education standards, regulations, and administrative policies and procedures issued by the State Department of Education (education).

Functional Achievement and Performance. Gains made by a student which include programming in community living, reading, communication, self-care, social skills, domestic maintenance, recreation, employment or vocational skills. Also called independent living skills.

Functional Behavioral Assessment (FBA). A systematic process for defining problem behavior and gathering medical, environmental, social, and instructional information that can be used to hypothesize about the function of student behavior. FBA assessment used for students with emotional or behavioral problems that are interfering with their educational progress or the progress of other students. The FBA can be used to developed an IEP or provide information for verification of a disability.

General Education Curriculum. The curriculum that is designed for all students, usually consisting of a common core of subjects and curriculum areas adopted by a district that are aligned to the Oklahoma Academic Standards or district standards. The general education curriculum is defined by either the Oklahoma Academic Standards or the district content standards if they are as rigorous.

General Education Interventions. Educational interventions designed to address 95% of the students using the core and supplemental curriculum interventions. Such interventions use whole-school approaches, scientifically based programs, and positive behavior supports, including accommodations and instructional interventions conducted in the general education environment. These interventions may also include professional development for teachers and other staff to enable such personnel to deliver scientifically based literacy instruction and/or instruction on the use of adaptive and instructional software.

Goal. A measurable statement that includes behavior, evaluation procedures and performance criteria and describes what the student is reasonably expected to accomplish from the specialized education program within the time covered by the IEP (generally one year).

Graduation. The point in time when a student meets the minimum State and district requirements for receipt of a regular high school diploma.

Guardianship. A judicial determination under which a competent adult has the legal right and duty to deal with problems, make decisions, and give consent for an adult with a disability (at least 18 years of age) who cannot act on his or her own behalf. The court will specify the nature and scope of the guardian's authority.

Gun-Free Schools Act. Federal legislation enacted in 1994 requiring school districts and similar public agencies to adopt a policy generally requiring the expulsion from school for a period of not less than one year of any student determined to have brought a weapon to school, although permitting exceptions to be made on a case-by-case basis for students, including students with disabilities whose behavior is determined to be a manifestation of their disability.

Hearing Impairment (HI). An IDEA disability category in which a student has a permanent or fluctuating hearing loss that adversely affects the student's educational performance but is not included under the category of deafness.

Highly Qualified. The standard which personnel must possess with the appropriate certification, endorsement, licensure, coursework, training, skills and qualifications to provide direct instruction in a core content area.

Homeless Children and Youth. Children and youth who lack a fixed, regular, and adequate nighttime residence.

Honig Injunction. A court order to remove a special education student from school or current educational placement due to factors of dangerousness. Districts are required to continue with the provision of FAPE.

Illegal Use of Drugs. The unlawful use, possession or distribution of substances identified under the Controlled Substances Act, but does not include the use of a drug taken under supervision by a licensed health care professional.

Inclusion/Inclusive Classroom. Inclusion in education is an approach to educating students with special educational needs. Under the inclusion model, students with special needs spend most or all of their time with non-special needs students. Inclusion rejects the use of special schools or classrooms to separate students with disabilities from students without disabilities.

Independent Educational Evaluation (IEE). One or more assessment(s) conducted by a qualified examiner(s) who is not employed by or contracted by the public agency or district responsible for the education of the student in question.

Individualized Education Program (IEP). A written document (developed collaboratively by parents and school personnel) which outlines the special education program for a student with a disability. This document is developed, reviewed and revised at an IEP meeting at least annually.

Individualized Education Program (IEP) Team. Established by the IDEA, an IEP team is responsible for determining a student's placement, developing the student's IEP, and reviewing/revising the student's IEP and placement at least annually. An IEP team is comprised of required members; the IEP team may include other stakeholders, when appropriate.

IEP Teacher of Record. A member of the evaluation and/or IEP team (usually the special education teacher) who is designated to perform administrative functions for the team, including: (1) setting up meetings; (2) ensuring appropriate forms are completed; (3) ensuring timelines are met; (4) notifying participants of the times and dates of meetings; and (5) possesses the appropriate certification for the student's disability.

Individualized Family Service Plan (IFSP). A written individualized plan for an infant or toddler with a disability that is developed by a multidisciplinary team, including the parents, reference Public Law 108-446, Section 636(C).

Individualized Services Plan (ISP). A written statement that describes the special education and related services the LEA will provide to a parentally-placed child with a disability enrolled in a private school who has been designated to receive services, including the location of the services and any transportation necessary, consistent with Section 34 CFR §300.132, and is developed and implemented in accordance with Sections [34 CFR §300.137 through 34 CFR §300.139](#), [34 CFR §300.37](#)

Initial Provision of Service. The first time that a child with a disability is provided special education services. This is also referred to as the “initial placement” and means the first time a parent is offered special education and related services for their child after an initial evaluation.

In-lieu of Transportation. Alternate method of transporting students to and from school.

In-school Suspension. A disciplinary technique, considered a less restrictive alternative to sending a student home, that involves excluding the student from the regular classroom and assigning him or her to a temporary location where students work and receive a minimum amount of privileges.

Instructional Intervention. An action or strategy based on an individual student’s problem that is designed to remedy, improve, or eliminate the identified problem.

Intellectual Disabilities (ID). An IDEA disability category in which subaverage intellectual functioning exists concurrently with deficits in adaptive behavior. These deficits are manifested during the student’s developmental period and adversely affect the student’s educational performance. The term “mental retardation” was previously used to refer to this condition.

Interagency Agreement. A written document that defines the coordination between the state and/or public/private agencies and/or districts with respect to the responsibilities of each party for providing and funding programs and services.

Interim Alternative Educational Setting (IAES). The educational setting in which a district may place a student with a disability, for not more than 45 school days, if the student while at school, on school premises or at a school function carries a weapon or possesses a weapon; possesses, uses, sells or solicits the sale of drugs or controlled substances; or has inflicted serious bodily injury upon another person. An IAES may also be ordered by a due process hearing officer based upon evidence that maintaining the current placement is substantially likely to result in injury to the student or others.

Interim IEP. A short-term IEP (30 school days or less) with all the components of a standard IEP developed by the IEP team. It may be used for students transferring from other districts pending the development of the standard IEP.

Interpreting Services. Oral transliteration services, cued language transliteration services, sign language transliteration and interpreting services, and transcription services, such as communication

access real-time translation (CART), C-Print, and TypeWell; and special interpreting services for children who are deaf-blind. ([34 CFR §300.34.4.i](#))

Interventions. Sets of teaching procedures used by educators to help students who are struggling with a skill or lesson succeed in the classroom.

Joint Custody. A court order awarding custody of a minor child to both parents and providing that physical and/or legal custody are shared by the parents.

Joint Legal Custody. A court order providing that the parents of a child are required to share the decision-making rights, responsibilities, and authority relating to the health, education, and general welfare of the child.

Joint Physical Custody. A court order awarding each of the parents significant periods of time in which a child resides with or is under the care and supervision of each of the parents. The actual amount of time is determined by the court.

Language Impairment. An IDEA disability category in which a delay or disorder exists in the development of comprehension and/or the uses of spoken or written language and/or other symbol systems and which adversely affects the student's educational performance. A language impairment may involve any one or a combination of the following: the form of language (morphological and syntactic systems); the content of language (semantic systems); and/or the function of language in communication (pragmatic systems).

Least Restrictive Environment (LRE). The IDEA 2004 requirement that students with disabilities, including those in public or private institutions or other care facilities, be educated with students who are nondisabled to the maximum extent appropriate.

Limited English Proficient (LEP). Students from language backgrounds other than English who need language assistance services in their own language or in English in the schools and who meet one or more of the following conditions: (1) the student was born outside of the United States or his or her native language is not English; (2) the student comes from an environment where a language other than English is dominant; or (3) the student is American Indian or Alaskan Native and comes from an environment where a language other than English has had a significant impact on his or her level of English language proficiency. The student also has sufficient difficulty speaking, reading, writing, or understanding the English language to deny him or her the opportunity to learn successfully in English-only classrooms.

Local Education Agency (LEA). A public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or for a combination of school districts or counties as are

recognized in a State as an administrative agency for its public elementary schools or secondary schools.

Manifestation Determination. A determination by the IEP team of whether or not the misconduct of a student with a disability was (1) a demonstration of the disability, that is, an inability to understand impact and consequences or an inability to control behavior; (2) the result of an inappropriate placement; and/or (3) the lack of provision of services consistent with the IEP and placement.

McKinney-Vento Homeless Assistance Act. This law is designed to address the problems that homeless children and youth have faced in enrolling, attending, and succeeding in school. Under this program, state educational agencies (SEAs) must ensure that each homeless child and youth has equal access to the same free, appropriate public education, including a public preschool education, as other children and youth.

Measuring Progress. The IEP must state how the child's progress will be measured and how parents will be informed of their progress.

Mediation. A voluntary, informal process in which an impartial third party mediator helps parents and district or agency personnel resolve a conflict. Mediation usually results in a written agreement that is mutually acceptable to both parties.

Medicaid Services (School-Based). Those related services, assessment and plan development for students receiving Medicaid which school districts may bill for reimbursement.

Migrant Student. A student of compulsory school attendance age who has not graduated from high school or completed a high school equivalency certificate and resides within a family that is composed of migrant fisher or agricultural workers. The student has moved within the preceding 36 months in order for the family to obtain or seek this type of temporary or seasonal employment that is a principal means of livelihood.

Monitoring. An activity conducted by the Oklahoma State Department of Education to review a school district's compliance with federal laws, regulations, and state rules.

Multiple Disabilities (MD). An IDEA disability category in which two or more impairments co-exist (excluding deaf-blindness), whose combination causes such severe educational problems that the student cannot be accommodated in special education services designed solely for one of the impairments. Multiple disabilities are generally lifelong, significantly interfere with independent functioning, and may necessitate environmental accommodations and adaptations to enable the student to participate in school and society.

Native Language. The language or mode of communication normally used by an individual or, in the case of a student, the language normally used by the student's parents. In direct contact with a

student, the native language would be the language or mode of communication normally used by the student and not the parents, if there is a difference between the two.

Nonpublic School. An educational institution providing instruction outside a public school, including but not limited to a private school or home school.

Nonpublic School Student. Any student who receives educational instruction outside a public school classroom, including but not limited to a private school or home school student.

Nonprofit. The term ‘nonprofit’, as applied to a school, agency, organization, or institution, means a school, agency, organization, or institution owned and operated by 1 or more nonprofit corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual, Public Law 108-446, Section 602 (21).

Nursing Services. See “School health services”

Objectives. Measurable, intermediate steps that describe the progress the student is expected to make toward an annual goal in a specified amount of time; similar to a benchmark.

Occupational Therapist. A professional licensed through the Bureau of Occupational Licenses who, in a school setting, is responsible for assessing fine motor skills, including student’s use of hands and fingers and developing and implementing plans for improving related motor skills. The occupational therapist focuses on daily living skills such as eating, dressing, school work, play, and leisure.

Office of Special Education Programs (OSEP). The branch of the Office of Special Education and Rehabilitative Services (OSERS) within the U.S. Department of Education which is responsible for administering programs relating to the free appropriate public education to all eligible beneficiaries.

Other Health Impairment. An IDEA disability category in which a student exhibits limited strength, vitality or alertness, including heightened alertness to environmental stimuli that is due to chronic or acute health problems (such as asthma, ADD or ADHD, cancer, diabetes, epilepsy, Fetal Alcohol Syndrome, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, Tourette syndrome and stroke) to such a degree that it adversely affects the student’s educational performance.

Orthopedic Impairment. An IDEA disability category that includes physical impairments that adversely affects a student’s educational performance and are caused by congenital anomaly (e.g., clubfoot, absence of an appendage, etc.); disease (e.g., poliomyelitis, bone tuberculosis, etc.); or from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contracture).

Parent. A biological, adoptive or foster parent, a legal guardian, a person acting as a parent, or a surrogate parent who has been appointed by the district. The term “acting as a parent” includes

persons such as a grandparent or stepparent with whom the student lives as well as persons who are legally responsible for a student's welfare. The term does not include state agency personnel if the student is a ward of the state. A foster parent may act as a parent if the biological parent's authority to make education decisions on behalf of his or her child has been terminated by legal action and the foster parent meets the criteria outlined below:

1. Parent and/or Adult student;
2. A biological or adoptive parent of a child;
3. A foster parent;
4. A guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child (but not the State if the child is a ward of the State);
5. An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or
6. A surrogate parent who has been appointed by the school district. If the child is a ward of the state, the judge overseeing the child's case may appoint the surrogate. The surrogate may not be an employee of the state or local education agency or any other agency that is involved in the education or care of the child, has no personal or professional interest which conflicts with the interest of the child, has knowledge and skills that ensure adequate representation of the child.

Part B. Part of the IDEA that relates to the assistance to states for the education of students with disabilities who are ages 3 through 21.

Part C. Part of the IDEA that relates to the assistance to states for the education of children with disabilities and the early intervention programs for infants and toddlers, ages birth through 2, with disabilities.

Peer-Reviewed Research. A higher level of non-biased research, which has been accepted by a peer-reviewed journal or approved by a panel of independent experts through a comparably rigorous, objective and scientific review.

Personally Identifiable Information. Includes but not limited to, student's name, name of parent or other family member, address of student or family, social security number, student number, list of personal characteristics that would make the student's identity easily traceable, or other information that would make it possible to identify the student with reasonable certainty.

Phonology. The process used in our language that has common elements (sound patterns) which affect different sounds.

Phonology Disorders. Phonology disorders are errors involving phonemes, sound patterns and the rules governing their combinations.

Physical Therapist. A professional licensed through the Bureau of Occupational Licenses who, in the school setting, assesses students' needs and provides interventions related to gross motor skills. In working with students with disabilities, the physical therapist provides treatment to increase muscle strength, mobility, endurance, physical movement and range of motion; improve posture, gait and body awareness; and monitor function, fit and proper use of mobility aids and devices.

Positive Behavioral Supports (PBS). Positive reinforcers, rewards or consequences provided to a child for specific instances of behavior that impedes learning or the learning of others (or refraining from behavior) as appropriate for the purpose of allowing the student to meet his or her behavioral goals/benchmarks.

Power of Attorney. The designation, in writing, by a competent person of another to act in place of or on behalf of another person.

Present Levels of Performance. A statement of the student's current level of achievement or development in an area of need and how the student's disability affects his or her involvement and progress in the general education curriculum. Present levels of academic achievement and functional performance (PLAAFP) typically shortened to 'present levels'-is a central component of the IEP and is intended to comprehensively describe a child's abilities, performance, strengths, and needs. It is based on all the information and data previously collected and known about the child, most especially the full and individual evaluation of the child that must be conducted in accordance with IDEA's evaluation/eligibility provisions.

Private School. A school that is not funded by or under federal or state control or supervision.

Procedural Safeguards. The formal requirements of Part B of the IDEA 2004 that are designed to allow a parent/adult student to participate meaningfully in decisions concerning an appropriate educational program for a student with a disability and, if necessary, dispute such decisions. Also referred to as special education rights.

Progress Monitoring. Is used to assess students' academic performance, to quantify a student rate of improvement or responsiveness to instruction, and to evaluate the effectiveness of instruction.

Professional Development. High-quality comprehensive programs that are essential to ensure that persons responsible for the education or transition of students with disabilities possess the skills necessary to address the educational and related needs of these students. These should be

scientifically-based and reflect successful practices including strategies for recruiting, hiring, preparing and retaining personnel.

Psychosocial Rehabilitation (PSR). These services assist the student in gaining and utilizing skills necessary to participate in school, such as training in behavior control, social skills, communication skills, appropriate interpersonal behavior, symptom management, activities of daily living, study skills, and coping skills. This service is to prevent placement of the student into a more restrictive educational situation.

Public Expense. When a district or public agency either pays for the full cost of an evaluation or special education services or ensures that it is otherwise provided at no cost to the parent; for example, through joint agreements with other state agencies.

Reading Components. The term “reading” means a complex system of deriving meaning from print that requires all of the following skills, which are the essential components of reading instruction:

1. Phonemic awareness: The skills and knowledge to understand how phonemes, or speech sounds, are connected to print;
2. Phonics: The ability to decode unfamiliar words;
3. Reading fluency: The ability to read fluently;
4. Vocabulary development: Sufficient background information and vocabulary to foster reading comprehension; and
5. Reading comprehension: The development of appropriate active strategies to construct meaning from print.

Reasonable Measures. A combination of recorded written and/or oral documentation to meet notification requirements of the district to parents/adult students.

Reevaluation. A periodic evaluation conducted at least every 3 years, or more frequently if conditions warrant, or if the student’s parent or teacher requests an evaluation of a student already identified as eligible for services under the IDEA 2004. Reevaluations may occur not more than once a year, unless the parent and the district agree otherwise.

Related Services. Refers to transportation and such developmental, corrective, and other supportive services required to assist a student with a disability to benefit from special education and includes the following, but not limited to: speech therapy, language therapy, audiology services, psychological services, physical therapy, occupational therapy, recreation, therapeutic recreation, early identification and assessment of disabilities in children, counseling services, rehabilitation counseling, orientation and mobility services, interpreting services, medical services for diagnostic

or evaluation purposes, school health/nursing services (excluding surgically implanted medical devices), social work services in schools, and parent counseling and training.

Response to Intervention (RtI). A formal process for evaluating student response to scientifically research-based interventions, consisting of the core components of: (1) problem identification, (2) problem analysis, (3) applying research-based interventions, and (4) progress monitoring/decisions rules.

Resolution Session. A preliminary meeting involving the parents, relevant members of the IEP team, and a representative of the district who has decision-making authority, required prior to a due process hearing if the parent has requested the due process hearing.

School Age. Includes all persons 5 (i.e., turns 5 on or before September 1) through 21 years who reside in Oklahoma.

School Day. Any day, including a partial day that students are in attendance at school for instructional purposes. School day has the same meaning for all children in school, including children with and without disabilities.

School Health Services. School health services and school nurse services means health services that are designed to enable a child with a disability to receive FAPE as described in the child's IEP. School nurse services are services provided by a qualified school nurse. School health services are services that may be provided by either a qualified school nurse or other qualified person.

School Psychologist. A professional who holds an Oklahoma Teaching Certificate with an endorsement in School Psychology and are often Nationally Certified through the National Association of School Psychologists (NASP). They are responsible for conducting assessments, providing direct support and interventions to students, consulting with teaching, families, and other school-employed mental health professionals to improve support strategies, working with school administrators to improve school-wide practices and policies and collaborating with community providers to coordinate needed services.

School Psychometrist. A professional who holds an Oklahoma Teaching Certificate with an endorsement in Psychometry and is charged with the responsibility of administering and interpreting both formal and informal diagnostic evaluations for educational program placements and planning purposes.

Scientifically-Based Research (SBR). The term scientifically-based research means research that applies rigorous, systematic, and objective procedures to obtain valid knowledge relevant to core academic development, instruction, and difficulties; and includes research that: (a) employs systematic, empirical methods that draw on observation or experiment; (b) involves rigorous data analyses that are adequate to test the stated hypotheses and justify the general conclusions drawn; (c) relies on measurements or observational methods that provide valid data across evaluators and

observers and across multiple measurements and observations; and (d) has been accepted by a peer-reviewed journal or approved by a panel of independent experts through a comparably rigorous, objective, and scientific review.

Screening. An informal, although organized process, of identifying students who are not meeting or who may not be meeting Oklahoma Academic Content Standards.

Secondary School. The term ‘secondary school’ means a nonprofit institutional day or residential school, including a public secondary charter school, that provides secondary education, as determined under State law, except that it does not include any education beyond grade 12 ([34 CFR §300.36](#)).

Secular. An adjective used to describe a private, non-religious educational entity.

Serious Bodily Injury (SBI). Bodily injury which involves (a) a substantial risk of death; (b) extreme physical pain; (c) protracted and obvious disfigurement; or (d) protracted loss or impairment of the function of bodily member, organ, or mental faculty.

Setting. The location where special education services are received.

Socially Maladjusted. A child who has a persistent pattern of violating societal norms with truancy, substance abuse, a perpetual struggle with authority, is easily frustrated, impulsive, and manipulative, *Doe v. Board of Education of the State of Connecticut*, (D. Conn. Oct. 24, 1990).

Special Education. Specially designed instruction or speech/language therapy at no cost to the parent to meet the unique needs of a student with a disability including instruction in the classroom, the home, hospitals, institutions, and other settings; instruction in physical education; speech therapy and language therapy; transition services; travel training; assistive technology services; and vocational education.

Special Education Paraprofessional. A credentialed individual who is employed by a district and who is appropriately trained and supervised in accordance with State standards to assist in the provision of special education and related services under the general direction and supervision of a certified or licensed professional staff.

Special Education Placement. Refers to the provision of special education services, rather than a specific place, such as a specific classroom or school. The balance of setting and services to meet an individual student’s needs.

Specially Designed Instruction. Adapting the content, methodology, or delivery of instruction to address the unique needs of an eligible student that result from the student’s disability and to ensure access to the general education curriculum so that the student can meet the education standards of that district that apply to all students. As defined in IDEA, specially designed (tiered) instruction is

the unique set of supports provided to an individual student based on his or her learning needs to remove barriers that result from the student's disability. The supports are reflected in the student's individual educational plan (IEP) and are infused throughout the student's learning experiences and environments as described in the IEP.

Specific Learning Disability (SLD). An IDEA disability category in which a specific disorder of one or more of the basic psychological processes involved in understanding or in using spoken or written language may manifest itself in an imperfect ability to listen, think, speak, read, write, spell or do mathematical calculations, adversely affecting the student's educational performance. The term includes such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia and developmental aphasia. The term does not include a student who has needs that are primarily the result of visual, hearing, or motor disabilities; cognitive impairment; emotional disturbance; or environmental, cultural, or economic disadvantage.

Speech or Language Impairment (SLI). An IDEA disability category that includes articulation/phonology, voice, and fluency disorders.

Speech-Language Pathologist Assistant (SLPA). A professional supervised under a Speech-Language Pathologist. Examples of work performed include, but are not limited to, assisting the SLP with speech, language, and hearing screenings without clinical interpretation and following documented treatment plans or protocols developed by the supervising SLP.

Speech-Language Pathologist (SLP). A professional holding an Oklahoma Teaching Certificate who can assess and treat persons with speech, language, voice, and fluency disorders. This professional coordinates with and may be a member of the evaluation and IEP teams.

Student (School Age). For resident children with disabilities who qualify for special education and related services under the federal individuals with disabilities education act (IDEA) and subsequent amendments thereto, and applicable State and federal regulations, 'school age' begins at the attainment of age 3 and continues through the age of 21 years.

Stay Put. A requirement that a district or agency maintain a student with a disability in his or her present educational placement while a due process hearing or subsequent judicial proceeding is pending unless the parties agree otherwise.

Summary of Performance (SOP). A document given to secondary students when a student exits special education as a result of earning a diploma or aging out. This document describes the academic achievement and functional performance along with recommendations to assist the student in meeting postsecondary goals.

Supplementary Aids and Services. Accommodations and adaptations that must be made to the general education classroom and/or curriculum to ensure the satisfactory participation of a student with a disability, including supports to the general education teacher.

Surrogate Parent. An individual assigned and trained by a district or an agency to assume the rights and responsibilities of a parent under the IDEA 2004 when no parent can be identified or located for a particular student or when the child is a ward of the state.

Suspension. A temporary stop, delay, interruption, or cessation of educational services.

Teacher of Record (TOR). A special education teacher assigned to oversee the educational programming of students with disabilities with regard to his/her area of certification.

Transition Services. A coordinated set of activities for a student with a disability designed within an outcome-oriented process. Services are based on individual student needs addressing instruction, related services, community experiences, employment, post school adult living objectives, and, when appropriate, acquisition of daily living skills and functional vocational evaluation.

Traumatic Brain Injury (TBI). An IDEA disability category that refers to an injury to the brain caused by an external physical force and resulting in a total or partial functional disability or psychosocial impairment, or both, that adversely affects educational performance. The term applies to open or closed head injuries resulting in impairments in one or more areas such as cognition, language, memory, attention, reasoning, abstract thinking, judgment, problem solving, sensory perception and motor abilities, psychosocial behavior, physical functions, information processing, and speech. The term does not apply to congenital or degenerative brain injuries or to brain injuries induced by birth trauma.

Travel Training. Providing instruction to children with significant cognitive disabilities, and any other children with disabilities who require this instruction, to enable them to: (i) Develop an awareness of the environment in which they live and (ii) Learn the skills necessary to move effectively and safely from place to place within that environment (e.g., orientation and mobility).

Twice Exceptional. Twice exceptional students are identified as gifted and talented in one or more areas of exceptionality (specific academics, general intellectual ability, creativity, leadership, visual or performing arts) and also identified with a disability that qualifies the student for an IEP or a 504 plan.

Unilateral Placement. A decision by a parent, at his or her own discretion, to remove his or her child with a disability from a public school and enroll the student in a private facility because the parent believes that the district did not provide FAPE in a timely manner.

Universal Design. A concept or philosophy for designing and delivering products and services that are usable by people with the widest possible range of functional capabilities, which include products and services that are directly usable (without requiring assistive technologies) and products and service that are made usable with assistive technologies.

Visual Impairment (VI), including blindness. An IDEA disability category characterized by an impairment in vision that, even with correction, adversely affects a student's educational performance. The term includes partial sight, which refers to the ability to use vision as one channel of learning if educational materials are adapted, and blindness, which refers to the prohibition of vision as a channel of learning, regardless of the adaptation of materials.

Voluntary Enrollment in a Private Placement. Enrollment by a parent of a student with a disability in a private facility or home school for religious, philosophical, curricular, or other personal reasons.

Ward of the State. A child who, as determined by the State where the child resides, is a foster child (unless the foster parent meets the definition of a parent in [34 CFR §300.30](#), a ward of the State, or in the custody of a public child welfare agency ([34 CFR §300.45](#)).

Weapon (See "[Dangerous Weapon](#)").

Written Notice. A written statement provided by the district to a parent/adult student within a reasonable amount of time proposing or refusing to initiate or change the identification, evaluation, educational placement, or the provision of FAPE.

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CHAPTER 1: FREE APPROPRIATE PUBLIC EDUCATION

Introduction. Free and Appropriate Public Education (FAPE)

All students with an Individualized Education Program (IEP) are entitled to a free appropriate public education (FAPE). This includes students who are eligible for special education from the ages of 3 through 21. FAPE is individually determined for each student with a disability. FAPE must include special education in the least restrictive environment (LRE) and may include related services, transition services, supplementary aids and services, and/or assistive technology devices and services.

The definition of a FAPE under the Individuals with Disabilities Education Act (IDEA) means special education services that:

1. Are provided at public expense (free/no cost to parents);
2. Are provided in conformity with an appropriately developed individualized education program, or IEP (appropriate);
3. Are provided under public supervision and direction; and
4. Include an appropriate preschool, elementary, and secondary education that meets the education standards, regulations, and administrative policies and procedures issued by the Oklahoma State Department of Education (OSDE).

A FAPE requires an individualized educational program (IEP) to be appropriately ambitious in light of the child's circumstances; and, every child should have the chance to meet challenging objectives.

Section 1. Provision of a FAPE

A. LEA Obligation

The Local Education Agency (LEA) is required to ensure a FAPE is available to students enrolled in the LEA who are eligible for special education. This includes students who reside in group homes, personal care, or foster homes, as well as institutions, if their parent(s) are residents of Oklahoma, even though the parent(s) may reside in another LEA. It also includes students who are migratory or homeless as defined by the McKinney-Vento Homeless Act (see Glossary).

Foster children may be brought to school for enrollment by their foster parents, social workers, or other legal guardians. The LEA has the obligation to immediately enroll these children in school. After immediate enrollment, the following guardianship or legal custody documents shall be provided for verification: Power of attorney, affidavit, and court order. ESSA, Section 1111(g)(1)(E)

stipulates that enrollment must not be denied or delayed for children in foster care because documents normally required for enrollment have not been provided.

The LEA is obligated to make FAPE available to each eligible student in the LEA as follows:

1. The LEA must offer a FAPE to an individual who is at least 3 years old and who qualifies for special education services unless the parent has refused special education services.
2. If a parent chooses not to enroll in a public school, but chooses to unilaterally place their student with a disability in a private school, then the student does not have an individual right to some or all of the special education and related services that the students would receive if enrolled in a public school. However, the LEA is responsible for locating, identifying, and evaluating unilaterally placed private school students. For more information, see [Chapter 10, “Students in Private Schools”](#).
3. A FAPE must be available to any individual student with a disability who needs special education services, even though the student has not failed or been retained in a course, and is advancing from grade to grade.
4. The LEA must provide a FAPE to students with disabilities (through 21 years of age) who have earned a general educational development (GED) and reenroll in a public school.

B. LEA Provision of a FAPE

LEAs must provide every eligible child a FAPE by means of a uniquely tailored IEP that is appropriately ambitious in light of the child’s circumstances; every child should have the chance to meet challenging objectives. The LEA’s provision of a FAPE can be met by:

1. Directly providing special education services for eligible students;
2. Joining in an interlocal cooperative program with another LEA or LEAs to provide special education services for eligible students;
3. Joining in a coordinated arrangement with State-operated and State-funded institutions for students who are deaf or hard of hearing, or for students who are blind or partially sighted;
4. Joining in a contractual agreement or written agreement with a private or public institution within the LEA to provide special education services; or
5. Transferring students with disabilities to other LEAs that accept the transfers for the provision of special education services if the transfer is an emergency transfer to provide a FAPE (LEA of legal residence pays tuition) or under an IEP service agreement as provided by State

law (IEP service agreements should be used in lieu of emergency transfers for FAPE whenever possible).

C. Limit to LEA Obligation

LEAs are responsible for Child Find activities to ensure homeschooled students with disabilities are located, identified, and evaluated, and a FAPE is made available if their parents choose to enroll them in public schools. LEAs are neither required nor prohibited by federal or State law to treat homeschooled students as students enrolled in private schools. A parent's decision to homeschool a student is a decision to refuse the right to a FAPE, and thus, refusal of special education and related services at the expense of the LEA.

D. When LEA Obligation to Provide a FAPE Ends

The LEA's obligation to provide a FAPE to a student ends:

1. When the student turns 22 years of age; or
2. When the student meets the LEA requirements that apply to all students for receipt of a regular high school diploma; or
3. When the student no longer meets the eligibility criteria for special education services, as determined by the evaluation group after a reevaluation; or
4. When a parent (or student at age of majority) revokes consent for special education and related services.

Section 2. FAPE Considerations

A. Incarcerated Students

The Oklahoma Department of Corrections (DOC) provides educational services to incarcerated youth with disabilities in adult correctional programs. Students eligible for special education services who have an IEP and who are in a facility operated by the Office of Juvenile Affairs (OJA) or DOC must receive their educational programs. Each of these agencies provides the services to students within their facilities in Oklahoma. Each agency has the responsibility to identify, evaluate, determine eligibility, and provide special education services to students. These agencies will contact the most recent public school attended by a student to obtain copies of educational records so that a FAPE can be provided. OJA and DOC are public schools and should be treated as other public schools when providing records in an expeditious manner.

A student with a current IEP who is in the community jail, such as those managed by city or county agencies (i.e., the sheriff's office), is also entitled to a FAPE. In these circumstances, the LEA where the student is incarcerated is responsible for providing services. LEAs need to work closely with the

local jail in order to gain access to the student and to deliver services. The main concern of the local sheriff or other enforcement agency is safety, while the LEA's obligation is to provide a FAPE.

B. Funding Sources and Insurance

LEAs may use whatever federal, State, private, or other sources of funds that are available to provide services to students under a FAPE. LEAs must not delay the delivery of services required by an IEP until the funding source is located or secured. Public or private insurance may also be used to support the placements if such use is at no cost to the parents and does not decrease the lifetime coverage available.

Medicaid is a federal/State insurance program for which students may be eligible. The Medicaid agency encourages LEAs and states to access the public benefits available through Medicaid when students are eligible.

The Oklahoma Health Care Authority (OHCA) is the State Medicaid agency and administers the public insurance program known as SoonerCare. In Oklahoma, LEAs may enter into intergovernmental agreements or contracts with the OHCA to participate in the Medicaid program. Services provided by the LEA, in accordance with the agreement and OHCA rules, may be billed for reimbursement of eligible claims. LEAs assure a State/local funding match for the federal Medicaid funds received through reimbursements for the services provided. Referrals to and coordination with SoonerCare physicians and health maintenance organizations (HMO) are also addressed under these agreements.

LEAs must obtain parental consent the first time the LEA plans to access public benefits or insurance and provide written notification annually thereafter. If a student transfers to a new LEA, the new LEA must obtain parent consent for accessing public insurance benefits. LEAs must inform parents of their right to refuse LEAs access to the insurance benefits and of the fact that such refusal does not relieve the LEA of its responsibility to ensure that all required services are provided at no cost to the parents. If an LEA is going to access benefits, public or private, it should seek written consent from the parent and inform the parent about the amount of benefits it plans to access. This can be done as part of the annual IEP process. The IEP will define the frequency of any service (for example, occupational therapy one time per week for 30 minutes). However, if the LEA exceeds the amount in the IEP or amends the IEP to provide a different level of service, a new consent must be obtained. If placement in a residential facility, either public or private, is necessary for the student to receive a FAPE, then the placement is at public expense, usually paid for by the LEA. ([Guidance from Office of Special Education Programs](#))

If an LEA believes a medical evaluation is warranted as part of the determination of eligibility or continuing provision of special education services, it must seek parental consent before such evaluation is provided, and the evaluation must be provided at public expense or no cost to the parent. As stated previously, any available insurance may be used to offset the costs of the

evaluation with parental consent. A student should not be denied a medical evaluation if it is needed for a determination of eligibility for special education or the educational needs of the student.

C. Accessible Educational Materials (AEM)

LEAs must provide educational materials in an accessible format to students who are blind or other print disabled. People with a print disability are those who cannot access information in a print format because they are blind, have low-vision, have a physical disability that prevents them from holding or manipulating the information in a printed form, and/or have a reading disorder from an organic dysfunction. The alternative format must be provided in a timely manner, usually about the same time as the traditional materials are received for other students, unless unusual circumstances exist. Accessible formats include braille, audio, large print or digital text, but do not include the altering of the content. When educational materials are offered in a digital format, LEAs must ensure that the digital formats used and purchased are accessible to students who use assistive technology such as screen readers or refreshable braille devices.

Oklahoma mandates the use of specific contract language to publishers of educational materials. Refer to the [Oklahoma Procedures for Providing Accessible Educational Materials](#) technical assistance document for additional information.

The [National Center on Accessible Educational Materials](#) provides resources and technical assistance for educators, parents, students, publishers, conversion houses, accessible media producers, and others interested in learning more about AEM and implementing AEM.

The [National Instructional Materials Accessibility Standard \(NIMAS\)](#) was established in 2004 by the United States Secretary of Education to be used in the preparation of electronic files suitable and used solely for efficient conversion in specialized formats. NIMAS files are provided for the sole, express purpose of producing student-ready instructional materials for elementary and secondary school students who are blind, visually impaired, or print disabled. The [National Instructional Materials Access Center \(NIMAC\)](#) is a federally funded, searchable online file repository of K-12 print text books in the XML-based NIMAS format.

D. Assistive Technology

The IEP team determines whether a student requires assistive technology devices or services. This must be clearly documented in the IEP, and the assistive technology must be provided to the student in a timely manner. If the IEP team determines that the student requires school purchased assistive technology at home or in other settings to receive a FAPE, the assistive technology must be provided to the student at no cost to the parent. The student, staff, and family, as appropriate, should be trained in the use of any assistive technology made available to the student. Refer to the [Technical Assistance Document - Assistive Technology for Children and Youth with Disabilities IDEA Part B](#) for additional information.

LEAs must have in place procedures and practices to ensure the proper functioning of hearing aids. Regular inspection of hearing aids should be documented. This also applies to external components of surgically implanted medical devices such as cochlear implants. However, LEAs are not responsible for programming such devices or for providing post-surgery maintenance, otherwise known as mapping.

E. Physical Education

Physical education services, specially designed--if necessary and documented on the IEP--are made available to every student with a disability receiving special education services to the extent physical education is made available to nondisabled peers.

F. Residential Placement

Placement in a public or private residential program may be determined necessary by the IEP team to provide a FAPE (special education services specifically designed to meet the student's needs) to a student with a disability. The program, including non-medical care and room and board, must be provided at no cost to the parents of the student.

G. Extended School Year

Each LEA must provide extended school year (ESY) services to students who need such services to receive a FAPE. Each LEA is responsible for establishing an ESY policy and to provide ESY special education and related services, including transportation, to students with disabilities whose IEP teams have determined these services are necessary. ESY services are those services a student requires to maintain academic or functional progress beyond the normal school year of the LEA and are not limited to only the summer months. The IEP team makes the determination regarding whether a student needs ESY and, if so, what services will be provided. This includes determining the details of ESY, such as what services will be provided, when and where the services will take place, and the frequency and the duration of the services. Any services provided as ESY must meet the requirements of a FAPE. An LEA must not state that ESY is only for certain groups of students or say it is for all of a certain group. Likewise, an LEA may not limit ESY services to a certain time period or type of activity (*Johnson v. Independent Sch. Dist. No. 4* 921 F.2d 1022 (Oklahoma 1990)).

H. Charter Schools and Virtual Charter Schools

Responsibilities for the provision of a FAPE for students with disabilities who attend public charter schools must be in accordance with Oklahoma State law and federal requirements under the IDEA. The Oklahoma Charter Schools Act requires that students served in charter schools or virtual charter schools must be protected by the same State and federal laws as LEAs for the education of students with disabilities. A charter school or virtual charter school sponsored by an LEA is considered an LEA for purposes of federal funding.

Students, who attend public charter schools or virtual charter schools and their parents, retain all the rights given to them in the public school under the IDEA. Charter schools or virtual charter schools

must make available the services needed to provide education for students with IEPs. The charter that is part of an LEA has, as part of its resources, the full continuum of services and supports within the LEA. At times, a student's IEP may determine that specific services are needed to offer a FAPE and are not available at the charter school, therefore these services should be provided through the LEA at no cost to the parent(s). The charter that is part of the LEA may not, however, decline to serve students with IEPs.

I. Medication

LEAs may not require medication as a condition of attending school, receiving an evaluation, or receiving services. Parents, in consultation with physicians, make the decisions regarding their student and any medication they administer or do not administer. Nothing prohibits an LEA, however, from sharing classroom observations regarding the academic, behavioral, or functional performance of a student with the parents in order to better inform the parents of the student's behavior and academic performance when taking or not taking medication. If an LEA believes a student is not receiving medication that is essential for his or her health or education, it may refer the family to the Department of Human Services (DHS) for assistance.

Section 3. Case Law Interpretations of a FAPE

The United States Supreme Court has further defined the term FAPE as a result of the 1982 case of *Hendrix Hudson Central School LEA Board of Education v. Rowley*. The case set a standard for FAPE that is commonly referred to as the Rowley Standard. The Rowley decision defines FAPE as including these two components:

1. An IEP developed in adequate compliance with the IDEA procedures; and
2. An IEP reasonably calculated to enable the student to receive educational benefit.

The Rowley decision also states that, if a student is being educated in the general education classroom, the IEP should be reasonably calculated to enable the student to achieve passing marks and advance from grade to grade.

[Board of Education of the Hendrick Hudson Central School District, et al., v. Rowley, by her parents, Rowley et ux., 458 U.S. 176 (1982)]

In *Endrew F. v. Douglas County School District* (2017), the United States Supreme Court ruled in favor of a special education student. The opinion of the court expanded the definition of "appropriate" regarding FAPE.

It was the court's opinion that a child's educational program must be appropriately ambitious in light of his or her circumstances; and, that every child should have the chance to meet challenging objectives. *Endrew F.* thus expanded the substantive standard of a FAPE, (2) above, to mean that

an IEP must be “reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.”

Chief Justice John G. Roberts Jr stated, “When all is said and done, a student offered an educational program providing ‘merely more than de minimis’ progress from year to year can hardly be said to have been offered an education at all.”

[Endrew F. v. Douglas County School Dist. RE–1]

Legal Citations

Code of Federal Regulations, Title 34: Education

- §300.17 Free appropriate public education.
- §300.101 Free appropriate public education (FAPE).
- §300.102 Limitation—exception to FAPE for certain ages.
- §300.103 FAPE—methods and payments.
- §300.104 Residential placement
- §300.105 Assistive technology.
- §300.106 Extended school year services.
- §300.108 Physical education.
- §300.109 Full educational opportunity goal (FEOG).
- §300.172 Access to instructional materials.
- §300.174 Prohibition on mandatory medication.
- §300.209 Treatment of charter schools and their students.
- §300.210 Purchase of instructional materials.
- §300.300 Parental consent.
- §300.305 Additional requirements for evaluations and reevaluations.

OSERS/OSEP Policy Documents

[OSEP Dear Colleague Letter on FAPE, 11/16/2015](#)

[OSEP Dear Colleague Letter on IDEA for students with disabilities in correctional facilities, 12/05/2015](#)

[OSEP Dear Colleague Letter regarding education of children with disabilities attending public virtual schools, 08/05/2016](#)

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CHAPTER 2. CHILD FIND

The Child Find system contains 3 components leading to the determination of whether or not a student has a disability and requires special education. The components are locating, identifying, and evaluating. This chapter describes locating and identifying activities. The evaluating component is covered in [Chapter 4: “Initial Evaluation & Eligibility”](#).

Section 1. LEA Responsibility

The Local Education Agency (LEA) is responsible for establishing and implementing an ongoing Child Find system to locate, identify, and evaluate students suspected of having a disability, ages 3 through 21 years, who may need special education, regardless of the severity of the disability. The LEA is also responsible for coordinating with SoonerStart Early Intervention (EI) Program regarding the Child Find system for children ages birth to 3 years of age. The LEA may appoint an individual to coordinate the development, revision, implementation, and documentation of the Child Find system. The Child Find system includes all students within the LEA’s geographic boundaries including students who are:

1. Enrolled in public school;
2. Enrolled in charter schools, virtual charter schools, and alternative schools;
3. Enrolled in home school;
4. Enrolled in private elementary and secondary schools (including religious schools) located in the LEA; including out-of-state parentally-placed private school students with disabilities even if the students are not residents of the LEA;
5. Enrolled in educational programs in correctional facilities located in the LEA;
6. Enrolled in Head Start;
7. Enrolled in State Institutions;
8. Enrolled in other child care or treatment facilities;
9. Not enrolled in elementary or secondary school, including children ages 3 through 5;
10. Highly mobile students, such as migrant and homeless as defined by the McKinney Vento Homeless Assistance Act (see Glossary); and
11. Wards of the state.

Section 2. Locating Students

Locating students who may have disabilities involves coordinating with other agencies and promoting public awareness.

A. Public Awareness

The LEA must take the necessary steps to ensure that LEA staff and the general public are informed of the following:

1. The availability of special education services;
2. A student's right to a free appropriate public education (FAPE);
3. Confidentiality protections; and
4. The special education referral process.

This information may be provided through a variety of methods to include, but not limited to: distributing brochures or flyers throughout the community, including information in school or LEA publications, disseminating articles and announcements to newspapers, arranging for radio and television messages and appearances, speaking at faculty meetings or LEA professional developments, and making presentations, as well as electronic forms of communication.

Section 3. Identifying Students

The identification component of Child Find may include screening or coordinated early intervening services (CEIS). However, general education interventions cannot delay the initial evaluation for special education services of a student suspected of having a disability. The procedural rights under the Individuals with Disabilities Education Act (IDEA) are afforded when the student is referred for a special education evaluation by the parent or the LEA.

A. Screening

Screening is one way of identifying students who are not meeting or who may not be meeting Oklahoma Academic Standards or Oklahoma Early Learning Standards. Screening is an informal but structured and organized process. A variety of methods may be used to screen students, including performance on assessments, curriculum-based measures, daily classroom work, observations, hearing and vision screeners, developmental milestones, and/or kindergarten readiness measures. The screening of a student by LEA staff to determine appropriate instructional strategies for curriculum implementation must not be considered an evaluation for eligibility for special education and related services. Although screening is an important part of the Child Find system, screening cannot be used to delay processing a referral to consider a special education evaluation where immediate action is warranted.

B. Coordinated Early Intervening Services (CEIS)

Under the LEA funding option, CEIS are services for K-12 general education students who need additional academic and behavioral supports to succeed in the general education environment. When a school's screening process reveals that a student or groups of students are at risk of not meeting the Oklahoma Academic Standards, the general education problem-solving team will consider each student's need for evidence-based interventions in order to help the students succeed. These interventions are referred to as early intervening services or general education interventions, accommodations, and strategies. Without the use of these interventions, it cannot be determined whether a student's learning difficulties are due to a disability and require special education services or if the student is merely in need of additional services or supports for a period of time. It is important to remember that students who receive these types of services are not currently identified as needing special education or related services and do not have a right to FAPE. Therefore, the IDEA procedural safeguards are not applicable at this time.

The overarching goal is to improve student achievement using research based interventions matched to the instructional need and level of the student. Monitoring student response to a series of increasingly intense interventions assists in identifying and addressing academic and behavioral difficulties prior to student failure.

Problem solving is a process of using data-based decision-making to:

- Provide research-based curriculum to all students in academic and behavior areas;
- Identify students who are not meeting standards;
- Plan and provide research-based interventions in a timely manner;
- Monitor student progress closely; and
- Intervene at increasingly intensive levels if students do not progress toward achievement standards.

LEAs will implement comprehensive coordinated services and activities that provide educational and behavioral evaluations, services, and supports. These services may also include professional development for teachers and other staff, enabling them to deliver scientifically based academic and behavioral interventions. This may include scientifically based literacy instruction, and where appropriate, training on the use of adaptive and instructional software. CEIS should be based on whole-school approaches such as: scientifically-based curriculum and instruction; positive behavior supports; or, a multi-tiered intervention system (e.g., [The Oklahoma Tiered Intervention System of Support \(OTISS\)](#)).

If an LEA chooses to use up to 15% of IDEA Part B Federal funds for CEIS for students in K-12 who are not currently identified as students with disabilities, but who need additional support in the general education environment, additional requirements may apply, affecting maintenance of effort. If the LEA uses Part B funds to provide CEIS, the LEA must annually report to the OSDE the number of students serviced with CEIS and the number of students receiving CEIS who subsequently received special education services during the preceding two year period.

If an LEA is found to have a significant disproportionate representation in special education, the LEA is required to use 15% of its Part B funds for CEIS.

Section 4. Special Education Referral for Evaluation

If through Child Find activities, a student is identified as possibly having a disability and needing special education services, parents may be asked for their consent to evaluate their child. Special education referrals for evaluation may be made for a variety of reasons, including but not limited to academic and/or behavioral concerns. See [Chapter 4, “Initial Evaluation & Eligibility”](#) for additional information.

Legal Citations

Code of Federal Regulations, Title 34: Education

§300.111 Child find.

§300.226 Early intervening services.

§300.302 Screening for instructional purposes is not evaluation.

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CHAPTER 3. YOUNG CHILDREN, AGES 3-5

Early identification and intervention for young children with special needs is critical for their future success. The Individuals with Disabilities Education Act (IDEA) 2004 requires that services be provided for young children with disabilities beginning at birth through age five. SoonerStart is Oklahoma's Early Intervention Program for children birth to 3 years of age. Special education services and supports may be continued through the public schools for young children with disabilities beginning at age three upon an eligibility determination. Some of the regulations outlined in this chapter do not apply to children who have enrolled in pre-kindergarten or kindergarten or are school-aged students.

IDEA requires that the local school district locate, identify, and evaluate all students with disabilities ages 3 through 21 who are educated within the Local Education Agency (LEA) geographic boundaries. These delays may occur in the areas of adaptive development, cognitive development, communication development, physical development, and/or social/emotional development. The Local Education Agency (LEA) is responsible for establishing and implementing an ongoing Child Find system to locate, identify, and evaluate students suspected of having a disability, ages 3 through 21 years, who may need special education, regardless of the severity of the disability. The LEA is also responsible for coordinating with SoonerStart Early Intervention (EI) Program regarding the Child Find system for children ages birth to 3 years of age. The LEA may appoint an individual to coordinate the development, revision, implementation, and documentation of the Child Find system. The Child Find system includes all students within the LEA's geographic boundaries. See [Chapter 2, Section 1, "LEA Responsibility"](#) for more information.

Section 1. Locating Students

Locating students who may have disabilities involves coordinating with other agencies and promoting public awareness.

A. Coordination

For infants and toddlers, birth to 3 years of age, Child Find may be provided by the SoonerStart EI Program. Primary responsibility for the EI Program is shared between the Oklahoma State Department of Education (OSDE) and the Oklahoma State Department of Health (OSDH).

B. Public Awareness

The LEA must take the necessary steps to ensure that LEA staff and the general public are informed of the following:

- The availability of special education services;
- A student's right to a free appropriate public education (FAPE);

- Confidentiality protections; and
- The special education referral process.

This information may be provided through a variety of methods to include, but not limited to: distributing brochures or flyers throughout the community, including information in school or LEA publications, disseminating articles and announcements to newspapers, arranging for radio and television messages and appearances, speaking at faculty meetings or LEA professional developments, and making presentations, as well as electronic forms of communication.

Section 2. Identifying Students

The identification component of Child Find may include screening or Coordinated Early Intervening Services (CEIS). However, general education interventions cannot delay the initial evaluation for special education services of a student suspected of having a disability. The procedural rights under the Individuals with Disabilities Education Act (IDEA) are afforded when the student is referred for a special education evaluation by the parent or the LEA as defined in [Chapter 2, “Child Find”](#).

Section 3. Referrals from SoonerStart

LEA's may receive requests for referral from parents with children who are within 45 days of their 3rd birthday who have not received early intervention (SoonerStart). In these cases, the child would be considered a child under Child Find and the referral process would proceed as usual.

By the child's third birthday, the LEA is responsible for the following:

- Determining whether the referred child is eligible in accordance with Oklahoma's evaluation considerations for special education services under Part B of the IDEA;
- Developing and implementing an individualized education program (IEP) in accordance with State policies and practices for special education; and
- Assuring that the Part B written notice and parent consent requirements are met and parents have available the rights and protections under Part B.

If a toddler in the SoonerStart program is considered potentially eligible for IDEA Part B (619) services, SoonerStart, with the approval of the family, will convene a Transition Planning Conference (TPC) among the required SoonerStart staff, the family, and the LEA not fewer than 90 calendar days or more than 9 months before the child's third birthday.

Both the LEA and SoonerStart are required to participate in the TPC.

Section 4. Late Referrals to SoonerStart

If a child is referred to SoonerStart fewer than 45 calendar days prior to the child's third birthday, SoonerStart **is not required to** conduct an initial evaluation, assessment and initial Individualized Family Service Plan (IFSP) meeting for the child. With parental consent, SoonerStart will refer the child to the LEA or other appropriate community services.

Section 5. Late Referrals to LEA

A child is considered a late referral to LEA if he/she is determined eligible for SoonerStart services after 33 months of age (or less than 90 calendar days from the child's third birthday). If a child is referred to the LEA less than 90 calendar days before the child's third birthday, SoonerStart is required to:

- Conduct an initial evaluation, assessment, and initial IFSP meeting for the child;
- If the child is potentially eligible for IDEA Part B services, SoonerStart will provide notification to the LEA with a parent consent as soon as possible;
- Information pertaining to the child, initial evaluation, assessment and IFSP, will be shared with receiving LEA or community services with written consent;
- A Transition Planning Conference (TPC) is recommended, but is **not** required.
- If the child's birthday is in the summer, SoonerStart is encouraged to schedule in the spring prior to the child's third birthday to allow for availability of LEA staff and time for the plan to be in place before the school year begins.

Section 6. Transition Planning Conference (TPC)

A. Purposes

- To promote a seamless transition from IDEA Part C services (SoonerStart) to potential services after the child's third birthday;
- To introduce the family to the LEA staff;
- To provide the family a better understanding of School Based Special Education Services; and
- To develop a plan that encompasses the steps necessary to determine eligibility, and if needed, to develop an Individualized Education Program (IEP) by the child's third birthday.

B. Topics at the TPC

- The eligibility and timeline requirements;
- The similarities and the differences under the IDEA between the SoonerStart program (Part C) and special education programs (Part B);
- The process for consenting to an IDEA Part B evaluation; and
- The steps needed to be completed to determine eligibility for IDEA Part B services.

C. Members of the TPC

- Family Members
- Persons invited by the family
- SoonerStart Staff
- LEA Staff (both LEA and SoonerStart are required to attend)
- Other community program staff (Head Start, Community Child Care, etc.)

SoonerStart must initiate communication with the family six to twelve months prior to the child's third birthday regarding the transition from SoonerStart (Part C) to preschool special education services (Part B includes, but is not limited to, LEAs, OSB, OSD, etc.). SoonerStart will notify the child's LEA, with parental permission to make a referral and schedule the transition planning conference. If a child will reach the third birthday during the summer, the transition meeting must occur a minimum of 90 calendar days prior to the child turning 3 years old. This may occur at the end of the school year prior to summer.

Parental consent must be obtained prior to SoonerStart's release of the child's records to the LEA. If parent consent to release records is not granted or the LEA determines that additional information is necessary to provide a FAPE to a child, the LEA must seek a review of existing data to determine whether to evaluate the child in any area before the child's third birthday. Parental consent is necessary for the LEA to conduct such evaluations. Due process hearing provisions under the IDEA for identification, evaluation, and the provision of a FAPE are available.

The group reviewing existing data must consider all information that the parent provides at the time of review. SoonerStart will provide the team with the most current evaluation data available. The group must review the evaluation information and identify what, if any, additional evaluation information is needed. If it is not necessary to evaluate a child again and sufficient data exists, the group should convene to complete the Multidisciplinary Evaluation and Eligibility Group Summary (MEEGS), where existing information will be documented.

Section 7. Initial Evaluation

Requests for initial evaluation may come from a variety of sources. These may include:

- Early Childhood Screening
- SoonerStart Early Intervention
- Intervention Teams
- Parent(s)
- Public Agency
- Medical Professionals

A request for an initial evaluation is made when it is suspected that a student may be a student with a disability who needs special education services. Requests for initial evaluations may be made for a variety of reasons dealing with academic and/or behavior concerns. For a preschool child the request for an initial evaluation may result from a screening or from SoonerStart Early Intervention. A school age student should participate in general education intervention(s) prior to the request for an initial evaluation. As a result of general education intervention(s), the Local Education Agency (LEA) should have data-based documentation of repeated assessments, which may indicate a basis for either a discontinuation of educational interventions, increased educational interventions, or a special education referral. Additionally, a parent may request an evaluation at any time. LEA's may receive requests for referral from parents with children who are within 45 days of their 3rd birthday who have not received early intervention (SoonerStart). In these cases, the child would be considered a child under Child Find and the referral process would proceed as usual.

An [OSEP policy letter](#) addressed to John Carlos Torres (2009), states that screening 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. The IDEA does not require parental consent prior to a screening. Moreover, nothing in either the IDEA or its implementing regulations requires a State or local educational agency (LEA) to, or prohibits a State or LEA from, developing and implementing policies to temporarily remove a student from his or her classroom for purposes of administering screening instruments to determine appropriate instructional strategies for the student. However, screening may not be used to delay an evaluation for special education and related services.

Section 8. Developmental Delay

The LEA may choose to use the term “developmental delay” by selecting this option in the annual LEA agreement by July 1st. The eligibility category on the MEEGS form must be “developmental delay” (except for the categories of deaf-blindness, hearing impairment including deafness, and visual impairment including blindness). **If the LEA chooses not to use the term “developmental delay,” each student(s) eligibility group must determine whether a student is a student with a disability as defined by the suspected categorical area.** Please refer to [Chapter 4, Section 7](#) regarding categorical placement.

A. Evaluation Components for Developmental Delay

In Oklahoma, children ages 3-5 (including 2-year-olds who will turn three during the school year) who show a significant delay may receive a comprehensive evaluation to determine eligibility for services.

The comprehensive evaluation includes assessing the following areas of development:

- Adaptive development-includes daily living skills (e.g., eating, dressing, and toileting) as well as skills involving attention and personal responsibility;
- Cognitive development-includes skills involving perceptual discrimination, memory, reasoning, academic skills, and conceptual development;
- Communication development-includes skills involving expressive and receptive communication abilities, both verbal and nonverbal;
- Physical development-includes skills involving coordination of both the large and small muscles of the body (i.e., gross, fine, and perceptual motor skills); and
- Social/Emotional development-includes skills involving meaningful social interactions with adults and other students including self-expression and coping skills.

After the comprehensive evaluation is completed, the eligibility group meets to review all of the information about the child in order to determine eligibility.

B. Eligibility Determination as Defined in 70 O.S. §13-123 for Developmental Delay

Young children ages 3-5 may qualify for special education services under developmental delay. To qualify, students generally meet one of the following:

- The student functions at least one and a half (1.5) standard deviations below the mean in two or more broad developmental domains.
- OR**
- The student functions two (2) standard deviations below the mean in at least one broad developmental domain.

Sufficient information shall be obtained using a variety of information sources to confirm that a disability exists.

No single source of information, such as a single measure or score, shall be used to determine if a young child is eligible or not eligible for special education and related services according to [34 CFR §300.304 \(b\)\(2\)](#).

Eligibility for special education and related services as a young child shall be determined on the basis of multiple sources of information, including, but not limited to:

- Vision/hearing screening
- Health/medical information
- Adaptive behavior
- Social/emotional status
- General intelligence
- Academic performance (present levels)
- Communication status (speech/language functioning)
- Motor abilities
- Developmental history
- Observations of the student during instruction
- Historical review of the student's academic progress
- Interview(s) with parent(s) and teacher(s)
- Assistive Technology (AT)

A medical or health diagnosis does not automatically qualify a student for special education services under IDEA; but, a group should consider the data as part of a comprehensive evaluation.

For students turning 5 on or before September 1, through age 9, criteria for delay in developmental domains or indicators for specific disability categories may be used to determine eligibility through the comprehensive evaluation process for developmental delay. Criteria for specific disability categories (e.g., autism, speech language impairment, other health impairment) may be used to determine developmental delay eligibility for students in this age range. However, the LEA must still mark the primary eligibility category of “developmental delay” on the MEEGS.

The LEA must use appropriate assessments to address areas of need to guide the appropriate suspected disability (e.g., if you suspect Intellectual Disability, you must assess adaptive, cognitive, achievement, and communication and meet criteria for Intellectual Disability).

An [OSEP policy letter](#) addressed to Dr. Linda Brekken in 2010, states that the category of specific learning disability is generally not applicable to children ages 3, 4, and 5. Moreover, the IDEA does not require, or encourage, an LEA to use a Response to Intervention approach prior to a referral for evaluation or as part of determining whether a 3, 4, or 5 year old is eligible for special education and related services.

A young child aged 3-5 who is eligible for special education services is a child who has one or more of the following disabilities, as defined in [34 CFR §300.8](#), and who, by reason thereof, needs special education and related services:

- Autism
- Deaf-Blindness
- Deafness/Hearing Impaired
- Emotional Disturbance
- Intellectual Disability
- Hearing Impairment
- Multiple Disabilities
- Orthopedic Impairment
- Other Health Impairment
- Specific Learning Disability
- Speech or Language Impairment
- Traumatic Brain Injury
- Visual Impairment
- Developmental Delay

Special considerations impacting reevaluation are needed for students who have been determined eligible for special education services under the category of Developmental Delay (DD). These considerations must be made in accordance with regulations regarding a student's continuing eligibility for services. If a student ages 3 through 9, was determined eligible as a child with DD, a reevaluation and/or documentation of eligibility on the written notice must be conducted before the student turns age 10. This will ensure determination of whether the student continues to be a student with a disability as defined by any of the categorical areas.

Section 9. Least Restrictive Environment (LRE) and Continuum of Alternative Placements.

The Individuals with Disabilities Education Act (IDEA) states that, to the maximum extent appropriate, all students with disabilities, 3 through 21 years of age, are to be educated with age appropriate peers, both with and without disabilities. This is known as the Least Restrictive Environment (LRE). The LRE is the appropriate balance of settings and services to meet the student's individual needs. The Local Education Agency (LEA) must have an array of services and a continuum of educational setting options available to meet the individual LRE needs of each student. **Placement is not the same as location.**

Young children with disabilities in Oklahoma may receive their special education services in a variety of environments. The child's IEP team will discuss the individual child's needs and determine the type of services, supports, and setting(s) that are appropriate to meet those needs as stated in [Chapter 5, "Least Restrictive Environment"](#).

LRE considerations also apply to preschool age students with disabilities who are entitled to receive a free appropriate public education (FAPE). Settings for young children ages 3-5 years old are the same as for all other school age students. These may include public or private early childhood programs. LEAs that do not operate early childhood programs for young children without disabilities

are not required to initiate general education programs solely to satisfy LRE requirements, but must provide all appropriate services in the LRE for young children with disabilities ages 3-5 years, which may include, but are not limited to:

- Providing opportunities for participation (even part-time) of preschool students with disabilities in public or private regular early childhood programs, such as Head Start;
- Private early childhood programs or other community-based early childhood settings that integrate students with and without disabilities; and
- Locating classes for preschool students with disabilities in elementary schools.

The educational needs of preschool aged children who demonstrates delay(s) in assessed domain(s) ([Chapter 3, Section 7, “Initial Evaluation”](#)) are considered when determining their placement, location, and services. This applies to children ages three through those turning five years old on or before September 1st. Placement and services are individually determined based upon the IEP team’s consideration of a child’s present levels of performance, abilities, and needs. The IEP team considers which services and placement are necessary to implement the goals and short-term objectives or benchmarks (for children taking an alternate assessment aligned to alternate achievement of the standard) for the child to benefit from an IEP that is reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances. Preschool children must be educated in the environment that the children would participate in if nondisabled to the maximum extent appropriate. The IEP team determines the appropriate instructional environment(s) and placement(s) necessary to implement the IEP goals. The placement options may include the following:

- Children who attend a regular early childhood program that includes at least 50% of children without disabilities. Regular early childhood programs may include: Head Start; Kindergarten; Private Kindergarten; Reverse mainstream classrooms; Preschool classes offered to an eligible pre-kindergarten population by the public school system; and, group child developmental center and child care.
- (A) Children attending a regular early childhood program at least 10 hours per week and either:
 - (A1) Receive the majority of hours of special education and related services in the regular early childhood program;
 - OR**
 - (A2) Receive the majority of hours of special education and related services in some other location.
- (B) Children attending a regular early childhood program less than 10 hours per week and either:

- (B1) receiving the majority of hours of special education and related services in the regular early childhood program;

OR

- (B2) receiving the majority of hours of special education and related services in some other location.

An [OSEP policy letter](#) addressed to reaffirm the position of the U.S. Department of Education (2017), states that special education and related services delivered in the child's classroom in the course of daily activities and routines in which all children in the classroom participate (e.g., "circle time", "learning centers"), would be considered as being received in the Regular Early Childhood Program. However, services delivered in other locations that remove the child from the opportunity to interact with children without disabilities would not be considered as being received in the Regular Early Childhood Program. These include, but are not limited to, services delivered in a 1:1 therapeutic setting, or in a small group comprised solely of children with disabilities in another location within the building where the regular early childhood program is located.

- A program that includes less than 50 percent of children without disabilities. Special education programs include, but are not limited to, special education and related services provided in: regular school buildings; trailers or portables outside regular school buildings; child care facilities; hospital facilities on an outpatient basis; other community-based settings; separate schools; and, residential facilities.
 - (C1) Special education class. Children who attend a special education program in a class with less than 50% of children without disabilities.
 - (C2) Separate school. Children who receive education programs in public or private day schools designed specifically for children with disabilities, (i.e., Oklahoma School for the Deaf (OSD) or Oklahoma School for the Blind (OSB) or a child placed by the LEA in an accredited day school, which provides special education services)).
 - (C3) Residential Facility. Children who received education programs in public or privately operated residential schools or residential medical facilities on an inpatient basis.
- Children not attending a special education program who receive the majority of special education and related services in the residence of the child's family or caregiver.
 - (D1) Home (the child receives some or all of his/her special education services in the primary residence of the child's family or caregivers and does not attend a regular early childhood program or a special education early childhood program (**Note:** this includes students who receive special education both at home and in a service provider location). The term "caregiver" includes babysitters).

- (D2) Service Provider Location (This includes a child who does not receive any special education services in the home and does not attend an early childhood program or a special education childhood program. This includes speech instruction provided in private clinicians' offices, clinicians' offices located in school buildings, hospital facilities on an outpatient basis, libraries, and other locations where services are provided on a regular basis).

Section 10. Special Education and Related Services

Special education and related services shall be provided as defined in rule [210:10-1-19](#) of the Oklahoma Administrative Code (OAC).

It shall be the duty of each school district to provide special education and related services for all children with disabilities who reside in that school district in accordance with the Individuals with Disabilities Education Act (IDEA), [U.S.C. §1400](#), et seq. A school district/LEA may fulfill this duty, to provide FAPE, by one of the following:

- The district directly providing special education for such children;
- The district joining a cooperative program with another district or districts to provide special education;
- The district joining in a written agreement with a private or public institution, licensed residential child care and treatment facility or day treatment facility within the district to provide special education and related services to students with disabilities; or
- The district entering into a written agreement with another school district whereby the resident district agrees that the receiving school district will provide FAPE to an eligible student with a disability on behalf of the resident district. This agreement is an IEP Service Agreement entered into solely for the purpose of providing special education and related services (FAPE) to an eligible student with a disability. In this case, all funds remain with the resident school district, which agrees to pay tuition to the receiving district. Further, the average daily membership (ADM) of the student is credited to the resident district. The resident district has the responsibility to provide FAPE, special education and related services, including transportation for students serviced pursuant to this provision. Representatives of the resident district are responsible for the development and implementation of the IEP and must be provided the opportunity to participate in all IEP meetings. In the event of a due process complaint, the resident district retains responsibility.

A. *Transportation as a Related Service*

The provision of transportation as a related service for preschool children with disabilities must be considered on an individual basis by the IEP team. The team must consider transporting a preschool

aged child to the site where special education and related services are provided, if that site is different from the site at which the child receives other preschool services.

For more information, see [Chapter 5, Section 3, “IEP Development”](#).

Section 11. IEP Service Agreements

IEP Service Agreements are granted by approval of both the resident and receiving school districts. Such agreements shall be memorialized in writing and documented in State Department of Education's student information system. This agreement should not be documented as a transfer pursuant to the Education Open Transfer Act.

IEP Service Agreements entered into pursuant to this section for three (3) consecutive years to the same school district shall lead to automatic renewal of the agreement each year. In these cases, the resident district shall continue to pay tuition as provided by law. Automatic renewal occurs only in cases where districts have entered into IEP Service Agreements.

Section 12. Early Childhood Outcomes (ECO)

LEA's are required to report outcomes data for children served through IDEA Early Childhood Program.

The three student outcome areas required to be reported include:

- Positive social-emotional skills (including social relationships);
- Acquisition and use of knowledge and skills (including communication skills); and
- Use of appropriate action to meet their needs.

A. ECO Ratings

ECO Ratings are provided for eligible students in the IDEA (619) Program according to their developmental abilities in each of the outcome areas when they begin Special Education Services and when they exit the program.

- All students must have an ECO Entry Rating, unless the child will exit the program within 6 months.
- All students with 6 months or more of IEP services must have an ECO Exit Rating.
- An ECO entry rating on all three early childhood outcomes is required to be completed with the exception of a child who enrolls within 6 months of turning 6 years old.

- The ECO Entry Rating date must reflect the date of the IEP.
- The ECO Exit Rating is completed on/before the student's 6th birthday or as the student exits the program.

B. Child Outcomes Summary Form (COS)

The child outcome ratings and supporting evidence are documented on the Child Outcome Summary Form (COS).

The COS is a 7 point scale for summarizing information related to a student's progress on each of the three child outcome areas required by OSEP. Information will be collected from multiple sources to describe a student's functioning on each of the outcomes and summarized on the COS. The information may include one or more norm-referenced or curriculum-based assessments, parent reports on child's skills and behavior, classroom observations, or other sources.

The COS is NOT an assessment instrument. It is a device used for summarizing across multiple sources of information about the child. The COS allows the results of the different assessments given to different children across the State to be placed on the same scale to be aggregated for federal reporting.

The service provider completing the Entry and Exit COS should explain ECOs to the family and give them an opportunity to participate in the ratings for their child. Whether or not families choose to participate in the rating discussion, professionals must be able to explain why the rating is being done and what it means.

COS ratings rely on information about a child's functioning across situations and settings. Parent input is crucial: family members see the child in situations that professionals do not. As members of the IFSP team, families are natural participants in the COS rating discussion. If families choose not to participate, professionals must be able to explain why the rating is being done and what it means.

Section 13. Average Daily Attendance

The legal average daily attendance/membership for the purposes of calculating state aid to any district as defined in rule 210:25-3-2 of the Oklahoma Administrative Code will be based upon the following:

- Attendance/membership in that district of residence and legally transferred pupils (except Special Education pupils transferred), five (5) years of age, September 1 of that school year or not over twenty-one (21) years of age as of September 1 of that school year. Average daily attendance/membership also includes students age three (3) and older who have an Individualized Education Program (IEP).

- Provided, beginning with the 1990-91 school year, all children who are at least four (4) years of age on or before September 1 and who have not attended a public school kindergarten shall be entitled to attend early childhood programs at any public school in the state where such programs are offered. These students shall be included in the average daily attendance/membership.
- Children age three (3) who have an Individualized Education Program (IEP) which indicates that they need to attend an early childhood program in order to obtain a free appropriate public education in the least restrictive environment shall also be entitled to attend such programs, and shall also be included in the average daily attendance/membership.

Note: Children age three (3) with a Primary Disability of Speech/Language Impairment, which the IEP team determines the child does not need to attend an early childhood program.

Legal Citations

Code of Federal Regulations, Title 34: Education

§300.8 Child with a disability.

§300.304 Evaluation procedures.

Oklahoma Administrative Code (OAC)

210:10-1-19 Special education and gifted education transfers.

210:25-3-2 Average daily attendance/membership.

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CHAPTER 4. INITIAL EVALUATION & ELIGIBILITY

The Child Find process is intended to locate and identify children (birth through ages 21) who may be in need of special education services. Information obtained from the Child Find process (screenings, assessments, interventions, etc.) will assist teams in making decisions about referrals for special education evaluations. This chapter includes information on the components and the process of conducting a comprehensive evaluation to determine eligibility under the Individuals with Disabilities Education Act (IDEA).

Section 1. Request for Initial Evaluation

A parent of a child or a public agency may initiate for an initial evaluation to determine if a child is a child with a disability. Requests for initial evaluations may be made for a variety of reasons. For a preschool child the request for an initial evaluation may result from a screening or from SoonerStart Early Intervention. A school age student should participate in general education intervention(s) prior to the request for an initial evaluation, however, according to an [OSEP policy letter](#) addressed to State Directors of Special Education (11-07), the use of RTI strategies cannot be used to deny or delay the provision of a full and individual evaluation.

As a result of general education intervention(s), the Local Education Agency (LEA) should have data-based documentation of repeated assessments, which may indicate a basis for either a discontinuation of educational interventions, increased educational interventions, or a special education referral. Additionally, a parent may request an evaluation at any time.

Section 2. Parent Rights

Upon a request for an initial evaluation, regardless of the source, the first action the LEA must take is to provide the parents a copy of the Parents Rights in Special Education: Notice of Procedural Safeguards available at <http://ok.gov/sde/documents-forms>. The [OSEP Letter to Boswell \(2007\)](#) states, that if a parent's primary language is not English, a translated copy in his or her language must be given to the parent to ensure that the parent has been fully informed of all information relevant to the activity.

A parental request for an evaluation does not automatically trigger a requirement to evaluate; however, the LEA must thoroughly investigate the possible existence of a disability and potential need for services before refusing to evaluate, especially when the request is from a parent and the student is not progressing well or not making adequate progress in the general education curriculum. The LEA is required to provide the parent with written notice if a determination is made that the student does not need a special education evaluation requested by the parent. If the school determines that it will proceed with a special education evaluation, the parent must be provided a written notice identifying the areas to be evaluated along with a request for written consent from the parent. In both cases, the LEA is obligated to provide the parents with written notice along with a copy of the Parents Rights in Special Education: Notice of Procedural Safeguards. In addition,

the LEA is required to inform parents of their right to an independent educational evaluation. See [Chapter 11, Section 8, “Independent Educational Evaluations \(IEE\)”](#) for a full discussion of IEEs.

Section 3. Review of Existing Data (RED)

When a request has been made for an initial evaluation and as part of any reevaluation under this part, qualified professionals and the parent must conduct a review of existing data to the extent appropriate. This data includes evaluations and information provided by the parents, current classroom-based, local, or State assessments, classroom-based observations, and observations by LEA staff, and the student’s response to scientifically research-based interventions. On the basis of the RED, there must be a determination of whether or not additional data will be needed.

A. No Additional Data Needed

If the group determines that no additional data are needed to determine whether the student is a student with a disability, and to determine the student’s educational needs, the LEA must notify the parents:

1. Of that determination and the reasons for it; and
2. The right of the parents to request an assessment to determine whether the student is a student with a disability, and to determine the educational needs of the student.

If the parent(s) requests an evaluation of their student, the LEA may refuse to do so, but it must provide the parent(s) with Written Notice of the refusal to conduct the evaluation and the reasons for the refusal. The parent(s) may request mediation or due process if they dispute the refusal to conduct an evaluation.

B. Additional Data Needed

If additional data are needed, the group must ensure all data will be collected within the evaluation timeline. The procedures used to collect the data must be described on the Written Notice for the initial evaluation and parental consent must be obtained.

Section 4. Written Notice/Parental Consent

A. Written Notice

Whenever a student has been referred for an evaluation, the LEA must provide Written Notice to the parent(s) that describes any evaluation procedures the LEA proposes to conduct. The purpose of providing notice to the parents is so they understand what action the LEA is proposing (in this case, to conduct an initial evaluation) and the basis used for determining the action is necessary.

B. Request for Parental Consent

The LEA must obtain informed consent from the parent of the student before conducting a comprehensive evaluation, including individualized assessment(s) for an evaluation.

Informed consent means:

- The parent has been fully informed of all information relevant to the proposed action for which consent is being sought, in his or her native language, or other mode of communication;
- The parent understands and agrees (in writing) to the proposed action for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and
- The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time. However, revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked).

Parental consent for initial evaluation must not be construed as consent for initial provision of special education services.

C. Failure to Respond or Provide Consent

The LEA must make reasonable attempts to obtain consent from the parents to conduct the initial evaluation. The LEA must document such attempts (detailed records of telephone calls made or attempted and the results, copies of written or electronic correspondence sent to the parents and their response if any, and visits made to the parents' home or place of employment, and the results, if any, from the parents).

If the parent does not provide consent or fails to respond to a request to provide consent for an initial evaluation, the LEA may, but is not required to, pursue the initial evaluation by utilizing mediation or by requesting a due process hearing. The LEA does not violate its obligation for Child Find by not conducting an initial evaluation if the LEA declines to pursue the initial evaluation through mediation or a due process hearing.

Additionally, under the disciplinary protections, the LEA is not deemed to have knowledge of the student's disability if the parent has not allowed an evaluation or refused services; or the student has been evaluated and determined not to have a disability.

D. Parental Consent Not Needed

Parent consent is not needed for the LEA to perform these routine duties:

- Review existing evaluation information.
- Screen a child to determine appropriate instructional strategies.
- Administer an evaluation that is given to all students without consent for evaluation.

In the [*OSEP Letter to Torres \(2009\)*](#), it states that an LEA can develop and implement policies that permit screening children to determine if evaluations are necessary. However, screening may not be used to delay an evaluation for special education and related services. Moreover, nothing in IDEA or its implementing regulations requires or prohibits a State or LEA from developing and implementing policies to temporarily remove a student from his or her classroom for purposes of administering screening instruments to determine appropriate instructional strategies for the student.

Section 5. Evaluation

A. Evaluation Group

Once consent is obtained from the parent, a group is formed to carry out the evaluation process. The members of each evaluation group may differ; however, there are specific members and skills that must be represented.

Members include:

- The parents of the student;
- A general education teacher;
- A special education teacher;
- A representative of the local education agency who:
 - Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of students with disabilities;
 - Is knowledgeable about the general education curriculum; and
 - Is knowledgeable about the availability of resources of the public agency.
- An individual who can interpret the instructional implications of evaluation results, who may also hold another position on the IEP team, such as a teacher;
- At least one person qualified to conduct individual diagnostic examinations of children, such as a school psychologist and/or a speech-language pathologist;

- At the discretion of the parent or agency, other individuals who have knowledge or special expertise regarding the student, including related services personnel as appropriate; and
- Other qualified professionals, as appropriate.

B. Parent Participation

If parent(s) cannot attend scheduled evaluation group meetings, other methods may be utilized to ensure parent participation, including individual or conference telephone calls. Meetings may be conducted without a parent in attendance if the LEA is unable to convince the parent that they should attend and the LEA has a record of reasonable attempts to schedule meetings at a mutually agreed on time and place. In these cases, Written Notice to Parents must be used to inform the parents of any group decision and reasons for that decision.

C. Timeline

Oklahoma has established a 45 school-day timeline. The timeline for conducting the initial evaluation starts upon receipt of written parental consent to conduct the evaluation, and ends with the determination of eligibility for special education services.

The 45 school-day timeline does not apply to a public agency if: [34 CFR §300.301\(d\) and \(e\)](#).

1. The parent of the child repeatedly fails or refuses to produce the child for the evaluation; or
2. If a child enrolls in a new district after the evaluation has begun and before the determination of eligibility; however, the new district is required to make sufficient progress to ensure a prompt completion of the evaluation, and the parent and the school district must agree to a specific timeline for completion; and If the parent and the school agree in writing to extend the timeline. LEAs may use a district form, an OSDE form, or other documentation to record the agreement and upload it to the online IEP system.

The time between eligibility determination and implementation of the individualized education program (IEP) cannot exceed 30 calendar days.

D. Definitions of Evaluation and Assessment

Although the terms “evaluation” and “assessment” are often interchanged, there are significant differences between the meanings of the two terms. In an effort to clarify, the terms are defined as follows.

Evaluation. Procedures used to determine whether a student has a disability and the nature and extent of the special education and related services that the student needs.

Prior to the initial placement of a student with a disability, a full and individual evaluation must be accomplished in all areas related to the suspected disability of the student including, if appropriate, health, vision, hearing, social and emotional status, general intelligence (or cognitive abilities), adaptive behavior, academic performance, communication skills, and motor abilities. The initial evaluation must include sufficiently comprehensive information to identify the suspected disability and all of the student's special education and related service(s) needs, whether or not commonly linked to the disability category. **The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation is not considered an evaluation for eligibility for special education and related services.**

Assessment. The formal or informal processes of systematically observing, gathering, and recording credible information to help answer evaluation questions and make decisions. A test is one method of obtaining credible information within the assessment process. Tests may be standardized or non-standardized, criterion-referenced (e.g. curriculum-based measures) or norm-referenced, and usually elicit responses from students to situations, questions, or problems to be solved. Assessment data may be gathered from observations, interviews, medical reports, general education accommodation evaluations, interventions, and other formal or informal data.

E. Evaluation Procedures

Every initial evaluation must be approached and designed individually based on the specific concerns and the selection of assessment tools based on the information needed to answer the eligibility questions. It would be inappropriate to use the exact same battery of assessments for all students or to rely on any single tool to conduct an evaluation.

The LEA conducts initial evaluations to gather data necessary to make an eligibility determination:

During the evaluation process, the student is assessed in all areas related to the suspected disability, which may include the following, but not limited to:

- Health
- Vision
- Hearing
- Social and emotional status
- General intelligence
- Academic performance
- Communicative status
- Motor abilities
- Accessible Educational Materials (AEM)
- Assistive Technology (AT)

When selecting assessment tools to assist in gathering the evaluation data, those conducting the evaluation must also ensure the following requirements are met:

1. **Use a variety of assessment tools and strategies.**
2. Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.
3. Materials and procedures used to assess a student with limited English proficiency must be selected and administered to ensure that they measure the extent to which the student has a disability and needs special education services, rather than measuring the student's English language skills.
4. Assessments and other evaluation materials are:
 - a. Selected and administered so as not to be discriminatory on a racial or cultural basis;
 - b. Provided and administered in the student's native language or other mode of communication, and in the form most likely to yield accurate information on what the student knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to do so;
 - c. Used for the purposes for which the assessments or measures are valid and reliable;
 - d. Administered by trained and knowledgeable personnel;
 - e. Administered in accordance with instructions provided by the producer of the assessments (**Note:** if an assessment is not conducted under standard conditions, a description of the extent to which it varied from standard conditions; for example, the qualifications of the person administering the test, or the method of test administration must be included in the evaluation report.);
 - f. Tailored to assess specific areas of educational need and not merely those designed to provide a single general intelligence quotient; and
 - g. Selected and administered so as best to ensure that if an assessment is administered to a student with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the student's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test intends to measure)

F. Evaluation Comprehensiveness

The evaluation must be sufficiently comprehensive to identify all of the student's special education needs, whether or not commonly linked to the disability category being considered for the student. If the student is found eligible, this information translates into the present levels of academic achievement and functional performance and forms the basis for making decisions in the IEP. If the student is not found eligible, this information assists the LEA in determining other appropriate instruction and supports for the student. Ultimately, at the close of an evaluation, the group should have enough information to support whether or not the student has a disability and the student is in need of special education services. The group should be able to describe where the student is currently performing within the general education curriculum and standards as well as able to describe how (or if) the student's unique learning characteristics are impacting his/her ability to access and make progress in the general education curriculum (or for early childhood, to participate in appropriate activities). Other issues that are impacting the student's ability to function in the general education setting should also be described so that the extent of the student's needs may be realized.

G. Specific Examiner Qualifications

Assessments and other evaluation materials must be administered by qualified professionals in conformity with the instructions provided by their producer. SLPs are professionals qualified to assess speech, language and communication skills. Similarly, Physical Therapist and Occupational Therapists conduct evaluations within their scope of practice and the personnel standards and licensure laws of the State. The National Association of School Psychologists does not condone the use of psychological or educational assessment techniques by unqualified persons in any way including teaching, sponsorship or supervision. The qualified examiner must be able to correctly administer and interpret psychological tests and must have proper training, which generally includes adequate graduate coursework, combined with lengthy supervised experience.

Section 6. Evaluation Considerations for Eligibility

The multidisciplinary evaluation must include relevant and functional information to provide a comprehensive perspective of the student's educational needs. Assessments must be selected and administered so as not to be racially or culturally discriminatory. Assessment results must demonstrate that deficits in functioning are not a result of environmental or sociocultural factors and reflect consideration of the physical health of the student which may impact functioning.

Relevant information may include the following considerations:

- Vision/hearing screening
- Health/medical information
- Adaptive behavior
- Social/emotional status
- General intelligence

- Academic performance (present levels)
- Communicative status (speech/language functioning)
- Motor abilities
- Academic/Achievement/Developmental history
- Observation(s) of the student during instruction
- Historical review of the student's academic progress
- Interview(s) with parent(s) and teacher(s)
- Assistive Technology (AT)
- Social/cultural

A medical or mental health diagnosis does not automatically qualify a student for special education services under the IDEA, but the evaluation group should consider the data as part of a comprehensive evaluation.

If the parent obtains an independent educational evaluation at private expense, the results of the evaluation **must be considered** by the public agency in any decision made with respect to the provision of FAPE. However, this does not mean that the school district must accept the findings or recommendations in the independent evaluation. It means that the IEP team must review the independent evaluation and discuss it as appropriate.

A. Vision/Hearing Screening

Information regarding visual acuity, field of vision, and vision functioning is necessary to determine a vision-related disability. Information regarding hearing functioning and extent of hearing impairment as necessary to determine a hearing-related disability.

B. Health/medical information

Information regarding health and medical history, information about child's health and medical status or medical diagnostic evaluation to determine a medically related disability.

C. Adaptive Behavior

Information regarding the child's general behavior in school and home settings (may include adaptive behavior skills and activities in the community).

D. Social/emotional status

Information regarding the child's social skills/emotional status, psychological concerns, and behavior (may include data collection, rating scales, behavioral observations, interviews, personal inventories, and projective tests).

E. General Intelligence

Information regarding the child's ability to learn, including overall mental ability and cognitive functioning.

F. Academic performance (present levels)

Information regarding academic achievement in such areas as listening comprehension, oral expression, basic reading skills, reading comprehension, reading fluency, mathematics calculation, mathematics problem solving, and written expression skills.

G. Communicative status (speech/language functioning)

Information regarding speech skills (including articulation, voice, fluency, and oral-motor) and/or receptive and expressive language skills and abilities (including phonology, morphology, syntax, semantics, and pragmatics).

H. Motor abilities

Information regarding gross and/or fine motor skills and abilities in relation to educational needs.

I. Academic/Achievement/Developmental History

Information regarding academic achievement or developmental progress may include, but is not limited to: standardized achievement tests, observations, grades, criterion-referenced tests, district-wide assessments, curriculum based measurements, benchmark assessments, progress monitoring, and developmental activities.

J. Observation(s) of the student during instruction

The student must be observed in the student's learning environment (including the regular classroom setting) to document the student's academic performance and behavior in the area(s) of difficulty. Information from an observation in routine classroom instruction and monitoring of the student's performance that was conducted before a request for an evaluation may be used. After a student has been referred for evaluation and parental consent has been obtained, a group member may conduct an observation of the student's academic performance and behavior in the student's learning environment. If a child is less than school age or not in school, an observation of the child in an environment appropriate for a child of that age is required. This information is then summarized on the MEEGS.

K. Historical review of the student's academic progress

Information regarding previous and current academic progress (may include enrollment, assessments, attendance, vision/hearing screening, medical information, home language survey, WIDA results, grades, previous report cards).

L. Interview(s) with parent(s) and teacher(s)

Information regarding the student obtained from parent(s) and teacher(s) (may include medical information, goals, concerns, academic progress, and current living information).

M. Assistive Technology (AT)

Assistive technology devices or assistive technology services, or both, must be made available to a child with a disability if required as a part of the child's special education, related services, supplementary aids and services, and on a case-by-case basis.

N. Social/cultural

Consideration of environmental or economic disadvantage requires information related to educational history (including school enrollments, attendance records, and grades repeated) and family background. Consideration of cultural factors requires information related to native language or mode of communication and English proficiency.

Section 7. A Child with a Disability

A child with a disability means a child evaluated in accordance with [34 CFR §300.304 through 300.311](#) as having an intellectual disability, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disturbance (referred to in this part as “emotional disturbance”), an orthopedic impairment, autism, traumatic brain injury, another health impairment, a specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services.

If it is determined, through an appropriate evaluation under [34 CFR §300.304-311](#), that a child has one of the disabilities defined in [§300.8](#), but only needs a related service and not special education, the child is not a child with a disability.

If the related service required by the child is considered special education rather than a related service under State standards, the child would be determined to be a child with a disability.

A child with a disability aged three through nine, may include a child who is experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: Physical development, cognitive development, communication development, social or emotional development, or adaptive development; and who, by reason thereof, needs special education and related services.

(c) Definitions of disability terms. The terms used in this definition of a child with a disability are defined as follows:

A. Disability Categories

i. Autism

Autism is a developmental disability, generally evident before age 3, significantly affecting verbal and nonverbal communication, social interaction, and adversely affecting educational performance. However, a student who manifests the characteristics of autism after age 3 may be diagnosed as having autism. If a student's educational performance is adversely affected primarily because the student has an emotional disturbance, then the student does not qualify under the category of autism. Other characteristics often associated with autism include, but are not limited to, engagement in repetitive activities and stereotypical movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. Characteristics vary from mild to severe.

REQUIRED COMPONENTS OF A COMPREHENSIVE EVALUATION

- Medical information
- Cognitive/intellectual
- Motor processing/perceptual/sensory
- Academic/achievement/functional levels
- Communication/language
- Adaptive behavior
- Social or cultural background
- Behavioral functioning

EVALUATION CONSIDERATIONS

Assessment procedures should include a wide variety of methods, including both formal and informal observations, interviews, and direct student evaluation. Evaluation procedures and instruments developed and validated for the identification of students with autism provide information about the student in various areas of functioning and are an essential part of the assessment process.

Medical information from a licensed physician, psychiatrist or an advanced registered nurse practitioner (ARNP) is an essential component in the appropriate evaluation for students with autism. The Medical Report may be utilized. A medical diagnosis of Autism is not required to determine whether a child is eligible for purposes of special education and related services under the IDEA. Licensed psychologists and certified school psychologists are qualified to conduct components of a comprehensive evaluation for the purpose of determining eligibility under the category of Autism.

Prior to assessment in other areas, evaluation of the student's ability to communicate with others is essential, including general developmental and functional levels in communication/language, preferred modalities for receptive and expressive language, and acquisition of new language skills.

KEY ELIGIBILITY INDICATORS

Impairments must be documented in both communication and social interaction that adversely affect educational performance. Lack of appropriate instruction in reading, including the essential components of reading instruction, mathematics or Limited English Proficiency (LEP) must not be the determining factor.

Note: Use the term “autism” for eligibility purposes under the IDEA may include any autism spectrum disorder (ASD).

ii. Deaf-Blindness (DB)

A student with deaf-blindness demonstrates both hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that the student cannot be appropriately educated with special education services designed solely for students with deafness or blindness.

REQUIRED COMPONENTS OF A COMPREHENSIVE EVALUATION

- Audiological/hearing
- Communication/language
- Ophthalmological or optometric/vision
- Adaptive behavior and social or cultural background
- Cognitive/intellectual
- Academic/achievement/developmental

To qualify, children usually meet one the following conditions under [Degree of Vision Loss](#) and one of the conditions listed under [Hearing Loss](#) below.

Degree of Vision Loss (With Correction)

- Low Vision (visual acuity of 20/70 to 20/200 in the better eye after the best possible correction)
- Legally Blind (visual acuity of 20/200 or less in the better eye after the best possible correction or field restriction of 20 degrees or less)
- Light Perception Only
- Totally Blind
- Cortical Visual Impairment – CVI
- Diagnosed Progressive Loss
- Documented Functional Vision Loss

Hearing Loss

- Mild (26-40 dB loss)
- Moderate (41-55 dB loss)
- Moderately Severe (56-70 dB loss)

- Severe (71-90 dB loss)
- Profound (91+ dB loss)
- Diagnosed Progressive Loss
- Documented Functional Hearing Loss
- Cochlear Implants
- Auditory Neuropathy
- Central Auditory Processing Disorder

EVALUATION CONSIDERATIONS

An otologist's or audiologist's report indicating the extent of the student's hearing impairment and an ophthalmologist's or optometrist's report stating the diagnosis and description of the student's visual problems is an essential component of identifying a student as having deaf-blindness. Indication of visual acuity, field of vision, statement of visual functioning, and degree of hearing loss are necessary in determining the special education services needed. When no response to the visual and hearing stimuli can be elicited from the student, a physician's report or existing medical records could fulfill this portion of the evaluation. Information regarding specific syndromes and special health problems, pertaining to the student's hearing and vision, and the long-term medical prognosis for the student should be collected and considered.

Prior to assessment in other areas, an evaluation of the student's ability to communicate with others is essential, including general developmental and functional levels in communication/language, preferred modalities for receptive and expressive language, and acquisition of new language skills.

Adaptive behavior information must be assessed in a manner that reflects the ability of the student to compensate for the sensory losses. This information should be gathered in a variety of settings and should include auditory and visual functioning.

Relevant adaptive behavior information and functional assessments are beneficial in determining the need for adaptations or modifications in the individual assessment of academic performance/achievement. Assessments selected and administered should accurately reflect the student's achievement level rather than reflecting the student's hearing and vision impairment. Evaluation procedures may range from standardized assessments to a focus on basic developmental levels or curriculum and functional skills based assessments. Assistive technology needs, communication, and Braille instruction, depending on the individual student, are additional special factors that should be considered in the evaluation process.

KEY ELIGIBILITY INDICATORS

A combination of concomitant hearing and vision impairments that cause severe communication and other developmental and learning needs that cannot be appropriately met in special education programs provided solely for children with deafness or blindness. Lack of appropriate instruction

in reading, including the essential components of reading instruction, mathematics, or LEP must not be the determining factor.

iii. Deafness - Hearing Impairment (HI)

Deafness is a hearing impairment that adversely affects educational performance and is so severe that with or without amplification the student is limited in processing linguistic information through hearing.

A hearing impairment is a permanent or fluctuating hearing loss that adversely affects a student's educational performance.

REQUIRED COMPONENTS OF A COMPREHENSIVE EVALUATION

- Audiological examination
- Communication/language
- Academic/achievement/developmental
- Adaptive behavior and social or cultural background

EVALUATION CONSIDERATIONS

An otologist's or audiologist's report indicating the extent of the student's hearing impairment is an essential component. When no response to the hearing stimuli can be elicited from the student, a physician's report or existing medical records could fulfill this requirement.

Relevant adaptive behavior should be assessed in a manner that must reflect the ability of the student to compensate for the loss of hearing. This information may be gathered by a hearing specialist and should include auditory functioning and mode(s) of communication.

Adaptive behavior observations and functional hearing information are beneficial in determining the need for adaptations or modifications in the individual assessment of academic performance/achievement. Assessments selected and administered must accurately reflect the student's achievement level rather than reflecting the student's hearing impairment.

Communication/language evaluation information should include language growth and development, speech intelligibility, and effective modes of communication.

KEY ELIGIBILITY INDICATORS

"Deafness"- a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, that adversely affects a child's educational performance. The National Association of State Directors of Special Education, (NASDSE) Inc.. also defines deafness as a trilingual, primarily sensorineural, bilateral hearing loss of 91 decibels or more. The term means that the child's communication development and current

primary communication mode is visually based (either sign language or speechreading). Residual hearing (if any) is a secondary and supplementary sensory avenue; vision is the major channel for receiving information.

“Hearing Impairment”- a hearing impairment, whether permanent or fluctuating, that adversely affects a child’s educational performance, but which is not included under the definition of “deafness.” Additionally NASDSE states “The person’s linguistic development is primarily auditory based, with vision serving as a secondary and supplemental channel. No satisfactory definition has been drawn between deaf and hearing impaired, other than a behavioral one, because hearing loss exists on a continuum and is influenced by many other external factors.”

Lack of appropriate instruction in reading, including the essential components of reading instruction, mathematics, or LEP must not be the determining factor.

iv. Developmental Delay (DD)

The term developmental delay may be used only for students ages 3 through 9 who are experiencing delays in one or more of the broad developmental areas as measured by appropriate diagnostic instruments and procedures. For more information on young children, ages 3-5, please refer to [Chapter 3](#). Students, ages 3 through 9, may qualify for special education services under developmental delay.

REQUIRED COMPONENTS OF A COMPREHENSIVE EVALUATION

- Adaptive Development
- Cognitive Development
- Communication Development
- Physical Development
- Social/Emotional Development

EVALUATION CONSIDERATIONS

Developmental Domains

1. Cognitive development – includes skills involving perceptual discrimination, memory, reasoning, academic skills, and conceptual development;
2. Physical development – includes skills involving coordination of both the large and small muscles of the body (e.g., gross, fine, and perceptual motor skills);
3. Communication development – includes skills involving expressive and receptive communication abilities, both verbal and nonverbal;

4. Social or emotional development – includes skills involving meaningful social interactions with adults and other students including self-expression and coping skills;
5. Adaptive development – includes daily living skills (e.g., eating, dressing, and toileting) as well as skills involving attention and personal responsibility.

To qualify, students generally meet one of the following:

- The student functions at least one and a half (1.5) standard deviations below the mean in two or more broad developmental domains

OR

- The student functions two (2) standard deviations below the mean in at least one broad developmental domain.

For students turning 5 on or before September 1, through age 9, criteria for delay in developmental domains or indicators for specific disability categories may be used to determine eligibility through the comprehensive evaluation process for developmental delay. For example, if Intellectual Disability is the suspected disability, the qualified examiner must assess adaptive, cognitive, achievement and communication and meet the requirements for Intellectual Disability.

When it is not possible to obtain valid results from standardized/norm-referenced assessments due to the nature or severity of the delay, at least two independent sources of diagnostic information should be utilized to substantiate the delay. Information from instruments, along with existing data and functional assessments, may be used for documentation of present levels of performance.

The LEA may choose to use the term “developmental delay” by selecting this option in the annual LEA agreement. The eligibility category on the MEEGS form must be “developmental delay” (**except for the categories of deaf-blindness, hearing impairment including deafness, and visual impairment including blindness**).

For school age students, turning 5 on or before September 1 through age 9 criteria for delay in developmental domains or indicators for specific disability categories may be used to determine eligibility through the comprehensive evaluation process for developmental delay. Criteria for specific disability categories may be used to fulfill the determine evaluation components for developmental delay for students in this age range. However, the eligibility team must still mark the primary eligibility category of “developmental delay” on the MEEGS.

KEY ELIGIBILITY INDICATORS

In order for a child to be determined eligible as a child with a developmental delay requiring special education and related services, they must meet one or more of the two eligibility criteria below:

- Functioning one and a half standard deviations below the mean in two domains or two standard deviations below the mean in one domain; or
- In extraordinary cases when a standardized score cannot be determined, a child may be determined to have a disability based on functionality and the informed opinion of the group with documentation of the rationale of the inability to obtain a standardized score.

The evaluation results identifying the areas of the developmental delay must be documented on the MEEGS, along with present levels of performance in age appropriate activities and consideration of the educational needs resulting from the disability.

v. Emotional Disturbance (ED)

Students with an emotional disturbance have a condition exhibiting one or more of the following characteristics over a long period of time, and to a marked degree, that adversely affects his or her educational performance.

- An inability to learn that cannot be explained by intellectual, sensory, or health factors;
- An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;
- Inappropriate types of behavior or feelings under normal circumstances;
- A general pervasive mood of unhappiness or depression; or
- A tendency to develop physical symptoms or fears associated with personal or school problems.

An OSEP policy letter address to Anonymous (1989) defined “a long period of time” as a range of time from two to nine months, assuming preliminary interventions have been implemented and proven ineffective during that period. This letter also suggests that a “marked degree” would require an examination of the frequency, duration and intensity of the behavior in comparison to a student’s peers or school and community norms.

The term does not include students who are socially maladjusted unless it is also determined they have an emotional disturbance. The term emotional disturbance does include students who are diagnosed with schizophrenia.

REQUIRED COMPONENTS OF A COMPREHENSIVE EVALUATION

- Psychological/social/emotional/behavioral
- Academic/achievement/developmental

- Adaptive behavior and social or cultural background
- Cognitive/intellectual

EVALUATION CONSIDERATIONS

An evaluation of psychological/social/emotional/behavioral functioning conducted by qualified examiner(s) is necessary to determine a student's eligibility for special education services. Components of the evaluation may include:

- Behavior/adjustment scales
- Personality profiles
- Self-report inventories
- Interviews
- Observations

The evaluation should address the relationship between the behaviors and concerns that resulted in the referral and any influencing factors that may impact or hinder the student's necessary skills and behaviors in the school setting.

Behavioral observations of the student in a variety of settings, behavior rating scales, and checklists may be used to document characteristics, behaviors, social skills, and interpersonal relationships. Documentation and history of the student's behavior over an extended period of time should be considered, including instructional and behavioral interventions, to determine whether the interventions have or have not been effective.

Academic and/or developmental achievement should be assessed, but other aspects of educational performance should also be considered. A causal relationship must be demonstrated between the student's emotional condition and adverse effects on educational performance should be documented. Intellectual/cognitive ability is determined by a reliable, valid, standardized instrument that is individually administered. Intellectual disabilities, health, and sensory factors should be ruled out as the determining causes of the student's inability to learn.

Medical information and health history will also be essential when a student's condition is such that medications and medical/psychiatric treatments are prescribed. However, a parent is not required to release this information.

Psychological or counseling services may be considered related services.

KEY ELIGIBILITY INDICATORS

An emotional condition (may include schizophrenia) exhibiting one or more of the defined characteristics over a long period of time and to a marked degree, which adversely affects educational performance is a key eligibility indicator. The term does not include social

maladjustment or disorder unless the group also determines the child has an emotional disturbance. Lack of appropriate instruction in reading, including the essential components of reading instruction, mathematics, or LEP must not be the determining factor.

Tourette syndrome is a neurological disorder; not an emotional disorder. Tourette syndrome is commonly misunderstood to be a behavioral or emotional condition, rather than a neurological condition.

vi. Intellectual Disabilities (ID)

Intellectual Disability means significantly sub-average intellectual functioning that exists concurrently with deficits in adaptive behavior. These deficits are manifested during the student's developmental period that adversely affect a child's educational performance.

REQUIRED COMPONENTS OF A COMPREHENSIVE EVALUATION

- Cognitive/intellectual
- Communication/language
- Academic/achievement/developmental
- Adaptive behavior and social or cultural background

EVALUATION CONSIDERATIONS

“Significantly sub-average intellectual functioning” refers to students who have a full-scale intelligence standard score (IQ) at or below 70 and exists concurrently with significant deficits in adaptive behavior.

Students with an intellectual disability exhibit concurrent deficits in adaptive functioning expected for his or her age. As with intellectual functioning, different sources of adaptive behavior information must be considered across different reporters (teachers, parents, peers); multiple settings (in-school, and out-of-school); and using different methods to collect information (review records, interviews, observations, and assessments), which confirm or deny significant limitations in adaptive behavior. Significant deficits in adaptive behavior means that the student must obtain a total/overall adaptive standard score at or below 70 on both parent and teacher forms.

If subareas within the cognitive measure are significantly discrepant or inconsistent with adaptive behavior or achievement, further evaluation is necessary to determine the reason for the discrepancy and to ensure that the student's primary disability is within the general intellectual/cognitive area.

Caution is advised when assessing students with cultural and language issues to prevent inappropriate identification of these students as having an intellectual disability. When determining eligibility, tests measuring intellectual ability must be used with care; that is, only those tests designed and normed for the population being tested may be used. Moreover, please refer to the

English Learner Technical Assistance Document for more information on nondiscriminatory assessments.

KEY ELIGIBILITY INDICATORS

Eligibility decisions should not be based solely on an intelligence quotient (IQ) or cognitive score. Intellectual, academic (or age appropriate activities), developmental information, and adaptive behavior assessments should demonstrate overall significantly low profiles across measures. An intellectual disability is considered to be at least two standard deviations below the mean on both cognitive measures and with significant deficits in adaptive behavior. Lack of appropriate instruction in reading, including the essential components of reading instruction, lack of appropriate instruction in math, or LEP must not be the determining factor

vii. Multiple Disabilities (MD)

Multiple Disabilities are two or more **concomitant severe impairments**, (such as an intellectual disability and blindness, intellectual disability and orthopedic impairment, etc.), **which causes such a severe educational need that the student cannot be accommodated in a special education program solely for one of the impairments**. Students with multiple disabilities exhibit impairments that are **likely to be lifelong, significantly interfere with independent functioning, and may necessitate environmental modifications to enable the student to participate in school and society**. The term does not include deaf-blindness.

REQUIRED COMPONENTS OF A COMPREHENSIVE EVALUATION

- Medical information
- Communication/language
- Cognitive/intellectual
- Adaptive behavior and social or cultural background
- Motor/sensorimotor/perceptual
- Academic/achievement/developmental

EVALUATION CONSIDERATIONS

Evaluations for a student with multiple disabilities should address the components of a comprehensive evaluation for each of the individual disability areas being considered. For a student with multiple disabilities, cognitive (intellectual), communication (language), motor, **sensorimotor, perceptual**, academic, and adaptive behavior domains could be assessed by utilizing a combination of standardized tests and functional assessments, behavioral or criterion-based instruments, trial teaching procedures, interviews, checklists, and observations.

KEY ELIGIBILITY INDICATORS

Two or more concomitant disabilities, the combination of which causes such severe educational needs

that they cannot be accommodated in special education programs solely for one of the impairments. This does not include deaf-blindness. Lack of appropriate instruction in reading, including the essential components of reading instruction, mathematics, or LEP must not be the determining factor.

viii. Orthopedic Impairment (OI)

Orthopedic impairment is a severe physical limitation that adversely affects a student's educational performance. The term includes impairments caused by congenital anomaly (clubfoot, or absence of an appendage), an impairment caused by disease (poliomyelitis, bone tuberculosis, etc.), or an impairment from other causes (cerebral palsy, amputations, and fractures or burns that cause contracture).

REQUIRED COMPONENTS OF A COMPREHENSIVE EVALUATION

- Medical information
- Academic/achievement/developmental
- Motor

EVALUATION CONSIDERATIONS

Medical information from a licensed physician, or an advanced registered nurse practitioner (ARNP), providing relevant medical findings of orthopedic conditions, specific syndromes, health problems, medication, and any information deemed necessary for planning the student's educational program is essential. The Medical Report may be utilized. An evaluation of motor functioning by a licensed physical therapist and/or occupational therapist, as appropriate to the needs of the student, may be included. Individual evaluation of the student's specific educational needs and present levels of performance in the general education curriculum (or other age appropriate activities for preschool student) should be included.

KEY ELIGIBILITY INDICATORS

A severe orthopedic impairment caused by congenital anomaly disease, or other causes which adversely affects educational performance. Lack of appropriate instruction in reading, including the essential components of reading instruction, mathematics, or LEP must not be the determining factor.

ix. Other Health Impairment (OHI)

Other health impairment is the presence of limited strength, vitality, or alertness, including heightened alertness to environmental stimuli that results in limited alertness with respect to the student's educational environment that is due to chronic or acute health problems. These health problems may include, **but are not limited to:** asthma, attention deficit disorder (ADD), attention deficit hyperactivity disorder (ADHD), cancer, diabetes, epilepsy, fetal alcohol spectrum disorder (FASD), a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle

cell anemia, Tourette syndrome, and stroke to such a degree that it adversely affects the student's educational performance.

REQUIRED COMPONENTS OF A COMPREHENSIVE EVALUATION

- Medical information
- Other information as relevant to the student's health condition
- Academic/achievement/developmental

EVALUATION CONSIDERATIONS

Medical information from a licensed physician, or an ARNP, is an essential component for providing any relevant medical findings, health problems, medication, and any information deemed necessary for determining eligibility and/or planning the student's educational program. A medical diagnosis is not required to determine whether a child is eligible for purposes of special education and related services under the IDEA. Licensed psychologists and certified school psychologists are qualified to conduct components of a comprehensive evaluation for the purpose of determining eligibility under the category of Other Health Impaired. The Medical Report may be utilized. Health information from the school nurse may also be useful.

Further evaluation procedures may be necessary for the student's specific health condition(s) to determine whether the student has a disability which requires special education services and the impact of the specific health condition on the student's educational needs. Tourette syndrome is a neurological disorder; not an emotional disorder. Tourette syndrome is commonly misunderstood to be a behavioral or emotional condition, rather than a neurological condition.

KEY ELIGIBILITY INDICATORS

Limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli (resulting in limited alertness with respect to the educational environment) due to chronic or acute health condition and which adversely affects educational performance are key eligibility indicators. Lack of appropriate instruction in reading, including the essential components of reading instruction, mathematics, or LEP must not be the determining factor.

x. Specific Learning Disability (SLD)

A specific learning disability is a specific disorder of one or more of the basic psychological processes involved in understanding, or in using spoken or written language, that may manifest itself in an impaired ability to listen, think, speak, read, write, spell, or do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, dyscalculia, dysgraphia, developmental aphasia, and adversely affects the student's educational performance. It is not necessary to identify the specific psychological processes that a student has, as long as the student meets the following criteria.

A child shall not be determined to be a child with a specific learning disability unless the group evaluating the child determines that its findings are not **primarily** the result of any of the following:

- A visual, hearing, or motor disability;
- Intellectual Disability;
- Emotional Disturbance;
- Cultural Factors;
- Environmental or economic disadvantage; or
- Limited English Proficiency

REQUIRED COMPONENTS OF A COMPREHENSIVE EVALUATION

- Documentation of scientifically research-based interventions
- Progress monitoring
- Cognitive/intellectual development
- Observation
- Academic/achievement/development
- Social/cultural background

Depending on the individual needs of the student, assistive technology, adaptive behavior, and perceptual processing may be additional considerations for evaluation.

Scientifically Based Research (SBR) guidelines

To ensure adherence with the IDEA, interventions implemented must be [Scientifically Based Research](#) (SBR). An official definition of SBR can be found in section 9101(37) of the Elementary and Secondary Education Act (ESEA). However, a simple set of questions may be used to distinguish between research that confirms the effectiveness of an instructional practice, indicating the practice is derived from scientifically based research and research that does not.

- Has the study been published in a peer-reviewed journal or approved by a panel of independent experts?
- Have the results of the study been replicated by other scientists?
- Is there consensus in the research community that the study's findings are supported by a critical mass of additional studies?

Scientific Research-Based Interventions, (SRBI)

Information regarding scientific research-based attempts at remediating academic deficits in the form of targeted intervention delivered in addition to the general education core curriculum must be documented. This data must demonstrate that the student was provided an intervention matched to the student's instructional needs in the general education setting, and delivered by qualified personnel. This data must also include a description of scientific research-based intervention

services, the target skill addressed by the intervention, the goal for intervention, designed frequency of delivery, overall integrity of intervention delivery, and the results of the intervention delivered.

Progress Monitoring

Information regarding a variety of ongoing measures of achievement in the area of academic deficits should include documentation of classroom work samples, progress reports, and formative data generated from the scientific research intervention described above. If available, assessment data that include(s) benchmarks, district/state/class assessments, and screening procedures should be included.

Cognitive/intellectual development

Information regarding intellectual development may include, but is not limited to:

- Review of data reflecting the student's response to intervention;
- Standardized measures of cognitive ability (such as intelligence tests); and
- Direct measures of cognitive processes related to specific academic skills.

EVALUATION CONSIDERATIONS

There are **two** ways to determine eligibility for students with a specific learning disability: either using the traditional discrepancy model or using a process based on a student's response to scientific research-based intervention(s). **Regardless of the process used for identification the following criteria must be met and documented.**

From [34 CFR §300.309\(a\)](#), the child does not achieve adequately for the child's age or to meet State-approved grade-level standards in one or more of the following areas, when provided with learning experiences and instruction appropriate for the child's age or State-approved grade-level standards:

1. Oral expression.
2. Listening comprehension
3. Written expression
4. Basic reading skill
5. Reading fluency skills
6. Reading comprehension
7. Mathematics calculation
8. Mathematics problem solving

AND

To ensure that underachievement is not due to lack of appropriate instruction in reading or math, the team considers the following:

- Data that demonstrates that prior to, or as part of, the referral process, the student was provided appropriate instruction in regular education settings, delivered by qualified personnel; and
- Data-based documentation of repeated assessments of achievement at reasonable intervals, that reflect student progress during instruction, has been provided to the parent. This refers specifically to the use of local or national progress monitoring systems (e.g., district CBMs, AIMSweb, DIBELS, etc.)

AND

An observation of the student's academic performance and behavior in the student's learning environment, including the regular classroom setting, has been conducted by an evaluation group member, in addition to the student's general education classroom teacher. The purpose of the observation is to document how the areas of concern impact the student's performance in the classroom. The observation should also document the name and title of the observer and the site, date, and duration of the observation.

The group must decide to:

- Use this information from an observation in routine classroom instruction and monitoring of the student's performance that was conducted before the student was referred for an evaluation; or
- Have at least one member of the group conduct an observation of the student's academic performance in the general education classroom after the student has been referred for an evaluation, and parental consent has been obtained. (In the case of a student who is out of school, a team member must observe the student in an environment appropriate for a student of that age.)

Option 1. Additional Requirements Specific to Traditional Discrepancy Model:

In addition to the required specific learning disability eligibility criteria listed in the above evaluation considerations, the evaluation team makes a determination using assessments and procedures that demonstrate the following:

A Severe Discrepancy Between Ability & Achievement

Based upon individually administered assessments **and** other evaluation data reviewed, a severe discrepancy of 1.5 standard deviations exists between the **full scale intellectual ability score (FSIQ)** and the standard score from one or more of the **8 areas listed under evaluation considerations** for SLD. You must not use age equivalents, grade equivalents or Relative Proficiency Index (RPI) to determine a severe discrepancy.

Option 2. Additional Requirements Specific to Response to Intervention Processes

Eligibility for special education through an intervention process is substantiated by the convergence of data from the general education interventions and other sources, which may include record reviews, interviews, observations, and tests (formal and informal). For additional information, go to [Oklahoma Tiered Intervention System of Support \(OTISS\)](#).

In addition to the required specific learning disability eligibility criteria, the evaluation group must make a determination using a convergence of multiple sources of data that demonstrate the following:

1. Response to General Education Interventions: Individual student learning requires resources beyond what typically can be provided in the general education curriculum in order to make adequate progress that is consistent with national or local growth rate comparisons. The student is expected to perform at grade level within a reasonable time period.
2. Level of Performance: The student's level of performance in the area of academic concern is significantly below what is expected for their grade and educational setting.

Documentation of the intervention process should be accomplished through an intervention plan as well as the data that is generated from such a process. The components represented on the intervention plan are as follows:

- The targeted skill, including the present levels of performance and a measurable goal;
- The scientific research-based interventions used, including intensity, frequency, and duration; and
- Interventionist(s), percent of integrity with which the intervention was delivered, and the results of the intervention.

KEY ELIGIBILITY INDICATORS

Specific learning disabilities may include conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The group may determine a child has a specific learning disability if the child does not achieve adequately for the child's age or to meet State approved grade-level standards in oral expression, listening comprehension, written expression, basic reading skills, reading fluency skills, reading comprehension, mathematics calculation, or mathematical problem solving when provided with learning experiences and instruction appropriate for the child's age or State-approved grade-level standards; **and**

- The child does not make sufficient progress to meet age or State-approved grade-level standards in one or more of the areas identified in this section when using a process based on the child's response to scientific, research-based intervention; **or**
- Based upon individually administered assessments and other evaluation information reviewed, a severe discrepancy of 1.5 standard deviations between achievement and intellectual ability exists in one or more of the above areas.

Additionally, the group must document the procedures utilized to determine the presence of a specific learning disability and the adverse effects on educational performance. The LEA must establish criteria and a process for such determinations and make this information available to the group, including the parent(s), as needed. The group may not identify a child has having a specific learning disability if the child's performance is primarily the results of a visual, hearing, or motor disability; intellectual disability; emotional disturbance; cultural factors; environmental or economic disadvantage; or LEP. Lack of appropriate instruction in reading, including the essential components of reading instruction, mathematics, or LEP must not be the determining factor.

xi. Speech or Language Impairment (SLI)

A language impairment exists when there is a disorder or delay in the development of comprehension and/or the uses of spoken or written language and/or other symbol systems.

The impairment may involve any one or a combination of the following:

- The form of language (morphological and syntactic systems);
- The content of language (semantic systems); and/or
- The function of language in communication (pragmatic systems).

A language impairment does not exist when language differences are due to non-standard English or regional dialect or when the evaluator cannot rule out environmental, cultural, or economic disadvantage as primary factors causing the impairment.

REQUIRED COMPONENTS OF A COMPREHENSIVE EVALUATION

- Communication
- Speech
- Language

Speech Impairment

Speech impairments include articulation/phonology disorders, voice disorders, or fluency disorders that adversely impact a student's educational performance.

Articulation/Phonological Disorder

Articulation is the ability to speak distinctly and connectedly. Articulation disorders are incorrect productions of speech sounds including omissions, distortions, substitutions, and/or additions that may interfere with intelligibility. Phonology is the process used in our language that has common elements (sound patterns) that affect different sounds. Phonology disorders are errors involving phonemes, sound patterns, and the rules governing their combinations.

An articulation/phonological disorder exists when:

1. The disorder is exhibited by omissions, distortions, substitutions, or additions;
2. The articulation interferes with communication and calls attention to itself; and
3. The disorder adversely affects educational or developmental performance.

An articulation/phonological disorder does not exist when:

1. Errors are temporary in nature or are due to temporary conditions such as dental changes;
2. Differences are due to culture, bilingualism or dialect, or from being non-English speaking;
OR
3. There are delays in developing the ability to articulate only the most difficult blends of sound or consonants within the broad range for the student's age.

Fluency Disorder

A fluency disorder consists of stoppages in the flow of speech that is abnormally frequent and/or abnormally long. The stoppages usually take the form of repetitions of sounds, syllables, or single syllable words; prolongations of sounds; or blockages of airflow and/or voicing in speech. A fluency disorder exists when an abnormal rate of speaking, speech, interruptions, repetitions, prolongations, blockages of airflow and/or voicing interferes with effective communication. A fluency disorder does not exist when developmental disfluencies are part of normal speech development and do not interfere with educational or developmental performance.

Voice Disorder

Voice disorders are the absence or abnormal production of voice quality, pitch, intensity, or resonance. Voice disorders may be the result of a functional or an organic condition. A student who has a suspected laryngeal-based voice disorder and does not have a current evaluation by an ear, nose, and throat physician (ENT) (otolaryngologist) may not receive voice therapy services from a speech-language pathologist.

A voice disorder exists when the vocal characteristics of quality, pitch, intensity, or resonance:

1. Interfere with communication;
2. Draw unfavorable attention to the speaker;
3. Adversely affect the speaker or listener; or
4. Are inappropriate to the age and gender of the speaker.

A voice disorder **does not** exist when the vocal characteristics of quality, pitch, intensity, or resonance:

1. Are the result of temporary physical factors such as allergies, colds, or abnormal tonsils or adenoids;
2. Are the result of regional dialect or cultural differences or economic disadvantage; or
3. Do not interfere with educational or developmental performance.

EVALUATION CONSIDERATIONS

More than one evaluation procedure should be used to determine the existence of a speech and/or language impairment. At least one assessment tool should be a standardized measure. Other measures may be informal or functional, such as observations, checklists, and language samples. Any informal or functional evaluation measure must be documented in the evaluation summary whether speech/language is the primary disability or a related service. Evaluation of speech skills may include articulation, voice, fluency, and oral-motor skills. Language skills may involve receptive and expressive language, including phonology, morphology, syntax, semantics, and pragmatics. Review of existing information might include health and developmental histories, results of hearing screenings, and audiological data. Caution is advised when evaluating a student whose native language is other than English. The acquisition of the English language is not to be mistaken as a language impairment.

KEY ELIGIBILITY INDICATORS

A communication, speech and/or language or voice impairment that adversely affects educational performance is a key eligibility indicator. Lack of appropriate instruction in reading, including the essential components of reading instruction, mathematics, or LEP must not be the determining factor.

xii. Traumatic Brain Injury (TBI)

Traumatic brain injury refers to an acquired injury to the brain caused by an external physical force resulting in a total or partial functional disability or psychosocial impairment, or both, that adversely affects educational performance. The term applies to open or closed head injuries resulting in impairments in one or more areas such as cognition, language, memory, attention, reasoning, abstract thinking, judgment, problem solving, sensory, perceptual and motor abilities, psychosocial behavior, physical functions, information processing, and speech. The term does not apply to congenital or degenerative brain injuries or to brain injuries induced by birth trauma.

REQUIRED COMPONENTS OF A COMPREHENSIVE EVALUATION

- Medical information
- Communication/language
- Cognitive/intellectual

- Social/emotional/behavioral
- Sensorimotor/perceptual
- Adaptive behavior and social or cultural background
- Academic/achievement/developmental

EVALUATION CONSIDERATIONS

Medical information from a licensed physician or an advanced registered nurse practitioner (ARNP) should be obtained regarding relevant medical and neurological findings, medications, the student's current status and prognosis, and any information pertinent to planning the student's educational program. Information is necessary to establish that the student has an acquired brain injury which occurred after birth and was caused by an external force (including the external force of near-drowning).

Formal evaluation of cognitive/intellectual and academic/achievement (or age appropriate developmental activities for preschool students) should be supported by functional and ecological assessment of the student's ability to generalize and apply skills in various settings. Samples and observations of academic related tasks may provide meaningful direction in planning for the gradual reintroduction to the academic school setting. The student's educational and developmental history prior to the injury also provides important information for educational planning and expectations for prognosis.

Neuropsychological factors and possible implications should be considered in evaluating the student's abilities. In addition to implications for cognitive/intellectual evaluation, the student's functioning in the areas of sensorimotor/perceptual processing and communication/language abilities should be assessed with this focus. The abilities of the student to effectively perceive, process, integrate, recall, respond to information, and communicate are important considerations.

The evaluation of the student's social/emotional/behavioral and adaptive behavior status may include functional assessment in various settings. If the student has not yet reentered school, adaptive behavior may need to be assessed in settings or in response to tasks that are as similar to the school setting or other age appropriate settings, as possible. Assessment of the student's adaptive behavior in the home or other settings and social/emotional/behavioral functioning with family and peers will provide valuable information for program planning.

KEY ELIGIBILITY INDICATORS

An acquired brain injury caused by an external physical force that occurred after birth must be documented. Additionally, evaluation information must establish that total or partial functional disability or psychosocial impairment, or both, are due to the injury. The resulting impairment(s) adversely affects educational performance. Lack of appropriate instruction in reading, including the essential components of reading instruction, mathematics or LEP must not be the determining factor.

xiii. Visual Impairment including Blindness (VI)

Visual impairment refers to impairment in vision that, even with correction, adversely affects a student's educational performance. The term includes both partial sight and blindness. Partial sight refers to the ability to use vision as one channel of learning if educational materials are adapted. Blindness refers to the prohibition of vision as a channel of learning, regardless of the adaptation of materials. For example, eligibility and definitions may not exclude a child with convergence insufficiency or other visual impairment from meeting the IDEA's definition of visual impairment including blindness, if that condition, even with correction, adversely affects the child's educational performance (e.g., the child's ability to read and write). While it is permissible for an LEA to provide examples of the types of conditions that would meet the State criteria, the LEA may not preclude eligibility teams from considering whether other vision conditions, even with correction, adversely affect the child's educational performance such that the child requires special education and related services under the IDEA.

REQUIRED COMPONENTS OF A COMPREHENSIVE EVALUATION

- Vision examination
- Academic/achievement/developmental
- Adaptive behavior and social or cultural background

EVALUATION CONSIDERATIONS

This information could include medical information from a qualified physician, if determined appropriate, to assess the effect of the child's visual impairment on the child's eligibility and educational needs. However, under [34 CFR §300.304\(b\)\(2\)](#), no single measure or assessment may be used as the sole criterion for determining whether the child is a child with a disability and for determining an appropriate educational program for the child. Indication of acuity and field of vision are necessary in determining the special services needed. In the case of total blindness, a physician's statement, medical records, or ophthalmologist's report could meet this requirement.

Adaptive behavior information may be assessed in a manner that will reflect the ability of the student to compensate for the loss of vision or visual condition. This information should be gathered by a visual specialist through a functional vision assessment. Information regarding the student's independent movement in the school and home environment or other age appropriate settings may be provided by an orientation and mobility specialist. Structured observations which include considerations for lighting, size of print or material to be identified visually, and the distance and positioning of the student from objects to be viewed may be utilized.

The student has documentation of a visual impairment, not primarily perceptual in nature, resulting in:

1. Measured acuity of 20/70 or less in the better eye with correction, or a visual field restriction of 20 degrees as determined by an optometrist, pediatrician or ophthalmologist;

2. A visual field limited to 20 degrees or less even if the acuity is normal; and
3. A physical eye condition that has been diagnosed by a qualified physician that affects visual functioning to the extent that specially designed instruction is needed.

KEY ELIGIBILITY INDICATORS

The vision examination must document that a child meets one or more of the following indicators which adversely affect educational performance:

- Measured acuity of 20/70 or less in the better eye with correction, or a visual field restriction of 20 degrees as determined by an optometrist, pediatrician or ophthalmologist;
- A visual field limited to 20 degrees or less even if the acuity is normal; and
- A physical eye condition that has been diagnosed by a qualified physician that affects visual functioning to the extent that specially designed instruction is needed.

The IEP team must consider any medical documentation in an eligibility determination. Lack of appropriate instruction in reading, including essential components of reading instruction, mathematics, or LEP must not be the determining factor.

Section 8. Multidisciplinary Evaluation and Eligibility Group Summary (MEEGS)

Upon completing the review of existing data and the collection of additional data as necessary, a group of qualified professionals and the parent(s) of the student must determine whether the student is a student with a disability and whether the student requires special education services. The MEEGS documents the variety of assessment tools and strategies, results, conclusions, and the determination of the group.

A. The MEEGS must include the following statements:

- Whether the student is a student with a disability;
- The basis for making that determination;
- Relevant behavior noted during the observation of the student;
- Educationally relevant medical findings, if any; and

- For a student determined to have a specific learning disability, the report must include documentation of the following:

The student does not achieve adequately for the student's age or to meet State-approved grade-level standards when provided with learning experiences and instruction appropriate for the student's age or State-approved grade-level standards

AND

The student does not make sufficient progress to meet age or State-approved grade-level standards when using a process based on the student's response to scientific, research-based interventions.

- The group determines the reason the student does not achieve adequately for the student's age, does not make sufficient progress to meet age or State-approved grade level standards, or exhibits a pattern of strengths and weaknesses, is not primarily the result of:
 - A visual, hearing or motor disability;
 - Intellectual disability;
 - Emotional disturbance;
 - Cultural factors;
 - Environmental or economic disadvantage; or
 - Limited English proficiency
- If the student has participated in a process that assesses the student's response to scientific research-based intervention, the report must also document the instructional strategies used; and the student-centered data collected.
- Documentation that the student's parents were notified about the process, including the following information: the evaluation considerations for eligibility regarding the amount and nature of student performance data that would be collected and the general education services that would be provided for increasing the student's rate of learning; and the parent's right to request an evaluation.

Consideration of Data

At the time the initial evaluation is completed and the information is compiled, the group should schedule a time to convene (within 45 school days from parental consent) in order to make the determination of eligibility. The LEA must provide notice of the meeting at a mutually agreed upon time and place prior to the meeting date.

When interpreting evaluation data for the purpose of making a determination of eligibility, the group must:

- Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the student's physical condition, social or cultural background, and adaptive behavior; and
- Ensure that information obtained from all of these sources is documented and carefully considered.

ELIGIBILITY DETERMINATION

After carefully considering all data, the group, including the parents and qualified professionals, determine:

1. Whether the student is a student with a disability.
The group reviews the data to determine whether or not the student is a student with a disability. To do this, group members compare the data about the student to see if there is a match to one of the disability categories defined in IDEA. See [Section 8](#) of this chapter regarding specific evaluation considerations for eligibility.
2. Whether the disability has an adverse impact on the student's education [see further clarification on adverse impact below].
An adverse effect is a harmful or unfavorable influence. Educational performance includes both academic areas (reading, math, communication, etc.) and nonacademic areas (daily life activities, mobility, pre-vocational and vocational skills, social adaptation, self-help skills, etc.). Consideration of all facets of the student's condition that adversely affect educational performance involves determining any harmful or unfavorable influences that the disability has on the student's academic or daily life activities.
3. Whether the student has a need for special education services.
Special education refers to specially designed instruction regarding content, methodology, or delivery of instruction used to address the unique needs of a student that result from the student's disability to ensure access to the general education curriculum to meet the educational standards that apply to all students. In order to form a basis of the need for special education services, the student's unique needs require specially designed instruction in order to access the general education curriculum. Participation in the general education curriculum is expected of all students, regardless of disability.

Further Clarification on Adverse Impact

The eligibility group must determine that educational performance is adversely affected as a result of dysfunctional school-related behaviors and/or affective reactions. Evidence must exist that supports a relationship between the student's school-related behaviors and/or affective relations and decreased educational performance. While adverse effect on educational performance may imply a marked difference between the student's academic performance and reasonable (not

optimal) expectations of performance, the definition of education performance cannot be limited to academics. This position is clarified by the Office of Special Education Programs (OSEP) in a March 8, 2007, [Letter to Clark](#), 48 IDELR 77 where "educational performance" as used in the IDEA and its implementing regulations is defined as not limited to academic performance. Furthermore, based upon the IDEA definitions of a child with a disability in [34 C.F.R. Section 300.8\(a\)\(1\)](#) and specifically the definition of a child with an emotional disturbance, along with the definition of special education found in [34 C.F.R. Section 300.39](#), it is clear that special education and specialized instruction encompass more than only academic instruction. Adverse effect on educational performance cannot, therefore, be based solely on discrepancies in age or grade level performance in academic subject areas. An adverse effect can be manifested through behavioral difficulties at school; impaired or inappropriate social relations; impaired work skills, such as being disorganized, tardy; having trouble getting to school on time; and difficulty with following the rules.

Indicators of educational performance can include present and past grades, report cards and reports of progress (social emotional and/or academic), achievement test scores and measures of ongoing classroom performance such as curriculum-based assessment (formative and summative assessments), work samples and data relative to responses to tiered and targeted interventions. The appropriateness of the school district's educational goals, as reflected in the curriculum and in the formal grading reports, should also be considered. Various types of standards must be applied when making judgments about student progress to determine what constitutes adverse effect on educational performance. The student's overall performance should demonstrate a marked difference between actual and expected school performance. While determining a student's cognitive abilities and level of academic achievement may be useful, the focus should be placed on the student's overall performance in school and his or her response to interventions as illustrated in the data resulting from progress monitoring activities. Some students attain adequate achievement test scores, but do not demonstrate appropriate academic progress; for example, when a severe and chronic pattern of failing to persevere with tasks and complete classroom assignments leads to repeated failure in subject matter courses. In this case, the student's resulting failure in subject matter courses can be considered an adverse effect. However, it must also be noted, that [34 C.F.R. Section 300.101\(c\)](#) states that a free and appropriate public education (FAPE), must be available to any child with a disability who needs special education and related services, even if the child has not failed or been retained in a course or grade and is advancing from grade to grade. Therefore, as is the case for any student with a disability, the determination of whether a student's emotional status "adversely affects educational performance" must be made on a case by case basis and is dependent on the unique needs of the particular child (March 8, 2007, [Letter to Clark](#), 48 IDELR 77).

The documentation of adversely affected educational performance must also substantiate that the educational deficiencies persist over time in spite of specific alternative strategies that have been provided within the general education setting. The eligibility team should have evidence that tiered interventions, such as positive behavioral supports, home/school collaboration, attendance/counseling/academic supports, behavioral and emotional supports, contracts and/or established behavior interventions and approaches, have been implemented with fidelity.

A student **cannot** be identified as a student with a disability if the primary reason for such a decision is:

- Lack of appropriate instruction in reading, including the essential components of reading instruction (phonemic awareness, phonics, vocabulary development, reading fluency including oral reading skills, and reading comprehension strategies);
- Lack of appropriate instruction in math; or
- Limited English proficiency.

If a student meets the definition of a disability category but does not need special education services, s/he will not be determined eligible for special education. If the student has a need for special education services but does not meet the definition of a disability category, s/he will not be determined eligible. In the case of a student who is found to have a disability, but does not need special education services, a referral for a Section 504 of the Rehabilitation Act evaluation must be considered.

Once eligibility has been determined, each group member certifies in writing whether the decision reflects the member's conclusion. If it does not reflect the member's conclusion, the group member must submit a separate statement presenting the member's conclusions. The MEEGS must be provided, at no cost, to the parent. In addition, LEAs may conduct the initial IEP meeting upon conclusion of the initial MEEGS meeting. The initial provision of special education services requires parental consent.

Legal Citations

Code of Federal Regulations, Title 34: Education

- §300.8 Child with a disability.
- §300.15 Evaluation.
- §300.300 Parental consent.
- §300.301 Initial evaluations.
- §300.304 Evaluation procedures.
- §300.305 Additional requirements for evaluations and reevaluations.
- §300.306 Determination of eligibility.
- §300.308 Additional group members.
- §300.310 Observation.
- §300.311 Specific documentation for the eligibility determination.
- §300.500 Responsibility of SEA and other public agencies.
- §300.502 Independent educational evaluation.
- §300.503 Prior notice by the public agency; content of notice.

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CHAPTER 5. INDIVIDUALIZED EDUCATION PROGRAMS (IEP)

Section 1. Special Education and IEPs

Special education means specially designed instruction, at no cost to the parents, to meet the unique needs of a student with a disability including instruction in the classroom, the home, hospitals, institutions, and other settings. The definition of special education also includes instruction in physical education, speech/language pathology, travel training (e.g., orientation and mobility), and vocational education.

Specially designed instruction means adapting, as appropriate to the needs of an eligible student, the content, methodology, or delivery of instruction to:

- Address the unique needs of the student that result from his or her disability; and
- Ensure access to the general curriculum so that the student can meet the academic standards that apply to all students.

The individualized education program (IEP) is a written document that is developed for each eligible student with a disability and documents specially designed instruction and related services. The IEP is the product of a team that collaborates with parent(s), student (as appropriate), Local Education Agency (LEA) personnel, and other IEP team members who, through full and equal participation, identify the unique needs of a student with a disability and plan the special education services to meet those needs.

In developing each student's IEP, the IEP team must consider:

- The strengths of the student;
- The concerns of the parents for enhancing the education of their student;
- The results of the initial or most recent evaluation of the student;
- The academic achievement, developmental, and functional needs of the student; and
- The provision of a free appropriate public education (FAPE)

A. Purpose of Meeting

The primary purpose of an IEP team meeting is to design an IEP that meets the unique needs of a student with a disability. The IEP must be reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances in the least restrictive environment (LRE). The parent must be invited to the meeting and in order to participate meaningfully, the parent should be

informed of his or her role as a team member. The parent, LEA personnel, and other IEP team members should come prepared to discuss specific information about the student's individual needs and the type of services to be provided to address those needs.

The meeting format should invite open discussion that allows participants to identify and consider all the relevant needs of the student related to his or her disability. Service and placement decisions should be based on the individual evaluation data collected and not on the category of disability. Placement decisions are considered after the special education services are determined. Placement is based on the IEP services and accommodations and cannot be the determining factor in developing the IEP content.

B. Team Decision Making

The IEP meeting serves as a communication vehicle among the parent, LEA personnel, and other IEP team members that enables them, as equal participants, to make joint, informed decisions regarding the student's special education services. All members of the IEP team are expected to work toward consensus regarding the services and educational placement that will be included in the student's IEP to ensure that he or she receives a FAPE. Consensus means that all members are in general agreement regarding what is written.

Upon disagreement with one or more items on the IEP, the LEA may provide parent(s) the opportunity to place in writing the item(s) they disagree with and why. The documentation will now become a part of the student's educational records. The IEP team may reconvene to consider appropriate services for the student.

If consensus cannot be reached, the LEA is responsible for offering the student a FAPE in an IEP developed within the timelines. Ultimately, LEA personnel fulfilling the role of the administrative representative of the LEA will make the final decision at the meeting subject to all the procedural safeguards afforded the parent.

C. IEP Team Members and Roles

The IEP team is composed of a group of individuals that is responsible for developing, reviewing, and revising an IEP for a student with a disability.

Student's Parents or Adult Student if Rights Have Transferred (Required)

- Biological or adoptive parent(s).
- Judicially decreed guardian (does not include State agency personnel if the student is a ward of the state).
- Surrogate parent appointed by the LEA.
- Person acting in place of a parent (grandparent, stepparent, or other relative with whom the student lives, persons who are legally

	<p>responsible for student's welfare).</p> <ul style="list-style-type: none"> ● Foster parent (when natural parent's authority to make educational decisions for their student has been terminated by law) has no interest that would conflict with the interests of the student. ● If more than biological or adoptive parents meet the definition of parent, the biological or adoptive parents serve as the parents in the IEP process, unless a judicial decree identifies a person to make educational decisions for the student. ● Adult student- student with a disability who is 18 years of age or older whose special education rights have transferred under the Individuals with Disabilities Education Act (IDEA). (The parent may attend the IEP meeting at the invitation of the adult student or the LEA. The LEA must notify the adult student prior to the meeting).
Special Education Teacher/Provider (Required Member)	<ul style="list-style-type: none"> ● Holds appropriate certification. ● Participates in the development of the IEP.
Regular Education Teacher of the Student (Required Member)	<ul style="list-style-type: none"> ● Must serve as a member of the student's IEP team, if the student is, or may be, participating in the general education environment. ● Responsible for implementing a portion of the IEP if the student is, or may be, participating in the general education environment. ● Participates in the development of the IEP. ● Designees at the preschool level may include a care provider, Head Start teacher, or community preschool teacher if that person meets State and/or national licensing standards currently providing preschool services to nondisabled preschool students. ● The LEA may designate which teacher or teachers will serve as IEP team member(s) when a student has more than one regular education teacher. The IEP team is not required to include more than one regular education teacher of the student.
Administrator or Administrative Representative of the LEA (Required Member)	<ul style="list-style-type: none"> ● Qualified to provide or supervise the provision of special education services. ● Have the authority to allocate resources in the LEA as outlined in the IEP. ● Must be knowledgeable about the general education curriculum and the availability of the LEA's resources.

Related Service Provider (When Appropriate)	<ul style="list-style-type: none"> • May be invited to participate in the development of the IEP if the services they provide are being discussed. • Has knowledge and special expertise about the student's disability to assist in development of the IEP. • For a student whose primary disability is speech or language impairment, the Speech Language Pathologist could serve as the special education teacher/provider.
Qualified individuals who can interpret evaluation results and implications	<ul style="list-style-type: none"> • Be able to explain the results, the instructional, implications, and the recommendations of an evaluation. • Qualifications of such member(s) of the team will depend on the types of assessment(s) being administered.
Child/Student (When Appropriate)	<ul style="list-style-type: none"> • Included as a member of the IEP team whenever appropriate. • The student must be invited upon turning 16 years of age or prior to the 9th grade year, whichever comes first.
Representative of Transition Agency(s) (When Appropriate)	<ul style="list-style-type: none"> • Invited to be a member of the IEP meeting if transition services will be discussed and likely to be responsible for providing or paying for transition services. • Steps should be taken to obtain participation from the agency in transition planning even if a representative does not attend. • Requires parent consent
Part C Coordinator (SoonerStart Representative) (When Appropriate)	<ul style="list-style-type: none"> • May participate at the request of the parent. • The student previously was served under Part C and transitioning to Part B
Other Representatives	<ul style="list-style-type: none"> • At the discretion of the parent or LEA, other individuals who have knowledge or special expertise regarding the student. The determination of the knowledge and expertise of the individual must be made by the party who invited the individual to be a member of the IEP Team.

D. Parent Participation

It is the responsibility of the LEA to ensure that parent(s) are given the opportunity to participate in the development or revision of the IEP. The LEA must take steps to ensure that one or both of the student's parents are present at each IEP meeting. Meetings must be held at a mutually agreed upon time and place. LEAs may schedule IEP meetings only during regular school hours or regular business hours to ensure the availability of LEA staff. However, there may be circumstances where a parent cannot attend an IEP meeting that is scheduled during the day because their employment

situation restricts their availability during school hours or business hours. In such a circumstance, LEAs should be flexible in scheduling IEP meetings to accommodate reasonable requests from parents. Where LEAs and parents cannot schedule meetings to accommodate their respective scheduling needs, public agencies must take other steps to ensure parent participation, consistent with [34 CFR §300.322\(c\)](#). These include individual or conference telephone calls or videoconferencing, consistent with [34 CFR §300.328](#) (related to alternative means of meeting participation) ([Letter to Thomas 2008](#)).

For more information on definition of parent, see [Chapter 11, “Procedural Safeguards”](#).

E. Method of Parent Participation

Notification of Meeting	<ul style="list-style-type: none"> • The parent(s) must receive sufficient prior notice of IEP meetings. The notice is considered “prior” if enough time is allowed to make arrangements for participation of parent(s) and additional team members the parents wish to include. • The notice must include purpose, time, location of the meeting, and who will be in attendance by role. The notice must also include the right of the parent to bring other individuals with them who have knowledge or special expertise of the student. • If this is the student’s first IEP meeting and the student was served under Part C, it is the right of the parent to invite a representative of the Part C system. If post-secondary transition will be discussed, the notice must include consideration of post-secondary goals and transition services.
Mutually Agreed Upon Time and Place	<ul style="list-style-type: none"> • Time and place indicated are reasonably convenient to the parent(s), student, LEA personnel, and others involved. • LEA must make a good faith effort to reach an agreement with the parent(s) of a student with a disability regarding the scheduling of IEP meetings. • Attempts to arrange parent participation are maintained on the Record of Parent Contact. • If the parent is unable to attend the IEP meeting, the LEA must use other methods to ensure parent participation such as individual or conference telephone calls.

F. Excusal from the Meeting

There are two circumstances that allow a required IEP team member to be excused in whole or in part from an IEP meeting:

1. When an IEP team member's area of curriculum or related service is not being reviewed or revised at the meeting, the parent and the LEA may agree to excuse the member from all or part of the meeting with parent consent in writing. LEAs may use a district form or OSDE comment form to document the agreement and upload the form to the online IEP system.
2. When the IEP team member's area of curriculum or related services is being reviewed or revised at the meeting, the parent and the LEA may excuse the member from all or part of a meeting with parent consent in writing. The member must submit relevant, written input to the team prior to the meeting. LEAs may use a district form or OSDE comment form to document the agreement and upload the form to the online IEP system.

G. Recording Guidelines

The LEA has the option to require, prohibit, limit, or otherwise regulate the use of recording devices at IEP meetings. Recording should not be grounds for not holding a meeting. It would be improper not to conduct the meeting because a parent is recording the meeting.

Policy Prohibiting Use

If an LEA has a policy that prohibits (or limits) the use of recording devices at IEP meetings, that policy must provide for exceptions if they are necessary to ensure that parent(s) understand the IEP or the IEP process, or to implement other parental rights guaranteed under the IDEA Part B.

Policy Allowing Use with Regulation

An LEA that adopts a rule regulating the recording of IEP meetings should ensure that it is uniformly applied. The LEA has a responsibility to take steps necessary to ensure parent(s) participation in meetings, including taking steps to ensure that parent(s) understand the proceedings of the IEP meeting. Such steps may include arranging for an interpreter or other mode of communication for the parent(s).

Guidelines of Use

Any recording of an IEP meeting that is maintained by the public agency is an "education record" within the meaning of the Family Educational Rights and Privacy Act (FERPA) and would, therefore, be subject to the confidentiality requirements of the regulations under both the FERPA and the IDEA Part B.

Section 2. IEP Timelines

IEP Type	Timeline
Initial	30 calendar days from date eligibility is established
Subsequent	No less than annually from the development of the most current IEP.
Amended	As needed; does not change the annual due date.
Move-in Students	An IEP must be in effect for move-in students within 10 school days. If the parent(s) and LEA are satisfied with the existing IEP, the existing IEP may be implemented as written, without a formal meeting. Any changes will require the development of a new IEP. According to Oklahoma law (70 O.S. §24-101.4) and in accordance with provisions of the FERPA, a school district that receives a request for the education records (including disciplinary records) of a student who formerly was enrolled in the district shall provide full disclosure of those records and forward the records within 3 business days upon receipt of the request.
Interim	Should not exceed 30 calendar days

Section 3. IEP Development

A. Present Levels of Academic Achievement and Functional Performance

Present levels of academic achievement and functional performance are identified to inform and to guide the development of the IEP. Any identified areas of need(s) must be addressed in the IEP.

Statements of present levels of academic achievement and functional performance in an area of need include:

- The results of the initial or most recent evaluations of the student, including any state or LEA assessments;
- A description of academic, developmental, and/or functional strengths and needs:
 - Academic (e.g., math, language arts, sciences, etc.)
 - Developmental (e.g., communication, motor, cognitive, social/emotional, etc.)
 - Functional (e.g., self-care, social skills, daily living, communication, social/emotional, etc.)
- Impact of the disability on involvement and progress in the general education curriculum; and
- For preschool children, the impact of the disability on participation in age-appropriate activities.

B. Consideration of Special Factors

Consideration of special factors must be documented in the IEP to ensure a FAPE. These factors include: behavior, limited English proficiency, blindness or visual impairment needs, communication needs, assistive technology, and alternative format for educational materials. If a need arises for any of these special factors, the IEP must include a description of the supports and/or services that will be provided to meet the unique needs of the student. Refer to the [Special Factors Synopsis for AT Consideration](#) for additional information.

C. Parent Concerns

Parent concerns regarding their student's academic progress, behavior concerns, performance on goals, and any other relevant information should be documented as well as addressed through the IEP process.

D. Goals and Benchmarks/Objectives

Annual goals are related to the needs described in the present levels of performance statements. Measurable academic achievement, developmental, and functional annual goals are designed to meet the student's needs that result from the student's disability, to enable the student to be involved in and make progress in the general education curriculum, and to meet each of the student's other educational needs that result from the student's disability. If the student is assessed by alternate achievement standards, then the IEP team must include benchmarks/ objectives.

- A goal is a written, measurable statement that describes what a student is reasonably expected to accomplish within the time period covered by the IEP, generally one year.
- The student's eligibility category should not drive the goals or educational placement.
- If the student will be assessed through alternate achievement standards, then the IEP team must address benchmarks/objectives.

E. Goals and Benchmark/Objectives for Related Services

An OSEP policy letter addressed to Dr. Hal Hayden (1994) states that the goals and objectives in an IEP must address all of the student's identified needs that the IEP team has determined warrant the provision of special education, related services, or supplementary aids and services, and must enable the team to evaluate the effectiveness of each of those services. For example, if the IEP team has determined that a student needs speech and language therapy services as a component of FAPE, the IEP must include goals and objectives that address the student's need to develop and/or improve communication-related skills. Moreover, If instruction will be provided to the student to enable the student to increase the student's fine motor or gross motor skills, then goals and objectives must be included to address the need to increase fine and gross motor skills.

F. Progress Toward Goals

The IEP includes a statement describing:

- How the student's progress toward each IEP goal(s) will be measured; and
- How and when the parent will be informed of the student's progress toward the annual goals, including the extent to which progress is sufficient to enable the student to achieve the goals by the end of the IEP time period.

G. Service and Support Components

Each student's IEP includes descriptions regarding:

- Special education services;
- Related services;
- Supplementary aids and services;
- Program modifications; and
- Supports for personnel.

These components are designed to enable the student:

- To advance appropriately toward attaining the annual goals.
- To be involved in and make progress in the general education curriculum and to participate in extracurricular and other nonacademic activities.
- To be educated and participate with other students with disabilities and nondisabled students, as appropriate.

The term "special education" includes specially designed instruction to meet the unique needs of the student, including providing access to the general education curriculum. The term "related services" refers to supportive services required to assist a student with a disability to benefit from special education.

Supplementary aids and services refers to aids, services, and other supports that are provided in general education classes or other education-related settings and in extracurricular and nonacademic settings, for example: support for school staff, positive behavioral intervention plans, extended school year services, transportation, transition services, assistive technology services, and travel training services.

Supplementary aids and services may also include the following but not limited to: assistance of an itinerant special education teacher, related service provider, or paraprofessional; support or training for the general educator; use of resource services; provision of note takers; supports for

extracurricular or other nonacademic activities; and supports for participation in statewide or district wide achievement testing.

Accommodations refers to items that are intended to make educational opportunities more accessible. Accommodations include any changes that allow students with disabilities the same opportunity as students without disabilities. This may involve the setting, communication modality, equipment, and/or supplemental aids and services. Examples include Braille editions, large print, pencil grips, recording devices, note takers and computers with spell check.

Modifications refer to changes in educational expectations for the student with a disability compared to peers without disabilities. These modifications include actual changes in the general education curriculum and instruction or the use of an alternative or supplemental curriculum. Examples include fewer concepts to be mastered, different test questions, and material at a different reading level.

Whenever the IEP team determines that accommodations and/or modifications are needed to ensure academic progress, these are indicated in the IEP. Any accommodations and/or modifications required in physical education, vocational education, and state wide or district wide assessments are also included in the IEP.

H. Statewide and Districtwide Achievement Testing

Students with disabilities are to be included in all statewide and districtwide assessments. The IEP team determines how each student will participate in state and district wide assessments—with or without accommodations, or by means of an alternate assessment. Assessment accommodations are determined based on the student's needs. Those accommodations can only be used for state assessment purposes if they are used regularly by the student during instruction and/or classroom testing. The state approved assessment accommodation list is located on the Oklahoma State Department of Education Web site. Students must meet the eligibility requirements found in the [Criteria Checklist for Assessing Students with Disabilities on Alternate Assessments](#) before taking an alternate assessment.

I. Extended School Year Services (ESY)

Each LEA must provide extended school year (ESY) services to students who need such services to receive a FAPE. Each LEA is responsible for establishing an ESY policy and to provide ESY special education and related services, including transportation, to students with disabilities whose IEP teams have determined these services are necessary. ESY services are those services a student requires to maintain academic or functional progress beyond the normal school year of the LEA and are not limited to only the summer months. The IEP team makes the determination regarding whether a student needs ESY and, if so, what services will be provided. This includes determining the details of ESY, such as what services will be provided, when and where the services will take place, and the frequency and the duration of the services. Any services provided as ESY must meet the requirements of a FAPE. An LEA must not state that ESY is only for certain groups of students or say

it is for all of a certain group. Likewise, an LEA may not limit ESY services to a certain time period or type of activity (*Johnson v. Independent Sch. Dist. No. 4* 921 F.2d 1022 (Oklahoma 1990)).

The term “extended school year services” means special education services that are provided beyond the regular school year:

- To a student with a disability;
- In accordance with the student’s IEP; and
- At no cost to the parent.

The goal of ESY services is to assist students with disabilities with the emergence and maintenance of specific IEP goals addressed during the school year preceding the ESY. These may include goals related to independence, behavior, socialization, communication, and academics. The ESY services for special education students provide a different focus than that of a general education summer school program.

The ESY services are considered in light of the following circumstances:

- **Emerging Skill.** A skill is in the process of emerging, and the IEP team believes that with ESY services the student would reasonably maintain the skill;
- **Regression-Recoupment.** The student will regress to such an extent and the amount of time required to relearn a skill or behavior becomes so significant that the student will be unable to benefit from his or her special education; or
- **Self-Sufficiency.** An interruption in services would threaten the acquisition of critical life skills that aid in the student’s ability to function as independently as possible, thereby continuing the student’s reliance on caretakers, including institutionalized care. Critical life skills relate to those skills that lead to independent functioning. Development of these skills can lead to reduced dependency on future caretakers and enhance the student’s integration with individuals without disabilities. Skills may include such things as toileting, feeding, mobility, communication, dressing, self-help, and social/emotional functioning.
- Decisions concerning ESY services are based on collected data and written documentation. Types of data and information may include, but are not limited to, the following:
 - **Criterion-referenced test data.** Consider daily/weekly probes or pre-test/post-test data.
 - **Norm-referenced test data.** Consider pre-test/post-test data.
 - **Anecdotal records.** Consider information collected throughout the school year.

- **Physical, mental, or emotional health factors.** Consider the educational, medical, and psychological records of the student as well as the prognosis or judgments of educators, medical personnel, parents, and others that work with the student. Consider degenerative types of difficulties that may become intensified during breaks in educational programming.
- **History.** Consider evidence of past regression or past ESY services. The IEP team should not automatically assume that a student who has received ESY services in the past will be eligible for ESY services in the future, but it is a factor to consider.
- **Data on observed performance.** Consider data maintained on the student concerning performance observed in the classroom, during community-based activities, and as part of IEP progress monitoring.
- **Teacher interviews and recommendations.** Consider progress reports by teachers, therapists, and others who have direct contact with the student before and after breaks in educational programming.
- **Parent input.** Consider parent observations of the student as well as parent requests for ESY services.
- The ESY services are clearly delineated in the IEP. The LEA can meet this requirement by amending the current IEP.
- The LEA may not limit ESY services to particular categories of disability or unilaterally limit the amount or duration of these services.

J. LRE Explanation

The IEP explains the extent, if any, to which the student will not participate in the general education classroom, the general education curriculum, or extracurricular or other nonacademic activities. See [Chapter 6, “Least Restrictive Environment \(LRE\)”](#) for additional information on LRE.

K. Consent for Initial Placement in Special Education

The LEA must make a reasonable effort to obtain informed consent from the parent and/or the adult student before the initial provision of special education and related services are provided to the student.

If the parent communicates in writing that he or she refuses special education and related services or fails to respond and/or provide consent for initial placement following the evaluation and determination of eligibility, the LEA cannot provide special education services to the student—nor can an LEA challenge the decision through mediation or due process hearing.

L. Assistive Technology Devices and/or Services

The LEA must ensure that assistive technology devices and/or services are made available to a student, if required, as special education, related services, or supplementary aids and services. The term “assistive technology device” means any item, piece of equipment, or product system, whether acquired commercially, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a student with a disability. The term does not include a device that is surgically implanted or the replacement of such device. The IEP team may determine that the student needs to access school-purchased assistive technology devices in non-school settings to receive a FAPE. The term “assistive technology services” includes the following:

- An evaluation of the student’s assistive technology needs, including a functional assessment in the student’s customary environment;
- Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices;
- Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;
- Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;
- Training or technical assistance for a student with a disability or, if appropriate, that student’s family;
- Training or technical assistance for professionals, including individuals providing education or rehabilitation services, employers, or other individuals who provide services or are otherwise substantially involved in the major life functions of a student with a disability;
- The LEA must ensure that the hearing aids worn by deaf or hard-of-hearing students in school are functioning properly; and
- The LEA is responsible to appropriately monitor and check surgically implanted devices to make sure the devices are functioning properly, if the team has determined that those services are necessary. This responsibility applies to devices that are needed to maintain the health and safety of the student, including breathing, nutrition, or operation of other bodily functions, while the student is transported to and from school or is at school.

M. Transportation

Transportation is a related service if special arrangements resulting from the student’s disability are required to assist a student with a disability to benefit from special education. The student’s

individual needs concerning his or her education are the main considerations in determining services—this includes transportation services.

The IEP team must consider how the student's disability affects his or her need for transportation, including determining whether the student's disability prevents the student from using the same transportation provided to students without disabilities, or from getting to school in the same manner as students without disabilities.

When the IEP team determines that special transportation is required and documents it on the IEP, all procedural safeguards under the IDEA must be afforded to the student in matters concerning transportation.

Transportation needs may include, but are not limited to, the following:

- Travel to and from school and between schools to access special education; specialized equipment including lifts and ramps, if required to provide special transportation;
- Travel in and around school buildings; or
- Other services that support the student's use of transportation, such as:
 - Special assistance (e.g., an aide on the bus and assistance getting on and off the bus);
 - Safety restraints, wheelchair restraints, and child safety seats;
 - Accommodations (e.g., preferential seating, a behavioral intervention plan for the student on the bus, and altering the bus route);
 - Training for the bus driver regarding the student's disability or special health related needs; or
 - Attending non-academic and extracurricular activities if required by the IEP.

If the team determines that the child needs transportation as a related service, the school district may provide transportation services directly or contract with parents or some other person to furnish transportation. The miles driven and cost per mile to be paid by the school district should be specified in the IEP. Based on a mutual agreement between two school districts, a school district offering special education classes may extend its transportation services to include the transportation of children qualifying for special education in an adjacent district that does not offer special education classes.

In the event of a transfer, when transportation is included as a related service in the IEP and the IEP is reviewed and adopted by the receiving independent school district, the receiving school district will be required to provide transportation regardless of the transportation area where the child resides.

[Source: Added at 29 Ok Reg 971, eff 6-26-12]

N. Secondary Transition

The purpose of a transition service plan is to assist students in building the skills and supports they need to reach their post-school goals transitioning from school to post-school environments. Transition requires support from multiple sources so the student and his/her family can make choices, develop connections, and access services prior to leaving high school.

Secondary transition services are defined as a coordinated set of activities for a student with a disability that is designed within a results-oriented process that is focused on improving the academic and functional achievement of the student to facilitate the student's movement from secondary school to post-school activities (e.g., postsecondary education, vocational education, integrated employment, supported employment, continuing and adult education, adult services, independent living, or community participation). The coordinated set of activities may include instruction, related services, community experiences, development of employment and other post school adult-living objectives and, if appropriate, acquisition of daily living skills and a functional vocational evaluation. These activities are based on the individual student's needs, taking into account the student's strengths, preferences and interests.

The IEP must include secondary transition services that are in effect prior to the beginning of the student's ninth grade year or upon turning 16 years of age, whichever comes first, or younger, if determined appropriate by the IEP team, and updated annually. The student must be invited to attend the IEP meeting if a purpose of the meeting will be the consideration of the postsecondary goals and the transition services needed to assist the student in reaching those goals. If the student does not attend, the team must take steps to ensure that the student's preferences and interests are considered. In addition, the LEA must invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services. For more information, refer to [*Oklahoma's Secondary Transition Handbook*](#).

The IEP must include:

1. Student's needs, strengths, preferences, and interests identified using age appropriate transition assessments. Transition assessments should be varied and facilitate the development of transition goals. Please refer to the [*Oklahoma's Secondary Education Transition Handbook*](#) and the [*Age Appropriate Transition Assessment Toolkit*](#) more information.
2. Appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to education, training, employment, and where appropriate, independent living skills and community participation. Education, training, and employment must be addressed for all students. It is appropriate to address independent living and community participation goals when the student is participating in the alternate assessment and when results from assessments indicate student's needs in these areas.

3. Transition services (including courses of study) needed to assist the student in reaching postsecondary goals. A course of study should focus on instructional and educational classes and experiences that will assist the student in preparing for transition from school to postsecondary life, including postsecondary education, vocational education, integrated employment (including supported employment), adult services, independent living, or community participation. This should relate directly to the student's postsecondary outcome goals and should show how a planned course of study is linked to these goals.
4. Measureable annual transition IEP goals related to the student's transition service needs are designed to help the student reach each of the desired postsecondary goals. For students assessed by alternate achievement standards, short-term objectives/benchmarks must also be included.
5. Progress toward meeting graduation requirements for the student receiving special education services should be monitored to ensure students are progressing. The goals and transition services must be updated on the IEP annually. Students take an active role in monitoring the implementation of their IEP/transition plan to ensure they are completing activities to support achieving their goals.
6. No later than the student's 17th birthday, the IEP team must inform the parents and the student that all special education rights will transfer to the student on his/ her 18th birthday unless the student has been deemed incompetent by a Court.
7. When a student exits from special education as a result of earning a regular diploma or aging out, the LEA must provide the student with a summary of his or her academic achievement and performance along with recommendations concerning how to assist the student in meeting postsecondary goals. The student must have the opportunity to be an active participant in the development of the [Summary of Performance](#). The document should contain the most updated information on the performance of the student and include both the student's abilities and aspirations.

For detailed information regarding transition planning, please refer to the [Oklahoma's Secondary Education Transition Handbook](#).

Section 4. IEP Reviews

A. Annual IEP

Each student's IEP is reviewed at least annually and must be in effect at the beginning of the school year. Meetings may be held any time throughout the school year and Written Notice provided prior to the implementation of changes to special education services, related services, or educational placement.

The Annual IEP review addresses the following:

1. Whether the student's annual goals have been achieved, including those for related services and secondary transition;
2. Whether there is any lack of expected progress toward annual goals or in the general education curriculum, when appropriate;
3. Whether any additional assessments are necessary and to address the results of those conducted;
4. Information about the student provided to or by the parent;
5. The student's anticipated needs; and
6. To monitor the continuing eligibility of the student based on an evaluation or review of a variety of data, which may include formal or informal assessment, progress toward IEP goals and when applicable benchmarks/objectives.

B. Following the Annual Meeting

Following the IEP team meeting, a copy of the IEP is given to the parent in a timely manner after the meeting. In addition, IEPs and Written Notice must be given to the parent whenever a change in special education, related services, or educational placement is made to the IEP. Minor changes to the wording of a goal or accommodation, for example, would not require written notice.

Each general education teacher, special education teacher, and related service provider who is responsible for implementing any portion of the IEP must have access to the IEP and be informed of his or her specific responsibilities. This includes being informed of any specific accommodations, adaptations, or supports that will be provided to the student to ensure that the IEP is implemented appropriately and providing a copy to the partners who are paying for or providing transition services.

C. IEP Amendments

In making changes to a student's IEP after the annual IEP meeting, the parent and the LEA may agree not to convene an IEP meeting for the purposes of making such changes, and instead may develop a written document to amend the student's current IEP. Upon parental request, a revised copy of the IEP with amendments will be provided. The annual review date remains the same and does not change with an IEP amendment.

Each general education teacher, special education teacher, and related service provider who is responsible for implementing any portion of the amended IEP must have access to the amendment and be informed of his or her specific responsibilities.

If the parent believes that the student is not progressing satisfactorily or that there is a problem with the current IEP, he or she may request an IEP team meeting. The LEA must grant any reasonable request for such a meeting. If any other member of the IEP team feels that the student's placement or IEP services are not appropriate, that team member may request an IEP team meeting.

Legal Citations

Code of Federal Regulations, Title 34: Education

- §300.5 Assistive technology device.
- §300.6 Assistive technology service.
- §300.22 Individualized education program.
- §300.34 Related services.
- §300.39 Special education.
- §300.43 Transition services.
- §300.106 Extended school year services.
- §300.114 LRE requirements.
- §300.320 Definition of individualized education program.
- §300.321 IEP Team.
- §300.322 Parent participation.
- §300.323 When IEPs must be in effect.
- §300.324 Development, review, and revision of IEP.

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CHAPTER 6. LEAST RESTRICTIVE ENVIRONMENT

Section 1. LRE Considerations

The Individuals with Disabilities Education Act (IDEA) states that, to the maximum extent appropriate, all students with disabilities, 3 through 21 years of age, are to be educated with age appropriate peers, both with and without disabilities. This is known as the least restrictive environment (LRE). The LRE is the appropriate balance of settings and services to meet the student's individual needs. The Local Education Agency (LEA) must have an array of services and a continuum of educational setting options available to meet the individual LRE needs of each student.

An appropriate LRE is one that enables the student to make reasonable gains toward goals identified in an Individualized Education Program (IEP). The student's IEP must indicate the individualized LRE placement. The IEP team must consider to what extent, if any, the student will or will not participate in the general education classroom environment, the general education curriculum, and extracurricular or other nonacademic activities. This provision includes students with disabilities placed in public or private institutions or other care facilities by the IEP team.

Special classes, separate schooling, and other removals of a student with a disability from the general education environment may occur only when the nature or severity of the disability is such that education in the general education class, even with the use of supplementary aids and services, cannot be achieved.

Placement decisions for a student with a disability are made following the determination of the individual student's needs, goals, and services required to provide a FAPE. Placement is not the same as the location of services.

In *L.B. v. Nebo School District*, 379 F.3d 966 (10th Cir. 2004), a decision binding in Oklahoma, the United States Court of Appeals for the Tenth Circuit adopted the following two-part standard for determining the least restrictive environment (LRE) for a child with a disability under the IDEA:

1. Can education in the regular classroom with the use of supplementary aids and services be achieved satisfactorily for this student?
2. If education in the regular classroom with the use of supplementary aids and services cannot be achieved satisfactorily for the student, then has the school district mainstreamed the child to the maximum extent appropriate?

Section 2. LRE & Continuum of Alternative Placements

A. Continuum of Alternative Placements

The continuum of alternative placements includes instruction in general classes, special classes, special schools, home instruction and instruction in hospitals and institutions. In addition, the continuum includes the provision of supplemental services in conjunction with the general classroom. In determining appropriate settings and services for a student with a disability, the IEP team considers the student's needs and the continuum of alternative placements and related services available to meet those needs. Regardless of placement, the student will be given appropriate access to the general education curriculum, as determined by the IEP team.

LRE decisions are made individually for each student. The IEP team should consider the following when determining the LRE in which the IEP can be implemented:

Based on student's individual needs. The student's IEP is developed prior to the determination of the placement of services and settings. The services and settings needed by each student with a disability must be based on the student's IEP and unique needs that result from his or her disability, not on the student's category of disability.

1. **Age Appropriate Peers.** Students with disabilities must be educated with age-appropriate peers to the maximum extent appropriate.
2. **School of Attendance.** A student with a disability should be educated in the school as close as possible to the student's home unless the IEP requires some other arrangement. The student should be educated in the school he or she would attend if the student did not have a disability.
3. **Harmful Effects.** Consideration must be given to any potential current or long term harmful effect on the student or on the quality of services the student needs, including the student's ability to graduate and achieve his or her post high-school goals.
4. **Accommodations and/or Adaptations.** A student with a disability should receive accommodations and/or adaptations in the general education curriculum to the maximum extent appropriate. For more information please see the [Oklahoma Accommodations Guide](#) and the [Oklahoma Assistive Technology for Children and Youth with Disabilities IDEA Part B Technical Assistance Guide](#).
5. **Participation in Nonacademic and Extracurricular Services and Activities.** A student with a disability must be allowed to participate with students without disabilities in nonacademic and extracurricular services and activities to the maximum extent appropriate. These services and activities may include nutritional breaks, recess, field trips, counseling services, athletics, transportation, health services, recreational activities, special interest groups or

clubs sponsored by the LEA, referrals to community agencies, career development, and assistance in making outside employment available.

The IEP team determines the supplementary aids and services that are appropriate and necessary for the student to participate in nonacademic settings and extracurricular services and activities. This may include, but is not limited to, field trips, participation in clubs, Special Olympics, referral to agencies that provide services, special interest groups, employment assistance, counseling, health services, or athletics. An IEP does not negate eligibility requirements such as having to try out for the team or having an “A” average to be in French Club. It is also important to note, parent attendance or participation in extracurricular activities cannot be a requirement when determining necessary supports.

B. Program Options

Students identified as having a disability under the IDEA, are general education students first and are entitled to the full range of educational opportunities available to all students in an LEA. LEAs should ensure that students with disabilities have available to them the variety of educational programs and services available to nondisabled students in the area served by the agency, including art, music, industrial arts, consumer and homemaking education, and vocational education.

C. Continuum of Alternative Placements

The following are some examples of alternative placements for Students (ages 6 through 21). The following federal data reporting requirements charted below may guide IEP teams in making LRE decisions and may allow for consistency when LEAs are conducting Child Count.

General Education Full-time (Inside the regular class more than 80% of the day.)

The child receives special education and related services outside the general education classroom for less than 20% of the school day.

Special Education Services Part-time (Inside the regular class 40% to 80% of the day.)

The child receives special education and related services outside the general education classroom for at least 40%, but no more than 80% of the school day.

Special Education Services Full-time (Inside the regular class less than 40% of the day.)

The child receives special education and related services outside the general education classroom for more than 40% of the school day.

Public/Private Separate Day School Facility

The child receives education in public or private separate day school facilities (including students with disabilities receiving special education and related services, at public expense, for greater than 50% of the school day in public or private separate schools).

Public/Private Residential Facility

The child receives education in a public or private residential facility during the school week (including students with disabilities receiving special education and related services, at public expense, for greater than 50% of the school day in public or private residential facilities).

Home Instruction/Hospital Environment

The child receives education (1) through home instruction, or (2) in a hospital program.

Correctional Facility

The child receives education in a:

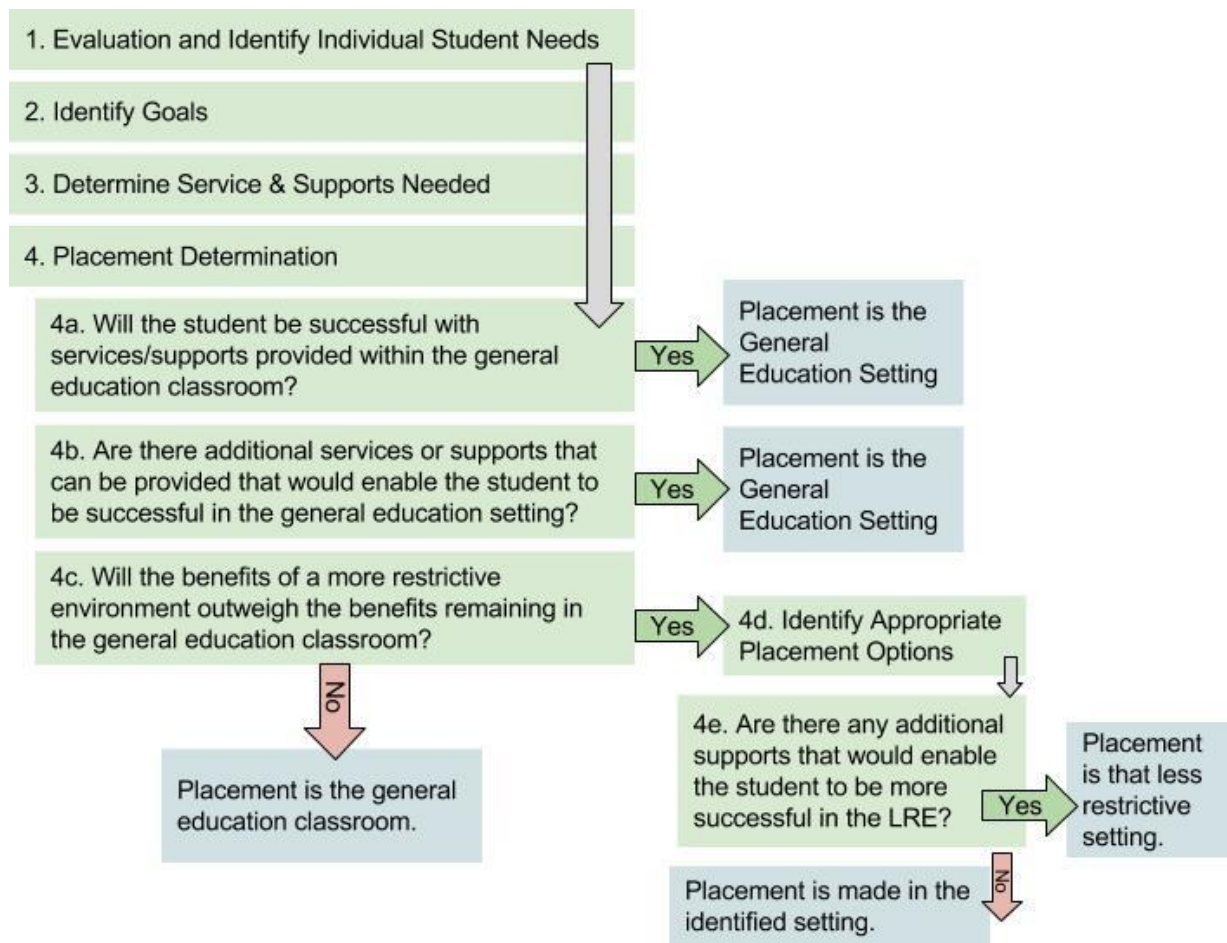
- Short-term detention facility (community-based or residential); or
- Correctional facility.

Parentally Placed in Private School

The child is enrolled by his/her parent or guardian in regular parochial or other private school and his/her basic education is paid through private resources; although, he/she receives special education and related services at public expense from an LEA under an individual service plan.

- This does not include students who are placed in private schools by the LEA.

D. LRE Decision Tree



Section 3. When to Review Placement Decisions

Placement decisions are revisited at least annually by the IEP team, which includes the parent and/or student and other persons knowledgeable about the student. The IEP team is responsible for interpreting the evaluation data and the consideration of placement options available in the LEA.

Placement decisions may be reviewed and changed at any time, including when an IEP team is convened to review a student's academic, functional, and developmental progress.

A. Special Circumstances

Oklahoma law provides LEAs with the option to educate students with disabilities in an alternate educational setting without regard to LRE requirements in the following circumstances:

- The student has been adjudicated as a delinquent for certain offenses (Definition);

- The student has been removed by administrative or judicial process from an LEA or private school in any state for a violent act or an act showing deliberate or reckless disregard for the health or safety of faculty or other students; or
- The student, as a sixth through twelfth grader, has been suspended out of school for having assaulted, attempted to cause physical bodily injury, or acted in a manner that could reasonably cause bodily injury to LEA personnel or a person volunteering for an LEA.

The LEA must provide students with disabilities with special education services in accordance with the student's IEP. If the LEA provides educational services at an LEA facility, then the LEA must notify any known student or employee victims of the student's presence and upon the victim's request, restrict the student from the general vicinity of the victim(s) or contact with the victim(s).

The requirements of the IDEA concerning LRE and other issues may override contrary provisions in Oklahoma law.

Legal Citations

Code of Federal Regulations, Title 34: Education

- §300.110 Program options.
- §300.114 LRE requirements.
- §300.115 Continuum of alternative placements.
- §300.116 Placements.
- §300.117 Nonacademic settings.
- §300.118 Children in public or private institutions.
- §300.119 Technical assistance and training activities.
- §300.120 Monitoring activities.
- §300.300 Parental consent.
- §300.320 Definition of individualized education program.

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CHAPTER 7. DISCONTINUATION OF SERVICES, GRADUATION & GRADING

Section 1. Discontinuation of Special Education Services

A. Students Who Are No Longer Entitled to Special Education Services

The Local Education Agency (LEA) will follow appropriate procedures to discontinue special education services to students who are no longer entitled to those services.

i. Student No Longer Meets Eligibility Criteria

If it is suspected that a student no longer meets the eligibility criteria for the Individuals with Disabilities Education Act (IDEA), the evaluation group will conduct a reevaluation (with or without new assessments, as determined appropriate) to determine whether the student continues to be eligible for special education services. If the evaluation group determines the student is no longer eligible, the LEA will provide the parent and/or adult student with written notice of this decision prior to discontinuing special education services.

ii. Student Completes Requirements for a Regular High School Diploma

The LEA's obligation to provide special education services ends when the student meets the LEA and State requirements that apply to all students for receipt of a regular high school diploma even if the student has not reached the age of 22. Although this is considered a change of placement, a reevaluation is not required. A GED is not considered a regular high school diploma.

Prior to graduation and the discontinuation of special education services, the LEA must:

- Provide the parent and/or adult student with written notice that the LEA's obligation to provide special education services ends when the student obtains a regular high school diploma; and
- Provide the parent and/or adult student with a written summary of academic achievement and functional performance, including recommendations to assist the student in meeting his or her postsecondary goals. This summary is known as the ([Summary of Performance](#)).

STUDENT REACHES MAXIMUM AGE

For students who have not yet graduated from high school by meeting requirements for graduation, the LEA's obligation to provide special education services ends when the child turns 22 years of age. Although this is considered a change of placement, a reevaluation is not required.

Before a student turns 22 years of age, the LEA:

- Must provide the parent with written notice that the LEA's obligation to provide special education services will end when the student turns 22 years of age; and
- Must provide the parent with a written summary of academic achievement and functional performance, including recommendations to assist the student in meeting his or her postsecondary goals. This summary is known as the ([Summary of Performance](#)).

B. Change in LEA Obligation to Provide Services

Under certain circumstances, a student may continue to be eligible for special education services, but the LEA's obligation to provide services changes.

- Transfer to another LEA
 - When a student moves out of an LEA, the LEA will make reasonable efforts to promptly forward the student's special education records electronically or by mail upon request from the new LEA. The records must include, at least, the student's most recent individualized education program (IEP) and all eligibility documentation.
- Enrollment in Private School
 - When a parent withdraws a student from public school and enrolls him or her in a private school, the LEA's responsibilities vary depending on the circumstances. See [Chapter 10, "Students in Private Schools"](#) for more information.

Parent Revokes Consent for Special Education Services

Parents may revoke consent for special education and related services at any time, in writing. However, the IDEA does not give parents the ability to revoke consent for a particular service; the revocation for all special education services. Revocation is not retroactive; it does not negate an action that has occurred after the consent was given and before the consent was revoked. If a parent revokes consent, the school must respond to the parent's request with a Written Notice to Parents before ceasing services in a timely manner. The notice must have language that is understandable to the general public regarding the change in educational placement and services that result from the parent's revocation of consent. Parents must be informed that their child will be treated as a nondisabled student for disciplinary purposes.

The parent's right to terminate their child's special education and related services is not subject to challenge in a due process hearing or mediation. If a parent revokes consent the LEA is not in violation of the requirement to provide a free appropriate public education (FAPE) for the child because of the failure to provide special education services. The parent can request at any time after the revocation of consent to start the child find process with their student. The student should be treated as any student in the Child Find process. The request is treated as an initial evaluation; however, existing evaluation data may be considered along with any new evaluations conducted.

Section 2. Graduation

Graduation means meeting state and/or LEA requirements for receipt of a regular high school diploma. The IEP team determines the course of study for each student. The course of study should include those courses the IEP team determines necessary to assist the student in meeting their postsecondary goals. It should also include a statement as to whether the student will participate in either the College Preparatory/Work Ready Curriculum or the Core Curriculum. Students must also meet all State testing requirements. IEP teams do not have the authority to change graduation requirements by reducing or increasing credits required.

A. Participation in Graduation Ceremonies

LEAs should clearly define in district policies or procedures, the criteria for participation in graduation ceremonies by students who have not met graduation requirements. The criteria for participation in graduation ceremonies should be established district-wide, rather than at the individual school level. LEAs should make these policies or procedures available to students, parents, and LEA staff.

Section 3. Transcripts & Diplomas

The transcript serves as a record of individual accomplishments, achievements, and courses completed. Transcripts must not contain any information that would be considered discriminatory based upon their disability. In the event a student on an IEP participates in graduation ceremonies while not officially graduating due to continuing to receive special education and related services through the 21st birthday, the transcript will not indicate graduation until the time the student officially completes all requirements for high school graduation.

Once a student has been issued a regular high school diploma, he/she has completed all requirements for graduation and is no longer eligible for any services under IDEA. Students who reach maximum age of eligibility do not receive a regular high school diploma unless they have also meet LEA graduation requirements at the time of exiting.

Section 4. Grades, Class Ranking, and Honor Roll

The LEA may establish objective criteria for class ranking, honors, grades, etc., as long as they are nondiscriminatory.

The practice of denying, on the basis of disability, a qualified student with a disability the opportunity to participate in an accelerated program violates both Section 504 and Title II. Discrimination prohibited by these laws includes, on the basis of disability, denying a qualified individual with a disability the opportunity to participate in or benefit from the recipient's aids, benefits, or services, and affording a qualified individual with a disability with an opportunity to participate in or benefit from the aid, benefit or service in a manner that is not equal to that offered

to individuals without disabilities ([34 CFR §104.4\(a\), \(b\)\(1\)\(i\), \(b\)\(1\)\(ii\)](#); [28 CFR §35.130\(a\), \(b\)\(1\)\(i\), \(b\)\(1\)\(ii\)](#)).

Under Section 504 and Title II, a recipient may not utilize criteria or methods of administration that have the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability ([34 CFR §104.4\(b\)\(4\)](#) and [28 CFR §35.130\(b\)\(3\)](#)). A public entity also may not impose or apply eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any service, program, or activity, unless such criteria can be shown to be necessary for the provision of the service, program, or activity being offered, [28 CFR §35.130\(b\)\(8\)](#). Public school students with disabilities who require special education and/or related services receive them either through implementation of an individualized education program (IEP) developed in accordance with Part B of the IDEA or a plan developed under Section 504 and [34 CFR §104.33](#). It is unlawful to deny a student with a disability admission to an accelerated class or program solely because of that student's need for special education or related aids and services or because that student has an IEP or a plan under Section 504. The practice of conditioning participation in an accelerated class or program by a qualified student with a disability on the forfeiture of special education or of related aids and services to which the student is legally entitled also violates the Section 504 and Title II requirements stated above.

Legal Citations

Code of Federal Regulations, Title 34: Education

- §300.9 Consent.
- §300.102 Limitation—exception to FAPE for certain ages.
- §300.300 Parental consent.
- §300.305 Additional requirements for evaluations and reevaluations.

Code of Federal Regulations, Title 28: Judicial Administration

- §35.130 General prohibitions against discrimination.

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CHAPTER 8. REEVALUATION

Section 1. Reevaluation and Continuing Eligibility

The information gathered as a result of the reevaluation provides valuable information about the student's progress and needs. In addition to using the information to determine whether the student continues to be eligible for special education and related services, this information should be used to review, revise or amend the IEP, if determined necessary.

A. Purpose of Reevaluation

The reevaluation process is required every 3 years, or more often, if needed, to determine:

- If the student continues to be a student with a disability;
- The educational needs of the student;
- The present levels of academic achievement and functional performance (related developmental needs) of the student;
- Whether the student continues to need special education and related services; and
- Whether any additions or modifications to the special education and related services are needed to enable the student to meet the measurable annual goals set out in the IEP and to participate, as appropriate, in the general education curriculum.

B. General Considerations for Reevaluation

A reevaluation should not occur more than once a year, unless the parent and the LEA agree otherwise. A reevaluation must be conducted before an LEA determines a student is no longer a student with a disability.

Circumstances when a reevaluation may be necessary within three years:

1. If a parent has requested a reevaluation and the LEA agrees to conduct the reevaluation.
 - a. In these cases the LEA must ensure that the group has conducted the evaluation process based on specific concerns.
 - b. If a parent requests more than one reevaluation per year, and the LEA disagrees that a reevaluation is needed, the LEA must provide Written Notice to the parent that explains why the LEA refuses to do the reevaluation and the parent's right to pursue the reevaluation through mediation or due process.

2. If the LEA determines that the educational or related services needs warrant a reevaluation.

Circumstances when a reevaluation is not required:

1. Before the termination of a child's eligibility due to graduation with a regular diploma; however, Written Notice to the parent and/or adult student is required for the change of placement;
2. Due to exceeding the age of eligibility for a FAPE (on the 22nd birthday), however, Written Notice is required for the change of placement; or
3. When the LEA and parent mutually agree that a reevaluation is not needed.

Section 2. Parent Rights

A copy of the Parents Rights in Special Education: Notice of Procedural Safeguards must be given to the parent(s) (or the young adult who has reached the age of majority-18 year of age unless a parent/guardian has been appointed by a Court) one time per year, except that a copy must also be given to the parent: upon initial referral or request for evaluation; upon the filing of a State administrative complaint or due process hearing complaint; upon a request and if the student is subject to a disciplinary change of placement.

During a reevaluation, like an initial evaluation, the LEA is required to inform parents of their right to an independent educational evaluation. See [Chapter 11, Section 8, "Independent Educational Evaluations \(IEE\)"](#) for a full discussion of independent educational evaluations (IEEs).

Section 3. Review of Existing Data (RED)

When a request has been made for an initial evaluation and as part of any reevaluation under this part, qualified professionals and the parent must conduct a review of existing data to the extent appropriate. This data includes evaluations and information provided by the parents, current classroom-based, local, and/or State assessments, classroom-based observations, observations by teachers and related service providers; and the student's response to scientifically, research-based interventions. After the RED, there must be a determination of what, if any, data in addition to the existing data, will be collected during the evaluation to enable the team to complete all requirements of the evaluation and eligibility including the evaluation report. If the group proposes to conduct the evaluation based only on existing data, the existing data must meet the requirements for a comprehensive evaluation.

The review of existing data, as part of the evaluation, may be conducted without a meeting and without consent from the parents.

A. No Additional Data Needed

If the group determines that no additional data are needed to determine whether the student is a student with a disability, and to determine the student's educational needs, the LEA must notify the parents:

1. Of that determination and the reasons for it; and
2. The right of the parents to request an assessment to determine whether the student is a student with a disability, and to determine the educational needs of the student.

The LEA is not required to conduct the assessment described in (2) above unless requested to do so by the student's parents. In addition, if the parents request an assessment, the LEA may refuse to do so, but it must provide the parents with Written Notice of the refusal to conduct the assessment and the reasons for the refusal. The parents may request mediation or due process if they want the assessment conducted.

B. Additional Data Needed

If the group has determined that additional data are needed, the group should ensure that all data will be collected within the evaluation timeline and that parental consent is provided for additional assessments.

If additional evaluation data are deemed necessary, the additional information, assessments, or evaluations must be completed and the team must reconvene on or before the three-year anniversary of the previous initial evaluation or reevaluation. The IEP team must consider the additional and existing evaluation results and, as appropriate, revise the IEP.

Section 4. Written Notice/Parental Consent

A. Request for Parental Consent

The LEA must obtain informed consent from the parent of the student before conducting the reevaluation. Informed consent means:

- The parent has been fully informed of all information relevant to the proposed action for which consent is being sought, in his or her native language, or other mode of communication.
- The parent understands and agrees (in writing) to the proposed action for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom.
- The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time. However, revocation is not retroactive (i.e., it does not

negate an action that has occurred after the consent was given and before the consent was revoked).

B. Written Notice

The LEA must provide Written Notice to the parents of the student that proposes any evaluation procedures. The purpose of providing notice to the parents is so they understand what action the LEA is proposing (in this case, to conduct a reevaluation) and the basis used for determining the action is necessary.

C. Failure to Respond or Provide Consent

When a parent fails to respond to a consent request for reevaluation, the LEA must provide written notice to the parent regarding the action to be taken. The LEA must provide this notice through the use of Written Notice to Parents. The LEA must make reasonable attempts to obtain consent from the parents to conduct the reevaluation. The LEA must document such attempts (detailed records of telephone calls made or attempted and the results, copies of written or electronic correspondence sent to the parents and their response if any, and visits made to the parents' home or place of employment, and the results, if any, from the parents).

If the parent does not respond to a request to provide consent for a reevaluation after reasonable efforts have been made to obtain such consent, the informed parental consent need not be obtained.

If the LEA believes, based off a review of existing data, that the student does not continue to have a disability or does not continue to need special education and related services, the LEA may determine that it will not continue to provide special education and related services to the student. If the LEA determines that it will not continue to provide special education and related services to the student, the LEA must provide the parent with written notice of its proposal to discontinue the provision of FAPE to the student.

Section 5. Reevaluation

A. Evaluation Group

Once consent is obtained from the parent, a group is formed to carry out the evaluation process. The members of each evaluation group may differ; however, there are specific members and skills that must be represented.

- The parents of the student;
- A general education teacher;
- A special education teacher;

- A representative of the local education agency who:
 - Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of child with disabilities;
 - Is knowledgeable about the general education curriculum, and
 - Is knowledgeable about the availability of resources of the public agency.
- An individual who can interpret the instructional implications of reevaluation results who may hold another position on the team, such as a teacher;
- At least one person qualified to conduct individual diagnostic examinations of children, such as a school psychologist and/or a speech-language pathologist;
- At the discretion of the parent or agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate.

B. Parent Participation

If parent(s) cannot attend scheduled reevaluation group meetings, other methods may be utilized to ensure parent participation, including individual or conference telephone calls. Meetings may be conducted without a parent in attendance if the LEA has a record of reasonable attempts to schedule meetings at a mutually agreed on time and place. In these cases, Written Notice to Parents must be used to inform the parents of any group decision and reasons for that decision.

C. Conducting the Reevaluation

The reevaluation must include a variety of assessment tools and strategies to gather relevant functional, developmental and academic information. This includes information provided by the parent that may assist in determining whether the child continues to be a child with a disability, the educational needs of the child, and the content of the child's IEP. Information related to enabling the child to be involved, and progress, in the general education curriculum (or for a preschool child, to participate in appropriate activities) must also be included. In addition, the procedures lead to the determination of the present levels of academic achievement and functional performance of the child. The qualified examiner must administer such assessments and other evaluation measures as needed to produce the data.

Section 6. Determining Continued Eligibility

Upon completion of the reevaluation, the group should compile all data (that which previously existed and/or was collected as part of the reevaluation) to make the continued eligibility determination. It is important that all the information allows the team, including the parent, to

understand the student's strengths and needs and how the student is progressing in the general curriculum in addition to information about the student's disability and needs for special education.

When making the determination of whether the student continues to be a student with a disability and whether the student continues to need special education and related services, the team must take into account whether the student has made progress since the time he/she was initially evaluated and determined to be eligible for services.

A copy of the reevaluation report and documentation of whether or not the student continues to be a student with a disability must be given to the parents. [See Chapter 4, Section 6, "Evaluation Considerations for Eligibility,"](#) for a complete discussion of the eligibility considerations.

Legal Citations

Code of Federal Regulations, Title 34: Education

- §300.9 Consent.
- §300.303 Reevaluations.
- §300.304 Evaluation procedures.
- §300.305 Additional requirements for evaluations and reevaluations.
- §300.306 Determination of eligibility.
- §300.500 Responsibility of SEA and other public agencies.
- §300.503 Prior notice by the public agency; content of notice.
- §300.504 Procedural safeguards notice.

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CHAPTER 9. CHARTER SCHOOLS

Section 1. Definition of Charter Schools including Virtual Charter Schools

In Oklahoma, a charter school is a public school established by contract with a board of education of a school district, an area vocational-technical school district, a higher education institution, a federally recognized Indian tribe, or the State Board of Education pursuant to the [Oklahoma Charter Schools Act](#). A charter school operates as a non-profit, publicly funded, nonsectarian brick-and-mortar or virtual school in one of two ways:

1. A school within an LEA, if authorized by a local school district; or
2. As its own LEA, if sponsored by the board of education of a technology center school district, a higher education institution, a federally recognized Indian tribe, the Oklahoma State Board of Education (OSBE), or the Statewide Virtual Charter School Board (SVCSB).

Like any other public school, charter schools must go through an accreditation process which is run through the Office of Accreditation at the SDE. This is to ensure that charter schools are compliant with all federal and state laws. A charter school maintains its own board of governance in addition to being accountable to their sponsor (authorizer). The Oklahoma Charter School Act lists seven (7) purposes for charter schools:

- i. Improve student learning;
- ii. Increase learning opportunities for students;
- iii. Encourage the use of different and innovative teaching methods;
- iv. Provide additional academic choices for parents and students;
- v. Require the measurement of student learning and create different and innovative forms of measuring student learning;
- vi. Establish new forms of accountability for schools; and
- vii. Create new professional opportunities for teachers and administrators including the opportunity to be responsible for the learning program at the school site.

A. Statewide Virtual Charter School Board (SVCSB)-Purpose and Responsibility

Oklahoma statute provides clear direction for the Statewide Virtual Charter School Board: It was created to have sole authority “to authorize and sponsor statewide virtual charter schools in this state.” ([70 O.S. §3-145.1](#))

The responsibilities of the Statewide Virtual Charter School Board are specific:

- Provide oversight of the operations of statewide virtual charter schools in this state;

- Establish a procedure for accepting, approving and disapproving statewide virtual charter school applications and a process for renewal or revocation of approved charter school contracts that meet the procedures set forth in the Oklahoma Charter School Act; ([70 O.S. §3-145.3](#))
- Make publicly available a list of supplemental online courses, of high quality options and aligned with the subject matter standards adopted by the State Board of Education; and
- Negotiate and enter into contracts with supplemental online course providers to offer a state rate price to school districts for supplemental online courses that have been reviewed and certified by the Statewide Virtual Charter School Board. ([70 O.S. §3-145.3](#))

In addition to the authorization and oversight of full-time statewide virtual charter schools, Oklahoma statute passed in 2015 established the Statewide Virtual Charter School Board as the state agency responsible for the certification of courses aligned with Oklahoma academic standards and the negotiation of fair course costs for school districts.

Section 2. Parent/Student Rights Regarding Attendance and Participation

Federal law requires that students with disabilities be offered educational choices comparable to those offered to students without disabilities. One of these choices is the opportunity to attend a public charter school. Each public charter school, whether a charter school within a Local Education Agency (LEA) or a charter school operating as an LEA, shares in the obligation to accept and appropriately serve students with disabilities under the Individuals with Disabilities Education Act (IDEA) in the same manner as any other public school. Charter schools cannot "limit admission based on ethnicity, national origin, gender, income level, disabling condition, English proficiency, measures of achievement, aptitude, or athletic ability."

A charter school student is a public school student. Students with disabilities who attend charter schools and their parents have all of the same rights granted to students who attend other public schools. These rights are provided under the IDEA; the Elementary and Secondary Education Act (ESEA), reauthorized as the Every Student Succeeds Act (ESSA); Section 504 of the Rehabilitation Act (Section 504); the Americans with Disabilities Act (ADA); and the Family Educational Rights and Privacy Act (FERPA). Pursuant to Oklahoma State law, charter schools are required to comply with all federal and State laws relating to the education of students with disabilities in the same manner as a school district.

Section 3. Responsibility and Provision of Services

[The Oklahoma Charter Schools Act](#) requires each charter school to comply with all federal and State laws relating to the education of students with disabilities in the same manner as a public

school district. A charter school may not unilaterally limit the type or amount of services it will provide to a child with a disability and must ensure a program of FAPE in accordance with that child's IEP. The charter school must have in effect policies, procedures, and practices that are consistent with State policies, procedures, and practices in special education. Areas to be addressed include the following:

- Nondiscriminatory enrollment procedures.
- Adequate plans, policies, procedures, contractual or other arrangements, and budget to ensure that students with disabilities attending the charter school will receive special education and related services that meet all the requirements of the IDEA. Those requirements include:
 1. Parental consent for initial evaluation and placement must be obtained in writing consistent with [34 CFR §300.9](#) and [300.300](#);
 2. Special education and related services are in place by the first day of the school year each year and in accordance with each student's IEP;
 3. Conduct Child Find activities and evaluations, including reevaluations;
 4. Develop, review, and revise IEPs to ensure the educational needs of students, including behavioral and social/emotional needs, are addressed in accordance with State and federal law;
 5. Meet least restrictive environment (LRE) requirements that include a full continuum of placement options;
 - Although types of special education and related services are the same for virtual schools as compared to brick-and-mortar schools, how those services are delivered may differ.
 6. The provision of supplementary aids and services, including accommodations and modifications, in the general education environment;
 7. Implementation of the IDEA discipline procedures and protections; and
 8. Procedural Safeguards to protect student and parent rights.
- Provisions to employ special education and related services professionals who are appropriately licensed and/or certificated for the duties they are assigned and highly qualified.

- A professional development plan for the training needs of special education personnel, as well as, general education teachers in order to meet the needs of students with disabilities who are enrolled in the charter school.
- A plan that ensures access to charter school programs, as required by the ADA. This plan may include the actual location of the school, classrooms, and settings within the classrooms to permit access by students with disabilities.
- A transportation plan for students with disabilities, who may, because of the nature of the disabilities, be entitled to specialized transportation, as a related service, even if the charter school does not provide transportation to other students.

A. Additional Considerations for Virtual Charter Schools

Special education and related service types are the same for Virtual Charter Schools as they are for brick-and-mortar schools. However, due to the nature of the virtual environment, the delivery of those services may differ and will need to be reviewed in order to ensure the student is receiving a FAPE in the virtual environment.

i. Individualized Education Program (IEP)

Enrollment in a virtual charter school will typically require some revisions to the IEP. Examples of common changes include:

- Removing language regarding specialized classroom seating (e.g., front of room);
- Adding language regarding assistive technology required to access or support online programs; and
- Removing specialized daily bus transportation previously required to physically attend school.

ii. Least Restrictive Environment (LRE)

Although more than one virtual school model exists, virtual schools cannot refuse or limit types of service delivery methods or service locations when determined appropriate by the IEP team.

iii. Related Services

The service delivery methods utilized in the provision of related services are as varied as the delivery methods used for academic services in the virtual school model. Analogous to traditional public schools, qualified related services personnel provide prescribed related services to children with disabilities who enroll in virtual charter schools. The services may be provided:

- 1) In person at home;

- If students reside close to speech therapists and parents are comfortable with the therapist providing the services in the home, the school may arrange for a therapist to provide these services at home
- 2) At the therapist's office; or
- The virtual charter school may make arrangements for the child to be transported to an office outside of their home to receive services. This arrangement requires that the virtual school secure appropriate transportation for the student (and in some cases the parent). Appropriateness depends on the unique circumstances of the child. For example, a child may need accessibility supports, such as transporting a wheelchair, as part of the transportation. The school must also consider the length and duration of the transportation in determining appropriateness (transporting a student to services two hours away may be inappropriate – and services should be provided closer to the child). Transportation arrangements must be described on the IEP as a part of the related services provided by the school.
- 3) Via synchronous or asynchronous online communication.
- Telepractice, also referred to as teletherapy, is therapy provided to students via electronic communication devices when the student and therapist are not in the same physical location. While still viewed as a relatively emerging field, telepractice may improve students' access to therapists in fields with shortages (i.e., speech and language) and provide access for students in remote rural locations.

B. Charter Schools Sponsored by LEAs

A charter school's compliance with the IDEA is required. Pursuant to the IDEA and the [Oklahoma Charter Schools Act](#), the charter school is ultimately responsible to ensure that the requirements of the IDEA are met with respect to students attending charter schools authorized by an LEA. To ensure that a charter school authorized by an LEA meets the IDEA requirements:

- The charter school will ensure services to students with disabilities attending the charter schools are provided in the same manner as the LEA serves students with disabilities in its other schools, including providing supplementary and related services onsite at the charter school to the same extent to which the LEA has a policy or practice of providing such services to its other public schools.
- The charter school will keep information on file with the Oklahoma State Department of Education (OSDE) that demonstrates students with disabilities who attend charter schools will receive special education and related services from either the LEA or the charter school (or a combination of both).
- The charter school will participate in all monitoring activities conducted by the OSDE.

- A charter school may enter into an Individualized Education Program (IEP) service agreement with the chartering LEA or other entity to provide special education and related services for its students.

C. Charter and Virtual Charter Schools Not Sponsored by an LEA

Oklahoma communities rely on charter school authorizers to set high standards, ensuring that families have access to high quality schools. These expectations create the process for authorization of charter schools and establish the expectations for oversight and evaluation of a school. Only the board of education of a technology center school district, a higher education institution, a federally recognized Indian tribe, the Oklahoma State Board of Education (OSBE), or the Statewide Virtual Charter School Board (SVCSB) have the authority to allow the creation of a public charter school or virtual charter school that operates as an LEA. A charter school operating as an LEA, whether virtual or brick-and-mortar or combination thereof, has an obligation to accept and appropriately serve students with disabilities and is solely responsible to ensure that the requirements of the IDEA are met with respect to students enrolled. Compliance with the IDEA is required. A charter school must:

- Participate in all monitoring activities conducted by the OSDE; and
- Participate in technical assistance in its first year of operation through the OSDE to ensure that the essential components of a special education program are in place.

Legal Citations

Code of Federal Regulations, Title 34: Education

§300.2 Applicability of this part to State and local agencies.

§300.7 Charter school.

§300.209 Treatment of charter schools and their students.

Oklahoma Statute, Title 70

§3-145.3 Powers and duties.

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CHAPTER 10. STUDENTS IN PRIVATE SCHOOLS

Introduction. Private School Placements

In order to describe the LEA's responsibilities for serving private school students, it is helpful to distinguish 3 separate ways that students are placed in private schools. These are defined by who enrolls or places the student in a private school and why the particular placement was chosen. (Please note, according to Oklahoma law, neither home schooled students are considered parentally placed private school students, nor are students parentally placed in a for profit elementary or secondary school. However, the LEA of residence has Child Find responsibility and must offer a FAPE.)

Parentally-Placed Private School Students. A parent may choose to enroll his or her child in a private school for a variety of personal reasons. This is considered a voluntary enrollment.

LEA Placement. At times, the IEP team may place a student in a private school or facility to fulfill its obligation to provide FAPE. This placement decision is always made by an individualized education program (IEP) team.

Unilateral Placement. A parent may withdraw a student with a disability from a public school and then enroll the student in a private school or provide services from a private provider at parent expense if he or she believes the LEA has not provided FAPE in a timely manner.

Section 1. Parentally-Placed Private School Students with Disabilities

Parentally-placed private school children with disabilities means children with disabilities enrolled by their parents in private, including religious, schools or facilities that meet the definition of elementary or secondary school.

Children ages 3 through 5 are considered to be parentally-placed private school children with disabilities enrolled by their parents in private, including religious, elementary schools, if they are enrolled in a private school that meets the definition of elementary school.

Elementary School. A nonprofit institutional day or residential school, including a public elementary charter school that provides elementary education.

Secondary School. A nonprofit institutional day or residential school, including a public secondary charter school that provides secondary education, except that it does not include any education beyond grade 12.

Parentally-placed children with disabilities attending an approved and/or accredited nonpublic school which is located **outside** of his or her resident district may receive Equitable Services from the public school within which the nonpublic school is located.

A. Consultation

The LEA must consult with private school representatives and parents of parentally-placed private school students with disabilities to ensure parentally-placed students with disabilities identified through the child find process can meaningfully participate in special education and related services. Timeliness is critical; LEA and private school officials should develop a timeline and select dates for consultation. This consultation meeting should not be confused with Title I part A consultation meetings with nonpublic schools.

The consultation should include a discussion of:

- Types of services;
- How special education and related services will be apportioned if funds are insufficient;
- How and when these decisions will be made; and
- How will the provided services be evaluated?

Only after discussing key issues relating to the provision of special education and related services with all representatives may the LEA make its final decision regarding the services to be provided to eligible private school children with disabilities. Decisions about the services that will be provided must be made in accordance with the Individualized Service Plan (ISP).

Decisions about which services and the amounts of services children with disabilities enrolled by their parents in private schools will receive are made during the consultation process and are based on the needs of the students designated to receive services. These students have **no** individual entitlement to receive some or all of the special education and related services they would receive if enrolled in a public school.

When timely and meaningful consultation has occurred, the LEA must maintain documentation that the consultation has occurred, including a written affirmation signed by representatives of the participating private schools.

i. Child Find Obligations for Parentally-Placed Private School Children with Disabilities

As part of the child find process, LEAs are required to determine the number of parentally-placed children with disabilities attending private schools located within their LEA, regardless of the student's residence (including state boundaries).

Each LEA must consult with appropriate representatives from private schools located within their district on how to locate, identify, and evaluate all private school children with disabilities.

If a student enters a private school during the school year and is suspected of having a disability, the LEA where the private school is located is responsible for ensuring the student is identified, regardless of whether or not the student was previously evaluated and determined not eligible for special education and related services by another LEA.

The child find process must be completed in a time period comparable to that for students attending public schools in the LEA. In evaluating students suspected of having a learning disability, LEAs should not delay the initial evaluation process because the private school has not implemented an RTI process.

ii. Dispute Resolution

A parent of a student enrolled by that parent in a private school has the right to file a due process complaint regarding child find requirements and evaluation. The complaint must be filed with the LEA in which the private school is located; a copy must be forwarded to the Oklahoma Department of Education, Special Education Services by the LEA.

Due process provisions do not apply to issues regarding the provision of special education or related services to any particular parentally-placed private school student with disabilities whom an LEA has agreed to serve because there is no individual right to service for such children under the IDEA.

iii. Annual Count of Eligible Students

On October 1, the LEA must submit to the OSDE the number of private school students evaluated, the number found eligible, and the number provided special education services. This includes 3-5 year olds identified through the Child Find process who are enrolled in a private school or facility that meets the definition of an elementary school. This count is used to determine the amount of funds the LEA may expend providing special education and related services to private school students in the next school year. The LEA will consult with representatives of private school students to determine how to conduct the count.

B. Provision of Equitable Services

A parentally-placed private school student with a disability **does not** have an individual right to some or all of the special education and related services the student would receive if enrolled in a public school. The school district, nonpublic school officials and representatives of children parentally-placed in nonpublic schools make the final determination of what special education services will be available to parentally-placed private school students with disabilities.

Equitable Services are special education and related services for parentally-placed private school students with disabilities, ages 3-21, whose parents have elected not to receive FAPE from their resident school district. Equitable Services for a parentally-placed private school student with a disability must be provided as determined through the consultation process.

To the extent determined appropriate, Equitable Services should include:

- The child's present levels of academic achievement and function performance in the areas identified for services by the LEA;
- Annual goals specific to the services to be provided;
- The type, amount, frequency, location and duration of services to be provided.

i. Individualized Services Plan (ISP) Development

Nonresident children with disabilities parentally-placed in a nonpublic school, designated by the LEA to receive special education services, must have an Individualized Services Plan (ISP) in place before the child can receive services. An ISP describes the specific special education and related services the child will receive from the school district in light of the services the school district has determined through the consultation process that will be made available to nonpublic children with disabilities parentally-placed in a nonpublic school.

The ISP does not entitle children with disabilities to a free and appropriate education (FAPE). Therefore, the ISP may not include the same services the nonresident parentally-placed child with disabilities would receive from the resident school district.

The ISP must be developed, reviewed and revised in the same manner as an IEP. Similarly, the ISP must include present levels of performance, goals and Equitable Services. The LEA must initiate and conduct meetings to develop, review and revise ISPs; the LEA must also ensure the participation of a nonpublic schools representative in the development, review and revision of ISPs.

To the extent appropriate, the LEA must initiate and conduct meetings to develop, review, and revise ISPs in accordance with the following requirements:

- Given the services that the LEA has elected to provide to private school students, the ISP must meet the requirements of the IEP to the extent appropriate.
- An ISP is in effect at the beginning of each school year and accessible to each person responsible for its implementation.
- ISPs are reviewed and revised at least annually regarding student progress toward goals and in the general education curriculum.
- The ISP team members include the same members as an IEP team. The LEA will ensure that a representative of the private school attends these meetings or participates by some other means.
- A parent is invited to ISP meetings at a mutually agreed upon date and time. The invitation must indicate the purpose, time, and location of the meeting. The parent is informed that he

or she may bring other persons knowledgeable about the student to the meeting. A copy of the ISP will be given to the parent.

- The team developing the ISP will consider the student's strengths and results of the most recent evaluations. The private school general education teacher should participate in the development, review, and revision of the ISP.
- Special education services provided to parentally placed private school students with disabilities, including materials and equipment, will be secular, neutral and non-ideological.
- Services may be provided at a public school building or another agreed upon site (including religious schools to the extent consistent with the law) determined by the LEA in consultation with appropriate representatives of private school students.
- Services provided to private school students with disabilities by the LEA must be provided by personnel meeting the same standards as personnel providing services in the public schools.

ii. Transportation

If transportation is necessary for a private school student to benefit from or participate in special education or related services, the LEA must provide transportation from the student's school or home to the site where those services will be provided. The LEA takes the student back to either the private school or the home, depending on the timing of the services. In this sense, transportation is not a related service but a means of making the services offered accessible. Transportation costs may be included in the LEA's expenditure requirement. The LEA is not required to transport the student from home to the private school.

iii. Disagreement

The LEA must provide to the private school officials a written explanation of the reasons why the LEA chose not to adopt the recommendations of the private school officials.

Disputes that arise regarding Equitable Services are subject to State complaint procedures. A parent may file a signed written complaint, in accordance with State complaint procedures, alleging that an LEA has failed to meet the private school requirements, such as failure to properly conduct the consultation process.

C. Private Schools and IDEA Part B Funding

Part B funds for Equitable Services may not be paid directly to a private school.

The LEA must spend a proportionate share of both Section 611 federal grants (for students aged 3-21) and Section 619 grants (for children, ages 3-5). It must be used to provide special education and related services to students with disabilities who are enrolled by their parents in private

elementary schools and secondary schools in order for the LEA to meet its responsibility for providing Equitable Services.

The proportionate share under each federal grant is calculated by taking the proportionate number of students parentally placed in private schools located in the LEA (as reported on the October 1 Child Count) who have been identified through Child Find activities compared to the total number of students with disabilities under the IDEA in the LEA who have been identified through Child Find activities.

Example: If the LEA has 1,000 students with disabilities ages 3-21 (including preschoolers either not attending private schools or enrolled in a public preschool program, school-aged public school students, school-aged students attending private schools located within the LEA's district) and of those students, 50 are attending private schools located within the LEA's district, the LEA must use five percent (5%) of the Section 611 grant on to provide Equitable Services to private school students.

**50 students with disabilities in private schools / 1,000 total students with disabilities
= 5% of the Section 611 grant**

The LEA will budget the proportionate share funds on IDEA Part B Consolidated Application, after consultation between the LEA and the private schools occurs. The application can be found on the School LEA Reporting Site and must be completed by the last Friday in September.

D. Carryover of Unspent Funds

Flow-Through funds may be carried over into the next fiscal year for use on approved programs during the next school year, but the unclaimed funds must be declared as carryover by June 30. Carryover funds from a prior year will be applied against the LEA's first computer program-generated expenditure report submitted for reimbursement to the OSDE-SES.

If, after the carryover period, the LEA is unable to expend the entire proportionate share and assuming the LEA is in compliance with the child find, consultation, and other requirements related to parentally placed private school students with disabilities, the LEA may use the unexpended funds - at the end of the period during which the funds may be spent on parentally placed private school students - to pay for other allowable IDEA Part B expenditures for that same LEA. **This situation should be the exception.**

The costs of child find activities, such as assessments, are distinct from the proportionate share requirements. The LEA where the private elementary or secondary school is located cannot charge the LEA of residence, even if the student is a resident from another state, for child find and Equitable Services.

E. Maintenance of Effort for the Proportionate Share

State and local funds may supplement, but not supplant, the proportionate share of federal funds required to be expended for students with disabilities placed by their parents in private schools.

LEAs that previously used only State and local funds to provide Equitable Services to students with disabilities placed by their parents in a private school and now uses federal Part B funds to provide Equitable Services must meet the maintenance of effort requirements. Exceptions to the maintenance of effort requirements do not apply to funds used for equitable participation of parentally placed private school students with disabilities. Therefore, the total or per capita amount of local or State and local funds expended for the education of students with disabilities, including the amount of local or State and local funds previously expended for Equitable Services to students with disabilities placed by their parents in private schools, would have to be maintained, unless adjustments are permitted under IDEA.

Section 2. LEA Placed Private School Children with Disabilities

Federal regulations allow an LEA to place a child with a disability in a private school or facility in order to meet its obligation to provide a Free and Appropriate Public Education (FAPE) to the child. The LEA should conduct an IEP prior to placing a student in a private school or facility. The IEP team must determine that the district is not able to provide the necessary services locally and in order for the student to receive FAPE the student must be placed in a private school or facility.

After the LEA has determined, through the IEP process, a child with a disability should be placed in a private school or facility, the student's individualized educational program, including special education and related services, must:

- Be provided according to the student's IEP at no cost to the parents;
- Ensure that the private school or facility provides services consistent with IDEA requirements; and
- Ensure that the student has all rights of a student with a disability who is served by the public school.

Section 3. Unilateral Placed Private School Children with Disabilities

All students who are placed by a parent when FAPE is an issue are voluntarily enrolled in a private school. If the LEA has made FAPE available to the child, the LEA is not obligated to fund the private placement.

The parents may attempt to seek reimbursement for the costs associated with the placement by requesting a due process hearing. Specific information regarding a parent's request for

administrative remedies through dispute resolution are discussed in [Chapter 13, “Dispute Resolution”](#).

Section 4. Lindsey Nicole Henry (LNH) Scholarship

[The Lindsey Nicole Henry Scholarships for Students with Disabilities Program Act](#) was established by Oklahoma law in 2010, and was last amended by the Legislature in 2017. Section A of the Act allows the parent/guardian of a public school student with a disability to exercise their parental option and request to have an LNH Scholarship awarded for their child to enroll in and attend a private school. The child must have been on an IEP prior to the request; spent the previous school year in attendance at a public school in the state; and reported by public school for funding purposes during that year.

A. LNH Scholarship Calculation Criteria

- The scholarship amount will be a calculated amount equivalent to the total State Aid factors for the applicable school year multiplied by the grade and disability weights (not applicable to children with ISPs) generated by that student for the applicable school year.
- The disability weights used in calculating the scholarship amount will include all disability weights which correspond to the disabilities included in the multidisciplinary evaluation and eligibility group summary for the student at the time the request for a scholarship is made by the parent or legal guardian (not applicable to children with ISPs).
- The maximum scholarship amount is calculated by the Oklahoma State Board of Education for each year the student is participating in the scholarship program.
- The amount of the scholarship will be the amount calculated in the above paragraph or the amount of tuition and fees for the private school, whichever is less, minus up to two and one-half percent (2 ½%) of the scholarship amount which may be retained by the OSDE as a fee for administrative services.
- Payment will be rendered on a reimbursement basis and made payable to the parent or legal guardian of the student and mailed by the OSDE to the private school that the parent or legal guardian chooses for their child.
- The parent or legal guardian will restrictively endorse the warrant to the private school for deposit into the account of the private school.
- The parent will be responsible for all additional costs associated with special education services incurred by the private school for the student including the cost of teachers,

equipment, material, and special costs associated with the special education class, including transportation.

B. LNH Scholarship Application Procedure

1. The parent must first choose an approved accredited private school and be accepted.
2. The LNH Scholarship Application must be submitted by the parent/guardian to the OSDE by mail, email or fax, with the required documentation, by December 1 of the year that parent/guardian is seeking the scholarship. All applications received after December 1 will be processed for the following school year.
3. The application process must be completed with the OSDE each year that the parent/guardian chooses to participate in LNH Scholarship.
4. By completing and submitting the LNH Scholarship Application, the parent is accepting and submitting in writing a request to revoke consent for special education services. Services cannot be revoked in part; therefore, the parent's request for revocation will forfeit all special education services, related services and any other supports included in the child's IEP.
5. Within a reasonable time, the school LEA must respond to the parent's revocation with a written notice, regarding the termination of the educational placement and special education and related services that will result from the revocation of consent. The written notice must include information on resources to understand the requirements of Part B of the IDEA.
6. If the parent revokes consent for special education, the LEA:
 - a. Is not in violation of the requirement to make available a FAPE to the child for its failure to provide services to the child;
 - b. Will treat the child as a nondisabled student for disciplinary purposes; and
 - c. Is not required to amend the child's education records to remove any references to the child's receipt of special education services; and the parent or the school LEA may, at a later date, initiate a request for an initial evaluation to determine if the Child is a child with a disability.

Legal Citations

Code of Federal Regulations, Title 34: Education

- §300.2 Applicability of this part to State and local agencies.
- §300.129 State responsibility regarding children in private schools.
- §300.132 Provision of services for parentally-placed private school children with disabilities—basic requirement.
- §300.134 Consultation.
- §300.137 Equitable services determined.
- §300.138 Equitable services provided.

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CHAPTER 11. PROCEDURAL SAFEGUARDS

Section 1. Procedural Safeguards Notice

Parents and adult students have specific procedural safeguards under the Individuals with Disabilities Education Act (IDEA) and State law. Each Local Education Agency (LEA) has a document titled *Parents Rights in Special Education: Notice of Procedural Safeguards (Procedural Safeguards Notice)*. The *Procedural Safeguards Notice* must include a full explanation of the procedural safeguards, written in the native language of the parent or adult student (unless it clearly is not feasible to do so) and written in an easily understandable manner.

A. When the Procedural Safeguards Notice Is Provided

The LEA must provide a Procedural Safeguards Notice that includes a full explanation of the special education rights afforded to the parent and/or adult student only once per year, in addition to the following circumstances:

- Upon an initial referral or parent and/or adult student request for evaluation;
- Upon the first occurrence of a filing of a due process hearing or an administrative complaint;
- When a decision is made to take a disciplinary action that constitutes a change of placement; or
- Upon request by the parent.

Section 2. Domestic Considerations

A. Definition of a Parent

- A guardian (but not the state if the child is a ward of the state);
- A biological, adoptive, or foster parent of a child;
- An individual acting in the place of a biological or adoptive parent (including a grandparent, step parent, or other relative) with whom the child lives;
- An individual who is legally responsible for the child's welfare;
- An adult student; or
- A surrogate parent who has been appointed by the LEA.

i. Other Considerations

A judge may decree or order a person acting as a parent or a legal guardian to act as the “parent” to make educational decisions for the child.

If more than one party is qualified to act as a parent, and the biological or adoptive parents attempt to act as the parent, the biological or adoptive parents must be presumed to be the parents and legal decision makers, unless they do not have legal authority to make educational decisions for the child.

If there is more than one parent that has the legal authority to make education decisions for the child and do not reside in the same location, LEAs are obligated to provide each parent access to Prior Written Notices of any special education action. This is the case even if only one parent has the right to consent, unless a court order precludes this from happening or one parent declines to participate. This applies to all special education notice requirements including notice of an IEP meeting. If the school is only aware of one parent's address, the school must make reasonable efforts to locate the other parent in order to provide notice. However, consent from one parent is sufficient. In the event that the school receives consent forms from both parents, with one parent providing consent for the action and the other denying consent, the school is deemed to have received consent and must fulfill its obligation to provide FAPE to the student. The parent who denies consent has the right to request mediation or file for due process.

If disputes arise between parents regarding their child's special education and/or related services, such disputes must be resolved privately. IDEA does not provide any mechanisms for school districts to resolve disputes between parents ([Letter to Cox \(2009\)](#)).

B. Definition of a Surrogate Parent

A "surrogate parent" is an individual assigned by the LEA to assume the rights and responsibilities of a parent under the IDEA in any of the following circumstances:

- No parent can be identified or located for a particular student;
- The student is a ward of the state; or
- The student is an unaccompanied homeless youth.

The surrogate parent has the same rights as a biological parent throughout the special education decision-making process.

i. Referral for a Surrogate Parent

Any person who is aware that a student may need a surrogate parent may make a referral for a determination to the LEA's special education director or an appropriate LEA administrator. The LEA will appoint a surrogate in any of the following circumstances:

- A parent cannot be found after reasonable efforts to locate the parent.
- The student is a ward of the state. If a state judge has appointed a surrogate to oversee the care of a student who is a ward of the state, the judge-appointed surrogate may make

decisions regarding the student's education, including special education, provided he or she meets the criteria for an LEA-appointed surrogate.

- The student is a homeless youth who is unaccompanied.

The LEA will make reasonable efforts and maintain records of attempts to locate a parent which may include a certified letter, telephone calls, emails, hand delivered notifications, etc. The LEA cannot appoint a surrogate parent when the biological parent is available but chooses not to participate. When a surrogate parent is needed for a student, the LEA will appoint a surrogate who meets the conditions set forth in item 3, below. The LEA will make reasonable efforts to assign a surrogate within 30 calendar days after it determines that the student needs a surrogate.

ii. Criteria for Serving as a Surrogate Parent

A surrogate parent may represent the student in all matters relating to identification, evaluation, placement, and the provision of a FAPE. The surrogate parent must:

- Have knowledge and skills that ensure effective representation;
- Have no personal or professional interest that conflicts with the interest of the student; and meet the following conditions:
 - Is not an employee of the OSDE, the LEA, or any other agency that is involved in the education or care of the student; and
 - Is not an employee of a nonpublic agency that provides educational care for the student.

Note: A person who otherwise qualifies to be a surrogate parent is not an employee of the LEA or agency solely because he or she is paid to serve as a surrogate parent.

In the case of a student who is an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary surrogate parents until a surrogate can be appointed that meets all the requirements.

iii. Adult Students and the Transfer of Rights

An "adult student" is a student who is at least 18 years of age, or who has been emancipated, to whom special education rights have transferred under the IDEA.

Discussion of the Transfer of Rights: No later than the student's 17th birthday, the IEP team must discuss the transfer of special education rights to the student. Special education rights will transfer from the parent to the adult student when the student turns 18 years of age unless:

- A parent has obtained legal guardianship including the scope of educational matter; or
- The LEA must continue to provide notices to the parent, but nothing under the IDEA requires parent participation in the process.

iv. Married Minors

When parent authority ceases upon marriage of the minor, the legally married minor may give legal consent on his or her own behalf.

v. Ward of the State

The term “ward of the state” means a child who, as determined by the state where the child resides, is a foster child, or a ward of the state or is in the custody of a public child welfare agency. The term does not include a foster child who has a foster parent who meets the definition of a parent in Section 2A.

Section 3. Informed Consent

Consent is written approval given by a parent and/or adult student who has been fully informed of and understands all information relevant to the activity for which consent is sought. The request for consent describes the activity for which consent is sought and lists the records, if any, that will be released and to whom. All information must be provided in the native language or mode of communication of the parent and/or adult student, unless not feasible. The parent and/or adult student must be informed that the approval is voluntary and may be revoked at any time prior to the action. Consent is indicated by the parent’s/adult student’s signature.

A. Actions Requiring Consent

The following actions require the LEA to obtain written consent. Some of the actions that require written consent from the parent and/or adult student also require prior written notice from the LEA:

- Informed written consent and written notice are required when:
 - Conducting assessments as part of an initial evaluation to determine whether a student is eligible for special education.
 - Initially providing special education and related services to a student with a disability.
 - Disclosing personally identifiable information to unauthorized persons, unless provided as an exception under the Family Educational Rights and Privacy Act (FERPA) regulations.
 - Accessing private insurance or public insurance benefits to pay for services listed in the IEP.

- Inviting outside agency representatives paying for or providing transition services to an IEP team meeting.

B. When Consent Is Not Required

The LEA is not required to obtain informed consent when:

- A review of existing data is part of an evaluation or a reevaluation.
- Tests are administered to both general and special education students in a grade or class and consent is not required for all students.
- Teacher or related-service-provider observations, ongoing classroom evaluation, or criterion-referenced tests are used as assessments in determining the student's progress toward goals and benchmarks/objectives on the IEP.
- Screening to determine appropriate instructional strategies for curriculum implementation.
- A disclosure of personally identifiable information to persons authorized to have access under FERPA.

C. Refusal to Give Consent

The LEA must secure written consent for the initial evaluation. If a parent and/or adult student refuses to give consent for the initial evaluation, the LEA may engage the parent in mediation or file for a due process hearing to ask a hearing officer to determine if the student needs an evaluation to determine if the student is in need of special education and related services. If the initial evaluation is then conducted, the evaluation will be reviewed by the MEEGS group to determine if the child qualifies for special education and related services.

There is no mechanism available to overturn a parent's/adult student's decision not to provide consent for the initial provision of services after reviewing the evaluation. If a parent and/or adult student fails to consent to the initial provision of services, then the LEA cannot be charged with failing to provide a FAPE to the student.

D. Failure to Respond to a Request for Consent Regarding Reevaluation Assessment

When a parent and/or adult student fails to respond to reasonable measures taken by the LEA to obtain written consent to determine continued eligibility, the LEA may proceed with the reevaluation. The LEA must record its attempts to gain consent by documenting telephone calls made or attempted, correspondence sent, or visits made to the home or place of employment. Failure to respond is not the same as refusing consent for reevaluation.

E. Revoking Consent

A parent or adult student has the right to revoke consent for the continued provision of special education and related services at any time. The parent or adult student must submit in writing the request to revoke consent for special education and related services. Services cannot be revoked in part; therefore, the request for revocation would forfeit all special education services, related services and any other supports included in the student's IEP. Within a reasonable time, the LEA must respond to the revocation with a written notice, regarding the termination of the educational placement and special education and related services that will result from the revocation of consent.

The written notice must include information available to the parent or adult student in order to understand the requirements of Part B of the IDEA. If a parent or adult student revokes consent for special education:

- The LEA is not in violation of the requirement to make available a FAPE for its failure to provide services to your child.
- The student will be disciplined as a general education student.
- The LEA is not required to amend the student's education records to remove any references to the child's receipt of special education and related services.
- The parent or adult student or LEA may at a later date initiate a new request for an initial evaluation.

Section 4. Written Notice

Written notice is the act of informing a parent and/or adult student, in writing within a reasonable amount of time, before the LEA proposes or refuses to initiate or change the student's identification, the evaluation, educational placement, or provision of FAPE. The written notice is provided to help parents understand the decisions made by the LEA.

A. Criteria for Written Notice

Written notice must be provided in a reasonable amount of time before implementing the proposed action.

Written notice must be in language understandable to the general public. It must be provided in the native language or other mode of communication normally used by the parent and/or adult student unless it is clearly not feasible to do so. If the native language or other mode of communication is not a written language, the LEA must take steps to ensure the following:

- The notice is translated orally or by other means in the native language or other mode of communication.

- The parent and/or adult student understands the content of the notice.
- There is written evidence that the notice requirements of this section have been met, such as a written record in the student's special education file documenting what was discussed.

B. Written Notice Is Required

The LEA must provide written notice before proposing to initiate or change the following (not an exhaustive list):

- Identification of the student;
- Any assessments for initial evaluation or reevaluation;
- Educational placement;
- The provision of a FAPE;
- After the LEA's decision to refuse a parent and/or adult student's request to initiate or change the identification, assessment, placement, or provision of a FAPE;
- If the LEA refuses to convene an IEP team meeting at the request of a parent and/or adult student;
- When the evaluation group determines that additional assessments are not required during a reevaluation to determine whether the student continues to meet eligibility criteria, the LEA must provide written notice to the parent and/or adult student of the decision and the reasons for that decision. The parent and/or adult student must also be informed of his or her right to request assessments when necessary to determine continued eligibility;
- If a parent files a due process hearing request, the LEA is required to give written notice specific to the issues raised in the due process hearing request within 10 calendar days, if it had not previously been provided written notice about those issues; or
- Any other requests, refusals, or changes regarding educational programming for the student.

C. Content of Written Notice

The content of written notice is intended to provide the parent and/or adult student with enough information so that he or she is able to fully understand the LEA's proposed action or refused action and to make informed decisions, if necessary. The written notice must include the following:

- A description of the action proposed or refused by the LEA;
- An explanation of why the LEA proposes or refuses to take the action;
- A description of any other options the IEP team considered and the reasons why those options were rejected;
- A description of each procedure, assessment, record, or report that the LEA used as a basis for the proposed or refused action;
- A description of any other factors relevant to the proposed or refused action;
- A statement that the parent and/or adult student has special education rights and a description of how to obtain a copy of the Procedural Safeguards Notice; and
- Sources to contact in obtaining assistance in understanding the Procedural Safeguards Notice.

Section 5. Confidentiality and Access to Records

A. Confidentiality

The LEA collects, uses, and maintains information about a student to make appropriate decisions concerning special education and the provision of a FAPE. LEA personnel should organize all relevant records in compliance with LEA guidelines and the IDEA requirements.

The IDEA and FERPA contain provisions to protect the confidentiality of personally identifiable information in student special education records. These statutes also provide for the right to review and inspect records.

B. Access to Records

The LEA must annually notify the parents of all students, including students with disabilities currently in attendance, of their rights under FERPA. The notice must include all of the following:

- Procedures for exercising the right to inspect and review education records;
- Procedures for requesting amendment of records; and
- A specification of criteria for determining who constitutes an LEA official or employee in the LEA and what constitutes a legitimate educational interest.

The LEA must permit a parent and/or adult student, or his or her representative, to inspect and review any record relating to educational matters that is collected, maintained, or used by the LEA. The LEA will presume that a custodial or non-custodial parent has the authority to inspect and review a record relating to his or her child unless there are legal documents limiting access to those records under State law.

The LEA will make records available to a parent and/or adult student for review:

- Without delay but no later than 45 calendar days after the request;
- Before any meeting regarding an IEP;
- Before a resolution session; and
- Not less than 5 business days before any due process hearing.

In addition, the LEA must:

- Upon request, provide a parent and/or adult student with a list of the types of education records the LEA collects, maintains, or uses and where they are kept;
- Respond to any reasonable request made by a parent and/or adult student for an explanation and interpretation of a record; and
- Always provide a parent and/or adult student a copy of the IEP and any documentation of identification and eligibility.

The LEA should note that test protocols may be part of a student's educational record. Test publishers require LEAs to maintain the integrity and validity of tests. Parents or others interested in a student's test results are allowed to view the student's responses to test items, but only if the information is shared in the presence of a person qualified to explain the results and meaning of the various items and data contained in the protocol.

C. Disclosures Not Requiring Consent

Consent is generally required to disclose personally identifiable information to others. However, consent is not required when:

- An LEA official or employee has a legitimate educational interest to access the records.
- A representative of the Federal Comptroller General, the United States Department of Education, or the OSDE accesses records necessary for an audit or evaluation of a federal program or for enforcement or compliance with federal regulations.

- A student transfers to another LEA in which the student intends to enroll unless an LEA has adopted a procedure requiring consent. However, the parent and/or adult student should be notified of the request for records at the last known address of the parent and/or adult student unless he or she initiated the request.
- The health and safety of the student or other individuals is in jeopardy because of an emergency.
- The disclosure concerns the juvenile justice system's ability to effectively serve the student or the ability to respond to court orders or subpoenas, as specified in State law. The LEA will make a reasonable effort to notify the parent of the court order in advance of compliance, unless the subpoena specifically states that it is not to be disclosed.
- An organization conducts studies on behalf of education agencies or institutions under specified FERPA criteria.
- The disclosure is in connection with an application for financial aid and is necessary to determine eligibility for the aid, the amount of the aid, conditions for the aid, or to enforce the terms and conditions of the aid ("financial aid" means a payment of funds to an individual that is conditioned on the individual's attendance at an education agency or institution).
- The LEA has designated information as "directory information" under the conditions in FERPA.
- An agency caseworker or other representative of a child welfare agency or tribal organization may access a student's education records when the caseworker/representative has the right to access the student's case plan and the agency/organization is legally responsible for the student's care and protection ([Uninterrupted Scholars Act of 2013](#)).
- The Oklahoma Department of Human Services (DHS) is conducting a child abuse or neglect investigation of the child who is the suspect of the record. In addition to juvenile records, employees of DHS may inspect, without a court order and upon a showing of proper credentials and pursuant to their lawful duties, information that includes, but is not limited to, psychological and medical records, and non-directory education records ([10A O.S. §1-6-103](#)).

D. Destruction of Records

The LEA will maintain education records, including eligibility documentation and IEPs, for at least **5 years** from the student leaving the LEA to demonstrate fiscal accountability and program compliance with the IDEA requirements. The LEA must provide notice to a parent and/or adult student when personally identifiable information collected, maintained, or used is to be destroyed

because the information is no longer needed to provide educational services to the student. The records manager should maintain a log that documents the date of destruction or release of records.

LEAs must keep an electronic or paper copy of the education records, including eligibility documentation and IEPs for at least 5 years from the student leaving the LEA.

A letter or email notice must be sent to the student, if 18 or older, or to the parent, if student is under 18, at the last known contact to notify them when non-transcript records are scheduled to be destroyed and to inform them of their ability to obtain a copy of the student records.

When informing the parent and/or adult student of his or her rights, the LEA should remind the parent and/or adult student that the records might be needed for Social Security benefits or other purposes in the future. Other types of records, such as Medicaid records, are maintained for 6 years.

E. Request for Amendment of Records

A parent and/or adult student may request that the LEA amend the student's records if he or she believes that information collected, maintained, or used in the education record is inaccurate, misleading, or in violation of the privacy or other rights of the student. The LEA will use the following procedure:

- The LEA, within a reasonable period of time—not to exceed 45 calendar days of receipt of the request—must decide whether to amend the record. If the LEA refuses to amend the record, the parent and/or adult student must be informed of the refusal and be advised of the right to and procedure for requesting an LEA hearing. An LEA hearing is an informal hearing that does not have all the requirements of a due process hearing.
- If an LEA hearing is requested and the LEA decides that the information is inaccurate, misleading, or in violation of the student's rights, the LEA must amend the record and inform the parent and/or adult student in writing.
- If an LEA hearing is requested and the LEA decides the information is accurate and does not violate the student's rights, the LEA must inform the parent and/or adult student that he or she may place a statement in the record. This statement may comment on the information in the record or set forth the parent's/adult student's reasons for disagreeing with the LEA. Any statement placed with a record must accompany the record for as long as the LEA maintains the record. If the LEA discloses the record to any person, the LEA must also disclose the statement.

Section 6. Guidelines for Minimizing the Use of Seclusion

For more information regarding Seclusion and Restraint, please see the [2016 Dear Colleague Letter: Restraint and Seclusion of Students with Disabilities](#).

In cases where a student has a history of dangerous behavior for which seclusion was considered or used, a school should have a plan for: (1) teaching and supporting more appropriate behavior; and (2) determining positive methods to prevent behavioral escalations that have previously resulted in the use of seclusion with the student.

Seclusion should never be used for the purposes of discipline or as a punishment, to force compliance, or as a convenience for staff. Seclusion should not be used to manage behavior. It may only be used under the following emergency circumstances and only if these elements exist:

1. A student's actions pose an imminent danger of serious physical harm to the student or others;
2. Positive behavior intervention strategies and less restrictive measures appropriate to the behavior exhibited by the student are currently being implemented, but are not currently de-escalating the threat of danger or harm; and
3. The seclusion lasts only as long as necessary to resolve the threat of danger or harm or while waiting for the arrival of law enforcement or crisis intervention personnel (e.g., the student has possessed a weapon or committed a crime).

Any student who is placed in seclusion based upon the previously established criteria must be continuously monitored visually and aurally by a school employee. In addition:

1. The student must be allowed to go to the restroom upon request;
2. The student must be permitted water to drink upon request;
3. Immediate action must be taken if the student displays any signs of medical distress; and
4. At least one witness who is not involved in the seclusion incident should be available.

Seclusion training should be recurrent with periodic updates and result in some form of certification or credential.

School personnel may only utilize seclusion procedures if they have completed training in:

1. Conflict de-escalation;
2. The crisis cycle and interventions at each stage;
3. Possible effects of seclusion;
4. Appropriate use of seclusion rooms (including escorting and placing a student in a seclusion room);

5. CPR and First Aid, must hold current certification in both; and
6. Monitoring the wellbeing of the student.

A building administrator should be informed immediately of any incident of seclusion. If unavailable, the building administrator must be informed as soon as possible following each incident and prior to any extended breaks from school. Each incident of seclusion must be documented on the optional OSDE Seclusion and Physical Restraint Documentation or other LEA documentation. A copy of the documentation must be placed in the student file and provided to the parents. Parents should be informed immediately, but must be informed within 24 hours of each seclusion incident, and prior to any extended breaks from school. An IEP meeting may be needed to review the student's BIP and placement for any changes to services or placement.

A. Definitions

The terms **“imminent danger of serious physical harm”** and **“dangerous behavior”** refer to an immediate and impending threat of a person causing serious physical injury to self or others.

“Seclusion” refers to the involuntary confinement of a student alone in a room or area from which the student is physically prevented from leaving. It does not include timeout, which is a behavior management technique implemented for the purpose of calming.

“Seclusion room” refers to a room or other confined area in which a student with a disability is involuntarily placed in isolation from other persons from which the student is physically prevented from leaving. A seclusion room must meet the following criteria:

- It must be of adequate size permitting the student to sit or lie down;
- It must have adequate lighting;
- It must be equipped with heating, cooling, ventilation, and lighting systems that are comparable to those in other rooms throughout the building where the seclusion room is located;
- It must be free of any objects that pose a potential risk of harm to the student with a disability;
- If equipped with a door that locks, the lock must automatically disengage in case of an emergency, such as a fire or severe weather; and
- It must allow continuous visual and auditory monitoring of the student with a disability.

Section 7. Guidelines for Minimizing the Use of Physical Restraint

For more information regarding Seclusion and Restraint, please see the [2016 Dear Colleague Letter: Restraint and Seclusion of Students with Disabilities](#).

In cases where a student has a history of dangerous behavior for which physical restraint was considered or used, a school should have a plan for: (1) teaching and supporting more appropriate behavior; and (2) determining positive methods to prevent behavioral escalations that have previously resulted in the use of physical restraint with the student.

Physical restraint must never be used for the purposes of discipline or as a punishment, to force compliance, as a convenience for staff or to prevent property damage. The use of chemical and/or mechanical restraint is prohibited.

Physical restraint to manage behavior must only be used under the following emergency circumstances; and, only if these four (4) elements exist:

1. The student's actions pose an imminent danger of serious physical harm to the students or others;
2. Less restrictive measures appropriate to the behavior exhibited by the student have not effectively de-escalated threat of danger or harm;
3. The physical restraint lasts only as long as necessary to resolve the threat of danger or harm; and
4. The degree of limitation or restriction of the student's freedom of movement that is applied may not exceed what is necessary to protect the student or other persons from serious physical harm.

Any student who is physically restrained based upon the previously established criteria must be continuously monitored visually and aurally by a school employee. At least one witness who is not involved in the physical restraint should be present.

Prone restraints (restraints that position a student face down on his or her stomach or face up on the back) or any maneuver that places pressure or weight on the chest, sternum, lungs, diaphragm, neck, throat, or back must not be used. Any restraint that prevents a student from speaking or breathing is prohibited.

Physical restraint training should be recurrent with periodic updates and result in some form of certification or credential.

School personnel may only utilize physical restraint if they have completed training in:

- Conflict de-escalation;
- The crisis cycle and interventions at each stage;
- Possible effects of physical restraint;
- CPR and First Aid, must hold current certification in both; and
- Monitoring the wellbeing of the student.

A building administrator should be informed immediately of any incident of a physical restraint. If unavailable, the building administrator must be informed as soon as possible following each incident, and prior to any extended breaks from school. Each incident of physical restraint must be documented on the optional OSDE Seclusion and Physical Restraint Documentation or other LEA documentation. A copy of the documentation must be placed in the student file and provided to the parents. Parents should be informed immediately, but must be informed within 24 hours after each physical restraint incident, and prior to any extended breaks from school. An IEP meeting may be needed to review the student's BIP and placement for any changes to services or placement.

A. Definitions

“Chemical restraint” refers to a drug or medication used on a student to control behavior or restrict freedom of movement that is not:

- Prescribed by a licensed physician, or other qualified health professional acting under the scope of the professional's authority under state law, for standard treatment of the student's medical condition; and
- Administered as prescribed by the licensed physician or other qualified health professional acting under the scope of the professional's authority under state.

The terms **“Imminent danger of serious physical harm”** and **“dangerous behavior”** refers to an impending threat of a person causing serious physical injury to self or others.

“Mechanical restraint” refers to the use of any device or equipment to restrict a student's freedom of movement. The term does not include devices implemented by trained persons, or utilized by a student that has been prescribed by an appropriate medical or related services professional and are used for the specific and approved purposes for which such devices were designed, such as:

- Adaptive devices or mechanical supports used to achieve proper body position, balance, or alignment to allow greater freedom of mobility than would be possible without the use of such devices or mechanical supports;
- Vehicle safety restraints when used as intended during the transport of a student in a moving vehicle;
- Restraint for medical immobilization; or
- Orthopedically prescribed devices that permit a student to participate in activities without harm.

Items used in a therapeutic manner for a particular student in one context could be used as a mechanical restraint in a different context; the proper inquiry, therefore, to determine whether an item is a mechanical restraint is not based solely on what the item is, but also how the item is used.

“Physical restraint” refers to a personal restriction that immobilizes or reduces the ability of a student to move his or her torso, arms, legs, or head freely. The term “physical restraint” does not include a physical escort. The term, “physical escort” means a temporary touching or holding of the hand, wrist, arm, shoulder, or back for the purpose of inducing a student who is acting out to walk to a safe location.

Section 8. Independent Educational Evaluations (IEE)

An independent educational evaluation (IEE) means one or more individual assessments, each completed by a qualified examiner who is not employed by the LEA responsible for the education of the student in question.

A parent and/or adult student has the right to obtain an IEE at public expense if he or she disagrees with an evaluation obtained or conducted by the LEA. Parents are not entitled to an IEE at public expense before they allow the LEA to conduct its own evaluation. The LEA will provide the parents with a list of qualified examiners from which to choose for the IEE.

- The parent and/or adult student is entitled to only one IEE at public expense for each LEA evaluation.
- The parent and/or adult student has the right to an IEE at his or her own expense at any time, and the MEEGS group or IEP team must consider the results of each individual assessment completed.
- The LEA may initiate a due process hearing, without undue delay, to determine if the evaluation it conducted is appropriate. If the final decision of a hearing officer, or a court of law’s decision on an appeal, is that the evaluation conducted by the LEA was appropriate,

the parent and/or adult student still has the right to an IEE but at his or her own expense. Conversely, a hearing officer may order an IEE at public expense if he or she determines that the evaluation conducted by the LEA was not appropriate.

A. Procedures for Requesting an IEE

If a parent and/or adult student requests an IEE at public expense, the LEA may ask why he or she disagrees with the evaluation obtained by the LEA, but the LEA cannot require an explanation. The LEA must give the parent and/or adult student the criteria under which an IEE may be obtained.

The LEA's IEE criteria may include the following information:

- The location for the evaluation;
- The required qualifications of the examiner;
- The eligibility requirements for the specific disability categories; and
- Reasonable cost containment criteria applicable to personnel for specific assessments to eliminate unreasonably excessive fees.

Except for the criteria listed above, the LEA may not impose other conditions or timelines if doing so would be inconsistent with the parent's and/or adult student's right to an IEE.

i. Criteria for Reasonable Costs

LEAs may establish a schedule of reasonable fees for IEEs. If the maximum allowable fees are established, the fees must:

- Not simply be an average of the fees customarily charged in the area.
- Only eliminate excessive fees, while still allowing for the parents to choose from qualified examiners in the area.
- Allow the parents an opportunity to demonstrate unique circumstances that justify an IEE that exceeds the criteria or maximum fee schedule.

If the LEA has established a cost ceiling that is reasonable for the type of evaluation requested and the IEE exceeds the ceiling, the LEA must pay up to the ceiling amount.

In addition to other criteria for an IEE, if the LEA establishes a schedule of reasonable fees, it must be provided as part of the information available to parents upon request.

ii. LEA Responsibilities Following IEE Requests

If a parent and/or adult student requests an IEE at public expense, the LEA must do one of the following without unnecessary delay:

1. Provide the LEA's IEE criteria and information about where an IEE may be obtained;
2. Offer mediation through the Special Education Resolution Center (SERC); or
3. Request a due process hearing without undue delay to show that the LEA's evaluation is appropriate.

If the final hearing decision is that the LEA's evaluation is appropriate, the parent and/or adult student may pursue an IEE, but at his or her own expense.

iii. Consideration of the IEE Results

If a parent and/or adult student obtains an IEE and makes that evaluation available to the LEA, the results must be considered by the LEA in any decision made with respect to the provision of a FAPE, identification, eligibility, or educational placement. If the IEP team determines, upon consideration of the IEE, that the results of the IEE do not necessitate a change to eligibility or provision of services for a student, the LEA should provide an explanation to the parent in a Written Notice. The results of an IEE cannot be the sole determining factor for eligibility. The evaluation group has the responsibility to use existing evaluation data in addition to the IEE to determine whether a student has or continues to have a disability under the IDEA.

Legal Citations

Code of Federal Regulations, Title 34: Education

- §300.9 Consent.
- §300.30 Parent.
- §300.45 Ward of the State.
- §300.300 Parental consent.
- §300.500 Responsibility of SEA and other public agencies.
- §300.502 Independent educational evaluation.
- §300.503 Prior notice by the public agency; content of notice.
- §300.504 Procedural safeguards notice.
- §300.519 Surrogate parents.
- §300.520 Transfer of parental rights at age of majority.
- §300.610 Confidentiality.
- §300.613 Access rights.
- §300.618 Amendment of records at parent's request.
- §300.622 Consent.
- §300.624 Destruction of information.

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CHAPTER 12. DISCIPLINE

Section 1. General Discipline Guidelines

Local Education Agencies (LEA) are encouraged to address student misconduct through appropriate school-wide discipline policies, instructional service(s), and/or related services. If a student with a disability exhibits behaviors that interfere with his or her learning or the learning of others, an individualized education program (IEP) team must consider the use of strategies, including positive behavioral supports and interventions, Functional Behavior Assessments (FBA) and Behavior Intervention Plans (BIP), to address the behavior. If the IEP team determines that such services are needed, they must be included in the IEP and must be implemented.

Students with disabilities who are subject to disciplinary actions by a local education agency (LEA) are entitled to all of the disciplinary due process rights afforded students without disabilities, in accordance with Oklahoma's School Bullying Prevention Act. In addition to these rights, the Individuals with Disabilities Education Act (IDEA) provides special education rights and additional procedural safeguards to a student with a disability for whom the LEA is proposing disciplinary removal from his or her current educational placement. These procedures come into play when the LEA is unable to work out an appropriate placement for the student with the parent. The purpose of these procedures is to balance the LEA's need to provide a safe environment conducive to learning for all students with procedural protections to students with disabilities preceding a change of placement for disciplinary reasons.

The general mission of schools is to provide opportunities for students to achieve 3 primary and interrelated expectations that enable participation, contribution, and success in schools, communities, and post-school outcomes. These 3 expectations are:

1. Academic skill competence;
2. Social skill competence; and
3. Lifestyle skill competence.

In order for schools to address difficult behaviors successfully, the IDEA places an increased emphasis on proactive approaches rather than reactive behavior management. Proactive approaches to discipline for all students include the expectation that more socially acceptable behaviors will be directly taught, that these skills will be practiced consistently in the school environment by staff and students. There will be frequent recognition of everyone in the school environment – not just students with disabilities – who perform these behaviors. Schools are encouraged to address student's misconduct through appropriate school-wide discipline policies, instructional services and/or related services.

The Oklahoma Tiered Intervention System of Supports (OTISS) is Oklahoma's [Response to Intervention \(RtI\)](#) model that addresses both academics and behavior. Specifically, this model blends Positive Behavioral Interventions and Supports (PBIS) and RtI. This model was developed, and is currently supported, through the 2011 Oklahoma State Personnel Development Grant (SPDG II).

A. Disciplinary Actions Resulting in Removal for 10 or Fewer School Days

Students with disabilities are expected to follow the student code of conduct. A student with a disability who has an IEP in effect can be removed from school through an out-of-school suspension or removed to another setting or to an appropriate Interim Alternative Educational Setting (IAES), just as any other student without a disability can, for up to a total of 10 school days, for violations of the student code of conduct or school rules. The 10 school days can be consecutive or cumulative and can occur over the course of one school year. It is not necessary for the IEP team to meet when this occurs. Likewise, it is not necessary for a manifestation determination to be completed, a functional behavior assessment to be conducted, a behavior intervention plan to be developed, or for any special education services to be provided if the removal is for 10 or fewer school days over the school year. However, as a best practice, the LEA may choose to convene the IEP team to discuss the need for a functional behavior assessment or to review and make changes to the student's current behavior intervention plan. Additionally, in accordance with Oklahoma State law, an out-of-school suspension of any student for more than 5 consecutive school days requires the LEA to provide the student with an education plan designed for the eventual reintegration of the student into school.

B. Disciplinary Actions Resulting in Removal for More than 10 School Days

When disciplinary actions result in removal for more than 10 school days in a school year **and** clearly indicate a **pattern of removal** that constitutes a change in placement, the LEA must conduct a manifestation determination, and the IEP team must determine appropriate services that allow the student to continue to participate in the general education curriculum and progress toward meeting the goals outlined in the student's IEP, although in another setting.

If LEA officials determine that it is appropriate to suspend a student out of school for more than 10 **consecutive** school days, or to have a student's educational setting changed to an IAES for up to 45 school days due to the existence of a special circumstance, such as weapon or illegal drug possession or infliction of serious bodily injury on another person, LEA officials must notify the parent or adult student immediately of this decision.

LEA personnel must consider unique circumstances when determining whether a change in placement is appropriate for a student with a disability. These circumstances are best determined at the local level by LEA personnel who know the student and the facts and factors related to the behavioral violation. LEA personnel should consider various forms of information such as the student's disciplinary history, antecedents to the offending behavior, as well as the supports that were provided to the student prior to the behavioral violation.

Section 2. Actions Involving a Disciplinary Removal that Results in a Change of Placement

Within 10 school days from the date of the decision to impose an out-of-school suspension or another type of disciplinary removal that either exceeds **10 consecutive school days or 10 cumulative days of suspensions in the same school year that constitute a pattern of removal** (a change in placement), or placement in an IAES, a meeting must be held to determine whether the conduct in question was caused by, or had a direct and substantial relationship to, the student's disability or whether the conduct was a result of the LEA's failure to implement the student's IEP. These steps are referred to as a "manifestation determination." Please see the [IDEA Discipline Flow Chart Example](#) for a visual representation of the aforementioned steps.

A. LEA Actions Resulting in a Change of Placement

34 CFR §300.536 Change of placement because of disciplinary removals.

(a) For purposes of removals of a child with a disability from the child's current educational placement under [34 CFR §300.530 through 300.535](#), a change of placement occurs if -

- (1) The removal is for more than 10 consecutive school days; or
- (2) The child has been subjected to a series of removals that constitute a pattern -
 - (i) Because the series of removals total more than 10 school days in a school year;
 - (ii) Because the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and
 - (iii) Because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.

(b)(1) The public agency determines on a case-by-case basis whether a pattern of removals constitutes a change of placement. (2) This determination is subject to review through due process and judicial proceedings.

B. LEA Actions When There is a Change of Placement

Whenever disciplinary action results in a change in placement, the LEA must:

1. Notify the parent or adult student of the disciplinary action to be taken on the date of the decision and provide a copy of the *Parents Rights in Special Education: Notice of Procedural Safeguards*; and
2. Conduct a manifestation determination no later than 10 school days after the date on which the decision to take the disciplinary action is made.

C. Interim Alternative Educational Settings

LEA personnel may remove a student to an IAES for no more than 45 school days without regard to whether the behavior is determined to be a manifestation of the student's disability if one or more of the following special circumstances exist. The student:

- Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of an LEA;
- Knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school, on school premises, or at a school function under the jurisdiction of an LEA; or
- Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of an LEA, defined as bodily injury that involves:
 - A substantial risk of death;
 - Extreme physical pain;
 - Protracted and obvious disfigurement; or
 - Protracted loss or impairment of the function of the bodily member, organ, or mental faculty.

See the Glossary for the definitions of “weapon”, “illegal drugs” and “controlled substance”.

[Serious Bodily Injury [18 U.S.C. §1365\(h\)\(3\)](#), Dangerous Weapon [18 U.S.C. §930\(g\)\(2\)](#), Controlled substance [21 U.S.C. §812\(c\)](#)]

Serious bodily injury A bodily injury that involves a substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ or faculty. See [18 U.S.C. Section §1365\(h\)\(3\)](#).

Although the student may be placed in an IAES, as determined by the IEP team, for up to 45 school days even if the conduct is a manifestation of the student's disability, the IEP team must still convene a meeting to review the student's IEP and conduct a manifestation determination.

D. Hearing Officer Actions Resulting in a Change of Placement

If necessary in appropriate circumstances, through an expedited due process hearing, the LEA may ask a hearing officer to place a student with a disability in an appropriate IAES.

In requesting a hearing officer to place a student in an IAES, the LEA must:

- Demonstrate by substantial evidence that maintaining the current placement is substantially likely to result in injury to the student or others; and
- Indicate whether the request is for an initial period of not more than 45 school days or an additional period of not more than 45 school days.

E. Court Actions Resulting in a Change of Placement

LEA administrators may seek a court order to remove a student with a disability from school or the current placement at any time. FAPE [educational services] must not cease during the period of time an injunction is in place. Although not directly addressed in the IDEA, the U.S. Department of Education has stated that a school district need not exhaust the administrative due process hearing system before seeking such court relief.

Section 3. FAPE Considerations

Services may not cease and the LEA must consistently provide FAPE to the student with a disability:

- After the student is removed for 10 school days in the same school year and subsequent days of removal do not constitute a change of placement;
- When there is a disciplinary change of placement.

A. FAPE Requirements in an IAES

If the student's placement will change to an IAES, the IEP team must select an IAES that enables the student to:

- Continue to participate in the general education curriculum;
- Progress toward meeting the goals set out in his or her IEP; and
- Receive, as appropriate, a functional behavior assessment(s) (FBA) and behavioral intervention services to address the behavior violation so that it does not recur.

Section 4. Procedures for a Manifestation Determination

In making the manifestation determination, the LEA, the parent or adult student, and relevant members of the IEP team (as determined by the parent or adult student and the LEA), will review all relevant information, including:

- The student's IEP;
- Any relevant teacher observations; and

- Any other information provided by the parents or adult student.

If the IEP team finds that the student's behavior was caused by or had a direct and substantial relationship to the student's disability, or that the behavior was a direct result of the LEA's failure to implement the IEP, then the behavior must be found to be a manifestation of the student's disability. If the team determines that the conduct in question was the direct result of the LEA's failure to implement the IEP, the LEA must take immediate steps to remedy those deficiencies. The team must also either:

- Seek parent or adult student consent to conduct a FBA, unless the LEA already conducted a FBA before the behavior that resulted in the change of placement occurred and the team determines that further FBA is unnecessary, and develop and implement a BIP for the student; or
- If a BIP has already been developed, review the BIP and modify it, as necessary, to address the behavior.

When the conduct is determined to be a manifestation of the student's disability, the LEA will not implement the disciplinary removal, unless special circumstances exist for placement in an IAES, as discussed above. Unless special circumstances exist, the IEP team will return the student to the placement from which the student was removed, unless the parent or adult student and the LEA agree to a change of placement as part of modifying the student's BIP.

If the IEP team finds that the student's behavior was not a manifestation of the student's disability, the same disciplinary actions can be implemented for the student with a disability as are implemented for any student except that the student is still entitled to a FAPE. The IEP team must determine how the student will continue to receive educational services that allow him or her to continue to participate in the general education curriculum and progress toward meeting the goals in the IEP during the suspension or other removal from school, and amend the current IEP or develop a subsequent IEP that specifies what and where special education and related services will be provided.

In addition, the IEP team, if appropriate, will conduct a FBA and develop a BIP. In the event of appeal of a student's out-of-school suspension, the LEA will forward the student's special education and disciplinary records for consideration to the board of education or board-appointed hearing officer who makes the final decision regarding the disciplinary action. An example flow chart regarding discipline of special education students under the IDEA may be accessed [here](#).

Section 5. Other Considerations

A. Request for an Expedited Hearing

An expedited hearing is a hearing that occurs within 20 school days of the request with a decision rendered within 10 school days of the hearing.

1. The parent or adult student may request an expedited due process hearing if he or she:
 - a. Disagrees with the determination that the behavior was not a manifestation of the student's disability;
 - b. Disagrees with any decision of the IEP team regarding a change of placement for disciplinary reasons; or
 - c. Disagrees with the decision regarding the student's placement in an IAES.
2. The LEA may request an expedited hearing if it believes that maintaining the current placement is substantially likely to result in injury to the student or to others.
3. When an expedited hearing is requested (either by the parent or adult student to challenge the action or by the LEA to seek removal to an interim setting), the student remains in the IAES pending the decision of the hearing officer or the expiration of the disciplinary placement term, whichever occurs first, unless the parent or adult student and LEA agree otherwise.
4. Resolution meeting requirements apply but are shortened from 15 to 7 days. No challenge to the sufficiency of the request is available.

See [Chapter 13, Section 5, "Due Process Hearings Requests"](#) and [Section 6, "Expedited Due Process Hearings,"](#) for an explanation of a standard and an expedited due process hearing rights and procedures.

B. Referrals to and Action by Law Enforcement and Judicial Authorities

LEAs are permitted to report a crime that a student with a disability may have committed to appropriate law enforcement authorities. However, under the Family Educational Rights and Privacy Act (FERPA), the LEA must ask for parent or adult student consent to transmit a student's special education records to the authorities, unless ordered by a judge or in compliance with a subpoena; the LEA may transmit the records. Otherwise, records are not transmitted in accordance with the IDEA.

FERPA always allows disclosure if parent(s) consent to the disclosure. FERPA exceptions to the parent consent requirement may allow for disclosure in other circumstances:

- Student records may be disclosed in compliance with a lawfully issued subpoena. However, parents or adult students must be notified in writing that the records have been subpoenaed before they are forwarded, unless the court has ordered that the existence of the subpoena or the contents of the subpoena not be disclosed.
- Student records may be disclosed in emergency situations where the disclosure is necessary to protect the health or safety of themselves or others.
- Student records may be disclosed under limited circumstances pursuant to State laws concerning the juvenile justice system.
- When records are provided to law enforcement or judicial authorities, the disclosure must be on the condition that the record will not be further disclosed without the written consent of the student's parents, or the student if the student is 18 or older.

Although it is easy for an LEA to determine to whom the crime should be reported, it is less clear to whom copies of special education and disciplinary records should be forwarded. Parent consent to release the records to certain individuals or a subpoena for the records will eliminate the confusion and should ensure that the appropriate parties receive the records. Unless the authority to release the records under FERPA is clear, schools should not forward student records to any law enforcement officer who comes into contact with the student. Sample request letters can be found at <http://ok.gov/sde/documents-forms>.

C. Transportation

If bus transportation is identified as a related service on the IEP, a suspension from the bus is treated as a suspension from school (unless the LEA provides transportation services in some other way, such as "transportation in lieu of") because transportation is necessary for the student to be provided a FAPE.

If bus transportation is not identified as a related service on the IEP, a suspension from the bus is not counted as suspension from school. In these cases, the student and the parent have the same obligation to get to and from school as a student without a disability who has been suspended from the bus.

If the student's behavior on a school bus violates a school code of conduct, whether or not the transportation is a related service, the IEP team must consider whether the behavior should be addressed in a Behavioral Intervention Plan (BIP).

D. In-School Suspension

Students with disabilities who are placed in an in-school intervention or in-school suspension program must have the opportunity to continue to progress appropriately in the general curriculum, to receive the services in the IEP, and to participate with nondisabled students to the extent they would have

in the current placement, in order for the LEA to avoid counting those days as days of disciplinary removal. If any of the criteria are not met, the in-school suspension will count towards the 10 cumulative school day limit before the IDEA disciplinary provisions are applied.

E. Transfer of Discipline Records

The forwarding and disclosure of disciplinary records or other educational records to the LEA in which a student seeks or intends to enroll must be in accordance with the annual notification requirements and provisions of FERPA. When the LEA initiates disciplinary proceedings applicable to all students, the special education and disciplinary records of students with disabilities must be given to authorized LEA personnel for their consideration in making the final determination regarding the disciplinary action.

Section 6. Protections for Students Not Yet Eligible for Special Education

A student who has not been determined eligible for special education and who has violated any rule or code of conduct of the LEA may assert the protections of the IDEA if the LEA had knowledge that the student was a student with a disability before the behavior that precipitated the disciplinary action.

A. Parent Request for Evaluation of a Disciplined Student

If a request for an evaluation of a student who is not currently eligible for special education is made during the period in which the student is subject to disciplinary measures, the LEA will conduct the evaluation in an expeditious manner. Pending the results of the evaluation, the student will remain in the educational placement determined by LEA officials, which can include suspension or expulsion without educational services.

- If the student is subsequently determined eligible for special education, the LEA will:
 - Convene an IEP team meeting to develop an IEP; and
 - Conduct a manifestation determination.
- If the behavior is caused by or had a substantial relationship to the student's disability, the disciplinary action must be set aside, and the student must be provided appropriate educational services in the least restrictive environment (LRE).
- If the behavior is not caused by nor had a substantial relationship to the student's disability, the student is subject to the disciplinary placement that had been determined, but he or she is still entitled to receive a FAPE, which is determined by the IEP team. Educational services must be provided to the extent necessary to allow the student with a disability the ability to participate in the general education curriculum and the opportunity to advance toward achieving the goals set out in his or her IEP.

- If the evaluation group determines that the student is not eligible for special education, he or she will be subject to the same disciplinary actions as all other students.

i. Basis of knowledge

With limited exceptions, which are described in item 4 below, the LEA will be deemed to have knowledge that an individual is a student with a disability if one or more of the following is true:

- The parent or adult student has expressed concern to supervisory or administrative LEA personnel or a teacher of the student that the student is in need of special education and related services. The concern must be expressed in writing unless the parent or adult student is unable to write or has a disability that prevents a written statement.
- The parent or adult student has requested that the student be evaluated for special education.
- The student's teacher or other LEA personnel have expressed specific concerns about a pattern of behavior demonstrated by the student directly to the director of special education or to other LEA supervisory personnel in accordance with the LEA's established Child Find system or special education referral system.

ii. No basis of knowledge

The LEA will be deemed not to have knowledge that an individual is a student with a disability if one or more of the following is true:

1. An evaluation was conducted and a determination was made that the student did not have a disability.
2. The parent or adult student refused to give written consent for an evaluation.
3. The parent or adult student refused special education services.

If the LEA did not have a basis of knowledge that a student was a student with a disability prior to taking disciplinary measures, the student is subject to the same disciplinary measures applied to all other students who engage in comparable behaviors.

B. Parents Revoking Consent

If a parent chooses to revoke consent for special education and related services, the LEA should inform the parents in the written notice that the student will be treated as a nondisabled student for disciplinary purposes.

Legal Citations

Code of Federal Regulations, Title 34: Education

- §300.9 Consent.
- §300.229 Disciplinary information.
- §300.300 Parental consent.
- §300.530 Authority of school personnel.
- §300.531 Determination of setting.
- §300.532 Appeal.
- §300.533 Placement during appeals.
- §300.534 Protections for children not determined eligible for special education and related services.
- §300.535 Referral to and action by law enforcement and judicial authorities.
- §300.536 Change of placement because of disciplinary removals.

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CHAPTER 13. DISPUTE RESOLUTION

Section 1. Dispute Resolution

On occasion, conflicts arise between Local Education Agencies (LEA) and parents and/or adult students. Several mechanisms are available through the Oklahoma State Department of Education (OSDE) to assist in resolving disputes. The processes are individualized education program (IEP) facilitation, mediation, formal complaints, due process hearings, facilitated resolution sessions, and expedited due process hearings. This chapter contains information on each of these processes.

A. Contact Information

The OSDE accepts formal complaints and requests for due process hearings via fax, mail, and personal delivery. Additionally, requests for IEP facilitation and mediation may be requested through a resolution center.

Oklahoma State Department of Education,

Special Education Services

Dispute Resolution Coordinator

2500 N. Lincoln Blvd.

Oklahoma City, OK 73105

Local: 405-521-3351

Facsimile: 405-522-2380

Special Education Resolution Center (SERC),

Oklahoma State University

9726 E. 42nd Street, Suite 203

Tulsa, OK 74146

Toll Free: 888-267-0028

Local: 918-712-9632

Facsimile: 918-712-9058

For further assistance in matters relating to dispute resolution, you may contact:

Oklahoma Disability Law Center

2915 Classen Boulevard, Suite 300

Oklahoma City, Oklahoma 73106

Oklahoma City, OK

Toll Free: 800-880-7755

Local: 405-525-7755

Facsimile: 405-525-7759

Oklahoma Parents Center

223 N. Broadway
Holdenville, OK 74848
Toll Free: 877-553-4332
Local: 405-379-6015
Facsimile: 405-379-2106

Section 2. IEP Facilitation

A request for IEP facilitation may be made by the parent and/or adult student or by an LEA representative, such as the director of special education. Requests may be made in writing or by phone to a resolution center.

IEP facilitation is a voluntary process for which a facilitator is appointed to facilitate an IEP team meeting. The role of the facilitator is to help team members communicate more effectively and efficiently. IEP facilitation supports early dispute resolution, providing assistance to the IEP team before a potential conflict develops into a more serious dispute. The facilitator is an impartial third party, not a member of the IEP team, and has no stake in decisions made by the team.

Section 3. Mediation

The OSDE has developed a mediation system to help resolve disagreements between LEAs and parents and/or adult students regarding the identification, evaluation, educational placement, and the provision of a free appropriate public education (FAPE). A request for mediation may be made by the parent and/or adult student or the LEA at any point without the necessity of requesting a due process hearing. Requests may be made in writing or by phone to a resolution center. The ultimate goal of mediation is to obtain a written agreement that is acceptable to both parties. Mediation agreements are legally binding. Even if a written agreement is not achieved, mediation may be helpful in clarifying issues.

Mediation is a structured, voluntary process in which an impartial third party (a mediator) assists parents and/or adult students and LEA personnel resolve disputes. Mediation builds positive working relationships, encourages mutual understanding, and helps the parties focus on their common interest—the student. Both parties must agree to the use of mediation.

A. Mediation Process

Following a request for mediation, a resolution center will contact the other party and ask whether they are willing to participate in mediation. Mediation may not be used to deny or delay the right to a due process hearing or any other rights afforded to students and parents.

Mediation is:

- Voluntary for parents and school personnel;

- Offered when disputes arise, including, but not limited to, formal complaints and due process hearing requests;
- Confidential, thus encouraging all participants to speak freely;
- A No-Cost Service to parents and LEAs; and
- An Alternative that does not delay the status of a due process hearing or formal complaint.

B. Special Education Resolution Center (SERC)

Currently, the [Special Education Resolution Center \(SERC\)](#) manages the special education due process hearing system for the State of Oklahoma. The duties of the SERC have been expanded to include innovative programs to assist parents and school districts to settle disputes at the earliest stage possible. At no cost to either party, the SERC provides highly trained mediators to assist with disputes which may develop at any time during the relationship of the parties over special education issues. Additionally, the SERC also provides highly trained facilitators during required resolution sessions of due process. The SERC provides stakeholder training that supports mutual collaboration.

Section 4. Formal Complaints

A formal complaint may be filed with the OSDE by any individual or organization who believes the LEA or other education agency has violated a requirement of Individuals with Disabilities Education Act (IDEA). The OSDE will accept a complaint received by mail, fax or hand delivery.

A. Filing Complaints

The complaint must be in writing and include the following information:

1. Current date;
2. The name, address, and telephone number of the person making the complaint (or available contact information);
3. The signature of the person making the complaint;
4. If alleging violations regarding a specific student, the name and address of the student involved (or available contact information in the case of a homeless student or family);
5. The school and LEA or other education agency that is the subject of the complaint;
6. One or more statements (allegations) that the LEA has violated one or more requirements of IDEA Part B;

7. The facts and/or a description of the events that support each allegation; and
8. Proposed resolution of the problem or the relief sought to the extent known and available to the party at the time.

The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received. The OSDE has a form available that may be used.

i. OSDE Complaint Procedures

Upon receipt of a written complaint, the OSDE will do the following:

- Determine whether the complaint meets all of the required criteria. The OSDE will notify the complainant if his or her submission is insufficient as listed in Section A, above.
- Notify the LEA that a complaint has been received and the timeline to submit documentation.
- Give the complainant the opportunity to provide additional information about the allegations, either orally or in writing.
- Resolve the complaint and issue a Final Report that includes the findings of fact, conclusions, and resolution for each violation within 60 calendar days of receipt of the complaint. This time period may be extended, but only under exceptional circumstances, which must be documented by the OSDE. The resolution will state:
 - How to remedy any denial of services, which may include the award of compensatory services, or other corrective action as appropriate to the needs of the student; and
 - The future provision of services for a student with a disability, if such clarification is needed.
- Ensure the LEA takes corrective action if it is determined that the LEA was out of compliance. All corrective actions must be completed no later than one year from issuance of the finding of violation. The OSDE may require a timeline for correction at a date earlier than one year.

Section 5. Due Process Hearings Requests

A request for a due process hearing may be made by a parent, adult student, and attorney representing the parent/adult student or the LEA. A parent and/or adult student or LEA may file a request for hearing with the other party. The request must be mailed, faxed, or hand delivered. When the request is filed the requesting party must send copies to the Dispute Resolution Coordinator at the OSDE.

All applicable timelines for due process hearing and resolution sessions will start when the request has been filed with the other party and the OSDE.

Oklahoma's due process system has 2 types of hearings, a regular due process hearing and an expedited due process hearing:

- A regular due process hearing is an administrative hearing to resolve disputes on any matter related to the identification, evaluation, educational placement, and the provision of a FAPE.
- An expedited due process hearing is an administrative hearing to resolve disputes concerning discipline. The expedited hearing will occur within 20 school days of the request, with a decision rendered within 10 school days of the hearing.

A. Due Process Hearing Request from Parent and/or Adult Student

A due process hearing may be requested on behalf of a student by a parent, by the adult student, or by an attorney representing the student.

- A due process hearing must be initiated within 2 years of the date the parent and/or adult student knew or should have known of the dispute. The 2 year timeline will not apply if the parent and/or adult student were prevented from requesting a hearing due to misrepresentations that the issues had been resolved or the withholding of information by the LEA required to be provided under the IDEA.
- A due process hearing can be initiated regarding issues pertaining to identification, evaluation, educational placement, or the provision of a FAPE if:
 - The LEA proposes to initiate or change any of these matters; or
 - The LEA refuses the parent's and/or adult student's request to initiate or change any of these matters.

B. Due Process Hearing Request by an LEA

An LEA may initiate a due process hearing within 2 years of the dispute in an attempt to accomplish one or more of the following:

- Override a parent's and/or adult student's refusal of consent for an initial evaluation, reevaluation, or the release of information;
- Ask a hearing officer to place a student in an Interim Alternative Education Setting (IAES) when there is substantial evidence that maintaining the current educational placement is likely to result in injury to the student or others; or

- Request that a hearing officer determine whether an evaluation conducted by the LEA was appropriate or whether an evaluation obtained by a parent and/or adult student meets the criteria for a publicly funded independent educational evaluation (IEE) when the LEA refuses the request by the parent for a publicly funded IEE. [**Note:** Although not in the IDEA, both the Office of Special Education Services (OSEP) and the Courts have allowed LEAs the right to request a hearing so that a hearing officer may determine whether the developed IEP is appropriate.]

If the LEA initiates a hearing, the LEA will inform the parent and/or adult student and the OSDE.

C. Contents of a Request for a Due Process Hearing

A request for a due process hearing must be made in writing and must include the following information:

- The current date;
- The student's name, address (or available contact information in the case of a homeless student), and LEA;
- The signature of the individual making the request for a due process hearing;
- A description of the nature of the problem, including supporting facts; and
- A proposed resolution of the problem or the relief sought to the extent known and available at the time to the party.

D. Actions for Due Process Hearings

1. A Due Process Request is Filed

- A request may be filed by either party.
 - Either party may challenge the sufficiency of the due process hearing request within 15 days of the receipt of the hearing request by filing a sufficiency objection with the hearing officer. The hearing officer must render a decision regarding the sufficiency challenge within 5 calendar days and immediately notify the parties of the decision in writing.
 - The LEA must inform a parent and/or adult student of any free or low-cost legal or other relevant services available to him or her and provide a copy of the Procedural Safeguards if a due process hearing is requested or if the parent and/or adult student requests such information.

2. A Hearing Officer is Assigned

- A hearing officer may not be an employee of the LEA or the OSDE, an individual having any personal or professional interest that would conflict with his or her objectivity in the hearing, or a member of the board of education of the LEA.
- The LEA will pay for all actual expenses incurred by the hearing officer and for the cost of a verbatim transcript of the hearing.

3. Mediator or Facilitator is Offered

- A trained mediator or third party neutral facilitator will be provided at the resolution session, if both parties agree. The OSDE offers mediation through a resolution center as an alternative dispute resolution mechanism to the involved parties. A trained mediator will be provided if the parties choose to participate in mediation rather than a resolution session.

4. Response to a Due Process Request

- The other party must file a response within 10 calendar days, addressing the issues raised.
- If the LEA has not sent a written notice to the parent and/or adult student regarding the subject matter contained in the due process request, the LEA will, within 10 calendar days of receiving the request, send the parent and/or adult student a response that includes all the components of a written notice.
- Either party may amend the request, upon obtaining written consent from the other party or as granted by the hearing officer, at least 5 calendar days prior to the hearing. If the request is amended, timelines for resolution and resolving the issues begin again as of the date of the amended request.

5. Pre-hearing Resolution Session

- A resolution session will be held within 15 calendar days of a request for a due process hearing unless:
 - Both parties agree in writing to waive the resolution meeting;
 - Both parties agree to go to mediation; or
 - The LEA initiates the hearing. The IDEA requires the resolution session only if the parent has requested the due process hearing.
- A “resolution team” includes the parent and/or adult student, a representative of the LEA who has decision-making authority, and relevant members of the IEP team who have specific knowledge of the facts identified in the request for a due process hearing as determined by the parties. The LEA’s attorney will not attend the resolution session unless the parent and/or adult student will be accompanied by an attorney.

- The purpose of the meeting is for the parent and/or adult student to discuss the due process hearing request and the facts that form the basis of the request, so that the LEA has the opportunity to resolve the dispute.
- If a resolution is reached regarding the issues raised in the request for a due process hearing, the LEA representative and parent and/or adult student will sign a legally binding document that is enforceable in State or federal court. Either party may void this agreement within 3 business days of signing the agreement.
- A due process hearing will be scheduled if no resolution is reached within 30 calendar days of receiving the request for a due process hearing.

If the LEA is unable to obtain the participation of the parent(s) or adult student after reasonable efforts have been made and documented, at the conclusion of the 30-calendar day period, the LEA may request that the hearing officer dismiss the due process hearing request.

A parent or adult student may request an immediate due process hearing from the hearing officer if the LEA has not scheduled or participated in a resolution session within 15 days of the request.

6. The 45 calendar day timeline

The 45 calendar day timeline for the due process hearing request starts the day after one of the following events:

- Both parties agree in writing to waive the resolution meeting;
- After either the mediation or resolution meeting starts, but before the end of the 30-day period, the parties agree in writing that no agreement is possible;
- Both parties agree in writing to continue the mediation at the end of the 30-day resolution period, but later, the parent or LEA withdraws from the mediation process; or
- The LEA files a hearing request.

7. Hearing Preparation

- A parent and/or adult student will be allowed to inspect and review reports, files, and records pertaining to the student upon request, not less than 5 business days prior to a due process hearing. An LEA may charge a fee for copies of records if the fee does not effectively prevent a parent and/or adult student from exercising his or her right to inspect and review those records. The LEA may not charge a fee to search for or retrieve records.
- Not less than 5 business days prior to a due process hearing, each party will disclose to all other parties:
 - Evaluations completed by that date;

- Recommendations based on those evaluations intended to be used at the hearing; and
- Copies of exhibits which will be introduced and a list of witnesses each party intends to call at the hearing.
- The hearing officer will provide notification as to the time and place of the due process hearing to the parent and/or adult student, LEA officials, and the OSDE. The hearing must be conducted at a time and place reasonably convenient to the parent and/or adult student.

8. The Due Process Hearing

- The hearing officer will preside over and conduct the proceedings in a fair and impartial manner, permitting all parties an opportunity to present their information and opinions pursuant the IDEA requirements.
- A parent and/or adult student and LEA personnel may be accompanied and advised by legal counsel and other persons with special knowledge or training about students with disabilities. The Oklahoma Attorney General has opined that lay advocates cannot represent parents and/or adult students at due process hearings.
- A parent and/or adult student has the right to open the hearing to the public and to have the student who is the subject of the hearing present.
- Only a parent and/or adult student, an LEA, and their respective attorneys have the right to present evidence, to compel the attendance of witnesses, and to confront and cross examine witnesses.
- New issues (issues not in the original due process request) may not be raised at the hearing unless agreed to by the other party. Any party may prohibit the introduction of any evidence at the hearing that was disclosed fewer than 5 business days before the hearing.
- During the hearing the LEA will provide reasonable accommodations as required by federal regulations. Disputes will be referred to the OSDE for resolution.
- A record of the hearing will be made. The record will be a written verbatim transcript. The parent and/or adult student may choose an electronic verbatim record. The LEA will pay the transcript costs, and a copy of the transcript will remain with the OSDE. The parent and/or adult student and LEA personnel have the right to obtain a copy of the record upon formal request.
- The party requesting the hearing will have the burden of proof in the due process hearing.

9. Decision of the Hearing Officer

- The decision of the hearing officer will be based solely on evidence introduced at the due process hearing.
- The decision made by the hearing officer will be made on substantive grounds based on a determination of whether a student received a FAPE. In matters alleging a procedural violation, a hearing officer may find that a student did not receive a FAPE only if the procedural inadequacies:
 - Impeded the student's right to a FAPE;
 - Significantly impeded a parent's and/or adult student's opportunity to participate in the decision-making process; or
 - Caused a deprivation of educational benefit.
- The decision will include findings of fact and conclusions of law and order as appropriate.
- The hearing officer's written decision must be available within 45 calendar days from the date of the request for a hearing after the resolution period ends or as adjusted by the IDEA provision. The hearing officer may grant an extension of the timeline if requested by a party. If granted, the extension will be for a specific period of time.
- The findings of fact and decision must be sent to the parent and/or adult student at no cost. Copies will also be mailed to the LEA superintendent, the OSDE, and representatives of the LEA. [**Note:** The IDEA gives the parent the right to ask for an electronic copy]
- After deleting personally identifiable information, the OSDE will make the decision available to the State Advisory Council (IDEA B Advisory Panel).
- A hearing officer's decision will be enforceable in State and federal court:
 - The decision specifies a different implementation date; or
 - Either party appeals the decision by initiating an administrative appeal.

Note: Nothing in this section should be interpreted to prevent a parent from filing a separate due process hearing request on an issue separate from the request already filed. The OSDE may consolidate multiple hearing requests involving the same IEP.

10. Stay Put

- During the pendency of any due process hearing, the student must remain, or "stay put," in his or her current educational placement unless the LEA and parent and/or adult student agree otherwise.

- The stay put placement continues during any subsequent appeals unless a hearing officer agrees with a parent and/or adult student that a change of placement is appropriate, in which case, the placement identified in the hearing officer's decision becomes the stay put placement.
- If the dispute involves an application for initial admission to an LEA in Oklahoma, the student, with the written consent of his or her parent, must be placed in the LEA program until the proceedings are completed.
- "Stay put" does not apply when a student is transitioning from Part C (the Infant/Toddler Program) to Part B services in Oklahoma. Following the development of an IEP or an Individual Family Service Plan (IFSP), if an educational placement dispute arises involving a student transitioning from Part C to Part B, the student cannot "stay put" in Part C:
 - With written consent of the parent, the student must be placed in the LEA until completion of all the hearing proceedings.
 - If the parent does not give written consent, the student will not receive services until completion of the hearing proceedings.
 - If the student is eligible for special education services, and the parent consents, then the LEA must provide those special education and related services which are not in dispute.

Section 6. Expedited Due Process Hearings

A request for an expedited due process hearing may be made by a parent and/or adult student or the LEA. The request should be mailed, sent via facsimile, or hand delivered to the Dispute Resolution Coordinator at the OSDE. A request for an expedited due process hearing filed by email will not be accepted. Contact information is listed in the introduction to this chapter.

An expedited due process hearing is defined as an administrative hearing to resolve disputes concerning discipline, occurring within 20 school days of the request, with a decision rendered within 10 school days of the hearing.

A. Expedited Hearing Requests

- An LEA may request an expedited hearing if the LEA believes maintaining the current placement or returning the student to the prior placement is substantially likely to result in injury to the student or others.
- A parent and/or adult student may request an expedited hearing if:
 - He or she disagrees with a determination that the student's behavior was not a manifestation of the disability; or

- He or she disagrees with the LEA's discipline decision, which resulted in a change of placement.

B. The Expedited Hearing Process and Decisions

An expedited hearing will be conducted in a fair and impartial manner. Guidelines and proceedings will be the same as those in a regular due process hearing, except for the following changes:

- A resolution center will appoint a hearing officer within 4 business days of a request.
- A resolution session must occur within 7 days of receiving a due process hearing request unless the parties agree in writing to waive the resolution session or go to mediation.
- A due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of receipt of the expedited due process hearing request.
- Any party may prohibit the introduction of any evidence at the hearing that was not disclosed at least 5 business days before the hearing, unless the hearing officer establishes another time period for the exchange of evidence.
- The hearing must occur within 20 school days of the request, with a decision rendered within 10 school days of the hearing. A written decision will be mailed to both parties.
- A party may appeal the decision in an expedited due process hearing in the same way as they may for decisions in other due process hearings.

C. Placement During an Expedited Hearing

When a hearing has been requested by the parent and/or adult student or the LEA regarding placement decisions, the student must “stay put” during the pendency of the hearing. In relation to disciplinary proceedings, stay put means:

- The student will remain in the interim alternate educational setting (IAES) until the timeline for the disciplinary action expires or the hearing officer renders a decision, whichever occurs first.
- Upon expiration of the IAES placement, the student will be placed in the setting he or she was in prior to the IAES. However, if LEA personnel maintain that it is dangerous for the student to return to that placement, the LEA may request an expedited hearing to continue the IAES for up to an additional 45 school days. This procedure may be repeated as necessary.

If the hearing officer finds for the parent and/or adult student, the change of disciplinary placement cannot occur, and the IEP team will need to determine the extent of services that are appropriate to meet the student's individual needs and to address the student's behavior. If the hearing officer finds for the LEA, the LEA may use the same disciplinary procedures, including expulsion, as it uses for any other student, except that a FAPE must be as described in the previous section on services for students who are suspended.

Section 7. Appeals and Civil Action

- An appeal to State or federal court must be filed within 30 calendar days from the date of issuance of the hearing officer's decision.
- An appeal to State or federal court must be filed within 90 calendar days from the date of the issuance of the appeal officer's decision.
- Either party must exhaust all dispute resolution procedures available under the IDEA prior to filing action in civil court. However, nothing in the IDEA restricts or limits the rights, procedures, and remedies available under the U.S. Constitution, the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, or other federal laws protecting the rights of students with disabilities. This means either party may have remedies available under these laws that overlap with the IDEA.

Section 8. Attorney Fees

A district court will have jurisdiction in the awarding, determination, or prohibition of attorney fees. The court may in its discretion:

- Award reasonable attorney fees as part of the costs to the prevailing party; and.
- Determine the amount of attorney fees, using prevailing rates in the community in which the action occurred, for the kind and quality of services provided. No bonus or multiplier may be used in calculating the amount of fees awarded.

Funds under IDEA Part B cannot be used by the LEA to pay any attorney fees or costs of a party related to an action or proceeding, such as deposition, expert witnesses, settlements, and other related costs. However, Part B funds may be used to pay hearing or appeal officer fees or the costs of a meeting room to conduct the hearing.

A. Prohibition of Attorney Fees

Attorney fees may not be awarded for legal representation at an IEP meeting, including a resolution session, unless such a meeting is convened as a result of a due process hearing, a judicial action, or for mediation that is conducted prior to a request for a due process hearing.

Attorney fees may not be awarded and related costs may not be reimbursed in any action or proceeding for services performed subsequent to the time of a written offer of settlement to a parent and/or adult student if:

- The LEA makes an offer at least 10 calendar days before a due process hearing or a civil proceeding begins;
- The offer is not accepted by the parent and/or adult student within 10 calendar days after it is made; and
- A court or due process hearing officer finds that the relief obtained by the parent and/or adult student is not more favorable to the parent and/or adult student than the offer of settlement.

B. Exception to the Prohibition of Attorney Fees

An award of attorney fees and related costs may be made to a parent and/or adult student who is a prevailing party and who was substantially justified in rejecting the LEA's settlement offer.

C. Reduction in the Amount of Attorney Fees

A court may reduce an award for attorney fees under any of the following circumstances:

- During the course of the action or proceeding, the parent and/or adult student or his or her attorney unreasonably extended the final resolution.
- The amount of the award unreasonably exceeds the prevailing rate in the community for similar services by attorneys of reasonably comparable skills, reputation, and experience.
- The time spent and legal services rendered were excessive considering the nature of the action.
- The attorney representing the parent and/or adult student did not provide the information required in a due process hearing request.

D. Exception to the Reduction of Attorney Fees

The amount of attorney fees will not be reduced if the court finds that the LEA unreasonably extended the final resolution of the action or proceeding.

E. Special Provisions Regarding Attorney Fees

An LEA that prevails may seek attorney fees from a court against the parent's and/or adult student's attorney if the action is deemed frivolous, unreasonable, without foundation, or prolongs the litigation.

An LEA that prevails may seek attorney fees from a court against the parent's/adult student's attorney or the parent and/or adult student if the hearing request was presented for improper purposes such as to harass the LEA, cause unnecessary delay, or needlessly increase the cost of litigation.

Legal Citations

Code of Federal Regulations, Title 34: Education

- §300.151 Adoption of State complaint procedures.
- §300.152 Minimum State complaint procedures.
- §300.153 Filing a complaint.
- §300.506 Mediation.
- §300.507 Filing a due process complaint.
- §300.508 Due process complaint.
- §300.510 Resolution process.
- §300.515 Timelines and convenience of hearings and reviews.
- §300.516 Civil action.
- §300.517 Attorneys' fees.
- §300.532 Appeal.
- §300.533 Placement during appeals.

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CHAPTER 14. TRANSFERS, MOVE-IN STUDENTS, & FOSTER CARE

Section 1. Transfers

Each Oklahoma school district has a duty to provide special education and related services in accordance with the Individuals with Disabilities Education Act (IDEA) for all students with disabilities who reside in that district. A student's residence for educational purposes is determined by State law. Students with disabilities who attend Oklahoma public schools may receive special education services directly in their school district of residence or by another method permitted by State or federal law as discussed below.

There are 3 types of transfers available to students with disabilities in Oklahoma: an open transfer, an emergency transfer to receive a free appropriate public education (FAPE) and an emergency transfer for reasons other than to receive a FAPE. The Education Open Transfer Act governs the transfer of students from the school district in which the student resides to another school district furnishing instruction in the grade the student is entitled to pursue. There are different rules and processes applicable to each type of transfer, and the responsibilities of the resident and receiving school districts differ based upon the type of transfer.

A. Open Transfers

The student's parent files an application for open transfer no later than the first Monday in June of the school year preceding the school year for which the transfer is desired. The board of education of the receiving school district approves or denies the open transfer application within 30 days of the receipt of the application and shall notify the student's parent of the decision. Within 10 days of receiving the notice, the student's parent must notify the receiving school district that the student will be enrolling in that school district.

For students who are deaf or hearing impaired who wish to transfer to a school district with a specialized deaf education program, applications may be filed at any time during the school year as an emergency transfer. Upon approval of the receiving school district, such a student may transfer to the receiving school district at any time during the school year.

B. Emergency Transfers

In addition to the open transfer process, students may transfer on an emergency basis. Transfer requests made outside of the open transfer period should be reviewed and treated as emergency transfers. A student's parent files a written application for emergency transfer with the superintendent of the school district to which the transfer is desired. On an adequate showing of emergency, the superintendent of the receiving school district may make and order a transfer, subject to approval by the Oklahoma State Board of Education (OSBE).

Before approving a transfer, the receiving school district must determine whether the appropriate program, staff and services are available. Before approving the transfer, the receiving school district must also consult with the resident school district and the student's parent to determine how a FAPE will be provided.

If the receiving school district approves the transfer and the student enrolls, the receiving school district must provide the student services comparable to those described in the resident district's current IEP until the receiving school district adopts that IEP or develops, adopts, and implements a new IEP for the student.

C. IEP Service Agreements

If the resident school district of a student with an IEP determines that it cannot provide the student with a FAPE, the resident school district may enter into a written agreement with another school district whereby the resident district agrees that the receiving district will provide a FAPE to an eligible student with a disability on behalf of the resident district.

IEP Service Agreements entered into for 3 consecutive years to the same school district automatically renews for each subsequent year, and the resident district must continue to pay tuition. Automatic renewal occurs only in cases where districts have entered into IEP Service Agreements.

Students Identified under IDEA and Attending Oklahoma Public Schools						
Student Enrollment Type	Legal/Financial Responsibility for FAPE	Responsibility for Developing IEP	Responsibility for Transportation	Claims on Child Count	Claims on ADM	Is tuition paid between districts?
Resident	Resident District	Resident District	Resident District	Resident District	Resident District	No
Open Transfer	Receiving District	Receiving District	Receiving District	Receiving District	Receiving District	No
Emergency Transfer	Receiving District	Receiving District	Receiving District	Receiving District	Receiving District	No
IEP Service Agreement	Resident District	Resident District	Resident District	Resident District	Resident District	Yes
Students who move out of original district during the SY, but choose to finish in the original district.	Original District	Original District	Original District	Original District	Original District	No

Section 2. IEPs for Move-In Students

A. Within Oklahoma LEAs

The receiving school district must provide the student with a FAPE when a student with a current IEP moves to another LEA in Oklahoma. This includes services comparable to those described in the previously held IEP, in consultation with the parent, until such time as the LEA adopts the previously held IEP or develops, adopts, and implements a new IEP. Per Oklahoma Policy, an IEP for move-in students must be in place within 10 school days.

To facilitate the transition for a student, the new school district must make reasonable steps to promptly obtain the student's records, including the IEP and supporting documents and any other records relating to the provision of special education services to the student, from the previous school district. The previous school district must take reasonable steps to promptly respond to the request from the new school district.

According to Oklahoma law ([70 O.S. §24-101.4](#)) and in accordance with provisions of FERPA, a school district that receives a request for the education records (including disciplinary records) of a student who formerly was enrolled in, the district shall provide full disclosure of those records and forward the records within 3 business days upon receipt of the request.

i. Move-in from an Oklahoma school district – student chooses to attend previous district of residence

Students who begin the school year as residents of one school district may move to another district before the school term ends. Those students are entitled to continue to attend school in the previous school district through the end of the school term. If a student with a disability makes that choice, the previous school district of residence remains the student's resident district until the school term ends ([70 O.S. §18-111](#)).

B. From Out-of-State

When a student with a disability moves in from out of state to an Oklahoma school district with a current IEP from another state, the new school district, in consultation with the parents, must provide the student with FAPE. This includes services comparable to those described in the previously held IEP, until the new school district makes an eligibility determination.

It is during this time of providing the student with FAPE that the LEA must conduct a review of existing data to determine (1) whether the student is a student with a disability, based off Oklahoma's categories of disabilities; (2) the student's present levels of performance and educational needs of the student; and (3) whether the student requires special education services and/or related services. The review of existing data requires the use of OSDE (RED) and the RED/MEEGS Evaluation Data form for documentation. The review of existing data may be conducted without a meeting and without consent from the parents.

After the review of existing data, there must be a determination by the group of what, if any, data in addition to the existing data, will be collected during the evaluation to enable the team to complete all requirements of the evaluation and eligibility including the evaluation report. If the group proposes to conduct the evaluation based only on existing data, the existing data must meet the requirements for a comprehensive evaluation ([See Chapter 4, Section 6, “Evaluation Considerations for Eligibility”](#)).

- Upon determining eligibility, the IEP team must develop, adopt, or implement a new IEP within 10 school days.

If the group needs additional data prior to making the eligibility determination, this is considered an initial evaluation and not a reevaluation. The group must ensure all data will be collected within the 45 school day evaluation timeline and obtain parental consent for additional assessments. Throughout this process FAPE must continue to be provided to the student ([OSEP Letter to Champagne, 2008](#)).

- Upon determining eligibility, the IEP team must develop, adopt, or implement a new IEP within 10 school days.

If an Oklahoma school district has formally received a request for records from an out-of-state school, the district will forward copies or the original documents within 3 business days of receipt of the request. If originals are sent, the district must maintain a copy for audit purposes.

Section 3. Students in Foster Care

Children in foster care often and inadvertently change schools, which along with enrollment delays and record transfers can have a significant disruptive impact on their academic progress. Studies have shown that children in foster care face an increased risk of grade retention, gaps in academic achievement, low high school graduation rates, and postsecondary enrollment.

Recognizing these adverse educational outcomes, the new foster care provisions under Title I of ESSA require State Educational Agencies (SEAs) and LEAs to collaborate with Child Welfare Agencies (CWAs) to ensure educational stability and minimize educational disruptions for children in foster care.

Among other provisions, the educational stability includes assurances that (1) a child in foster care will remain in the child’s school of origin, unless a determination is made that it is not in the child’s best interest to remain in that school and (2) if a determination is made that it is not in the child’s best interest to remain in the school of origin, the child will be immediately enrolled in the school of residence, even if the child is unable to produce records normally required for enrollment. These will help ensure that children in foster care experience minimal disruption to their education during moves and placement changes. Additionally, consideration must be made regarding the provision

of special education and related services, including transportation, when making these determinations.

In implementing these provisions, SEAs, LEAs, and CWAs must ensure compliance with other applicable laws, such as Title VI of the Civil Rights Act of 1964 (Title VI), the Individuals with Disabilities Education Act (IDEA) and Section 504 of the Rehabilitation Act of 1973 (Section 504), among others. Students with disabilities must be afforded the right to a FAPE regardless of any change to which LEA they are enrolled. Coordinated efforts between LEAs and CWAs to ensure special education and related services are provided in a timely manner and in accordance with a student's IEP is critical.

Taken in totality, these provisions promote greater stability for children in foster care so that they can continue their education without disruption, maintain important relationships with peers and adults, and have the opportunity to achieve college- and career-readiness.

Legal Citations

Code of Federal Regulations, Title 34: Education

- §300.19 Homeless children.
- §300.111 Child find.
- §300.229 Disciplinary information.
- §300.323 When IEPs must be in effect.
- §300.519 Surrogate parents.

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APPENDIX A. SPECIAL EDUCATION CERTIFICATION

Section 1. How to Become a Certified Special Education Teacher

There are [multiple paths](#) to become a certified special education teacher:

1. Complete a special education certification program from an accredited college/university;
2. A traditionally certified teacher can pass the Oklahoma Subject Area Test (OSAT) in special education and have special education added to their certificate;
3. A teacher alternatively certified in a core academic area can pass the OSAT in special education and have special education added to their certificate;
4. Complete the Para-to-Teacher program, if applicant has served as a para/teacher assistant for one year in a special education setting;
5. Complete the [Non-Traditional Route to Special Education Certification program](#) (Boot Camp).
6. An individual who completes a Master of Education degree in Special Education at an accredited university may be certified in special education by passing the Oklahoma General Education Test (OGET), Oklahoma Professional Teaching Exam (OPTE), and Special Education OSAT.

Special education teachers must be certified in the area of the student's disability as listed on the Eligibility Determination document. For older certifications, the listed area could be the specific disability (Learning Disability, Other Health Impaired, etc.), whereas current certification is indicated as Mild/Moderate, Severe/Profound, Visually Impaired/Blind, Deaf/Hard of Hearing or Speech/Language.

Teachers who are certified in special education are approved to provide content instruction in a special education setting if they hold a valid certificate (in Elementary, Early Childhood, or Secondary content area) that matches the subject and grade level of the assignment and demonstrates competency by passing an appropriate Oklahoma Subject Area Test (OSAT) or demonstrates competency through Oklahoma's High Objective Uniform State Standard of Evaluation (HOUSSE) for the required subject area in a special education classroom. These teachers are qualified to be the "teacher of record" for instructional/grading purposes. Special education teachers who hold no other subject area certification/qualification (HOUSSE) may still serve as co-teachers.

** A paper copy of the HOUSSE form accompanied by proper documentation must be available for review by OSDE, upon request.

A. Elementary/Early Childhood

Teachers wanting to teach special education at the pre-school/elementary level must be certified in special education. In order to be the teacher of record, for grade purposes, they also are required to be certified in either Elementary Education, Early Childhood or qualify via HOUSSE requirements. Teachers who do not possess the elementary/early childhood certification may teach special education within the special education setting but may not assign grades. If traditionally certified special education teachers pass the Elementary Education or Early Childhood OSAT, it may be added to their certificate. [House Bill 1206](#), effective November 1, 2017, allows all other special education certified teachers (except those certified through the paraprofessional route) to add Elementary or Early Childhood to a certificate, upon passing the appropriate OSAT, provided they will be teaching that content in a special education setting. These teachers will NOT be certified to teach Elementary or Early Childhood in a general education environment.

B. Secondary

For secondary grades, special education teachers must be certified in special education and hold appropriate subject certification or fulfill HOUSSE requirements to be the teacher of record, for grade purposes. Secondary teachers who provide instruction to OAAP students should be certified in special education and certified/qualified via HOUSSE in Elementary or Early Childhood. Special education teachers who cannot serve as a teacher of record for grade purposes may still serve as co-teachers.

C. Unique

Unique programs such as an alternative school, an alternative education program, residential or treatment facility (such as juvenile detention centers, group homes, and emergency youth shelters) must ensure that teachers are qualified to provide appropriate educational instruction in accordance with OAC 210:35-29-6 and OAC 210:10-1-13.

Teachers may continue to qualify in subject areas for which they aren't certified through the High Objective Uniform State Standard of Evaluation (HOUSSE) only for the purposes of teaching in an alternative education program or alternative school offered by the district board or in a residential or treatment facility located within a district.

Section 2. Career Development Program for Paraprofessionals

You must meet the following requirements before applying for certification through the Paraprofessional Program:

- Hold a bachelor's degree from an accredited college/university in any area.

- Have at least one year of experience as a special education paraprofessional in an accredited public or private school.
- Pass the Oklahoma General Education Test (OGET), Oklahoma Professional Teaching Exam (OPTE), and Special Education OSAT.

Section 3. Non-Traditional Route to Special Education Teacher Certification

The non-traditional route to special education teacher certification provides a method for individuals to obtain special education certification. Candidates must complete a 150- hour program that includes 120 hours of special education training and 30 hours of field experience. Upon completion, the State Board of Education will issue a one-year provisional certificate to teach in the area of mild/moderate or severe/profound disabilities grades PreK-12.

Candidates who meet University minimum entrance requirements may attend a non-traditional program through the Oklahoma State Department of Education, Special Education Services at no cost. Requirements include:

- Have earned any four-year degree from an Institution of Higher Education holding Regional Accreditation;
- Have a Grade Point Average of 2.75 or higher from a previous degree program;
- Have a recommendation from a representative at a school district or Institution of Higher Education;
- Pass a National Background Check; and
- Commit to complete a Master's Degree or Certification in Special Education.

Candidates who are interested in obtaining a non-traditional special education certification may submit an application to the State Department of Education through <http://www.ok.gov/sde/non-traditional-route-special-education-teacher-certification>.

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APPENDIX B. SPECIAL EDUCATION PARAPROFESSIONAL REQUIREMENTS

In order to become a Special Education Paraprofessional, candidates must have a secondary school diploma or its recognized equivalent. In addition, the Special Education paraprofessional has to meet the following requirements:

- Complete the Oklahoma Special Education Paraprofessional Training (Career Technology Centers) or other State approved Local Education Agency (LEA) training.
- Complete and maintain training and skills in Cardiovascular Pulmonary Resuscitation (CPR) and First Aid
- Complete training in Universal Precautions or Bloodborne Pathogens Training.
- Complete an additional 6 hours of professional development and Universal Precautions/Bloodborne Pathogens each school year thereafter.
- Please note additional Title 1, Part A Requirements:
 - Have completed at least two years of study at an institution of higher education defined as completion of 48 semester hours of college coursework; or
 - Have obtained an associate's degree (or higher); or
 - Have taken and passed the WorkKeys test, Parapro Test, or the Oklahoma General Education Test (OGET).

Once all requirements have been met, Special Education paraprofessional candidates must work with their school district to complete the application packet and mail it to the Oklahoma State Department of Education-Special Education Services Department. The application packet must include:

- A copy of a current Cardiopulmonary Resuscitation (CPR) training card (front and back);
- A copy of a current First Aid Card (front and back);
- Certificate of completion of the Special Education Paraprofessional training;
- A job description;
- Daily work schedule outlining duties and responsibilities performed; and
- School site emergency procedures.

For more information, please visit <http://sde.ok.gov/sde/special-education-paraprofessionals>.

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APPENDIX C. OSEP LETTERS REGARDING POLICY

Date	OSEP Letter	Topic	IDEA 34 CFR 300
5/22/2017	Letter to State Directors	Head Start, Evaluation, Visual Impairment	.304-.311, .8, .301, .199,
2/27/2017	Letter to Zacchini	Procedural Safeguards for Personally Identifiable Information	0.624
1/18/2017	Letter to Pugh	Progress Reports & Transitional Goals	300.320, 300.43, 300.521
1/9/2017	Dear Colleague Letter	Part C, Inclusion, LRE	.114, .118, .116, .320, .115, .202, .145, .147
12/27/2016	Letter to Chambers	Transportation, Parentally-Placed Private School Children, Consultation Process	.131, .134, .137, .139,
12/27/2016	Letter to Copenhagen	IDEA Part B State Advisory Panel	.167, .168, .704,
12/27/2016	Letter to Marcus	IDEA, Parent's Attorney	.321, .512, .508,
10/22/2016	Letter to Carroll	IEE at Public Expense	.502, .507-.513, .304
9/23/2016	Letter to Kashyap	Procedural Safeguards, Educational Records, Parent's Rights	.151-.153, .501, .613-.621, .507, .530-.532, .510,
8/23/2016	Letter to Goodman	Non-Public Education, Proportionate Share	.705, .815, .646, .226, .205, .133, .154,
8/22/2016	Letter to Zirkel	Complaint, Due Process, RTI	.307, .510-.514, .532, .600
8/18/2016	Letter to Skyer	Part C, Evaluation/Eligibility	303.1-303.734
8/4/2016	Letter to Eig	Due Process Proceedings	.507-.513, .514, .530-.534
8/1/2016	Dear Colleague Letter	Behavior, FAPE, Behavior Interventions	.17, .320-.324, .530, .304-.311, .114-.116, .42, .323, .156, .207, .511, .512, .513, .515, .151, .153, .506
5/9/2016	Letter to Goodman	Early Intervention Services, Evaluation/Eligibility, Part C	303.209, .303.211, 303.344, 303.7, .320-324
4/25/2016	Letter to Unnerstall	Evaluation/Eligibility; Dyslexia, Dyscalculia, and Dysgraphia	.304, .111, .34, .502, .507,
3/3/2016	Q & A	Response to Intervention, IEP Timeline, Evaluation/Eligibility,	.199, .323, .513, .514, .32, .507, .151-.153, .8
2/17/2016	Letter to Andel	Notification of Meetings, Parent Rights, IEP Meeting	.321, .322

2/9/2016	Letter to Copenhaver	IDEA Part B State Advisory Panel	.167-.169, .304-.311, .8
10/23/2015	Dear Colleague Letter	Definition of a Specific Learning Disability, Eligibility Considerations, Evaluation	.8, .304-.311, .309, .301, .306, .308, .320, .323
6/2/2010	Letter to Brekken	RTI Requirements for Head Start, Head Start Enrollment,	.307, .8, .304, .111, .301, .503, .504, .311, .507, .153
4/7/2009	Letter to Torres	Student Screening w/o Parent Consent	.302, .304, .311, .15, .301

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APPENDIX D. FOUR (4) DAY SCHOOL WEEK

Many local education agencies (LEAs) have opted to change their school-week from the traditional 5-day scheduled to an amended 4-day school week. Those LEAs that have not made that change continue to explore options as a response to budget cuts within education. Under Oklahoma School Law [\[70 O.S. §109\(A\)\]](#), a “school shall actually be in session and classroom instruction offered, for not less than one thousand eighty (1,080) hours each school year, if a district board of education adopts a school-hours policy and notifies the State Board of Education prior to October 15 of the applicable school year.”

LEAs within Oklahoma must consider how a school-hour policy impacts all students, including students with disabilities. LEAs must ensure the educational standards and expectations from State and Federal policies are intact. Under the Individuals with Disabilities Education Act (IDEA), Part B, students with disabilities are afforded the right to a free appropriate public education (FAPE) that emphasizes special education and related services designed to meet their unique needs.

The Oklahoma State Department of Education (OSDE), Special Education Services division is committed to ensuring all schools that are affected by this change are appropriately providing services to students with disabilities in accordance with Individualized Education Programs (IEPs). IEP services may be modified, but should not be reduced, when a school moves to a 4-day school week. LEAs must ensure that IEPs are reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances. The OSDE-SES has developed guidance to assist LEAs in making the transition. LEAs should consider the following requirements of the IDEA, Part B, as they move forward:

- 1) FAPE and the Definition of IEP ([34 CFR §300.101](#) and [34 CFR §300.320 - 300.324](#))
- 2) Parent Participation and the IEP Team ([34 CFR §300.321 - §300.322](#))
- 3) Extended School Year Services ([34 CFR §300.106](#))

Section 1. FAPE and the Definition of IEP

All students with an IEP are entitled to a “free, appropriate public education” (FAPE). This includes students who are eligible for special education from the ages of 3 through 21. FAPE is individually determined for each student with a disability and provided at no cost to the parent. An IEP describes the special education and related services, including supplementary aids and services that are provided to the student. These services are designed to enable the student to make progress toward annual IEP goals and in the general education curriculum. LEAs are accountable for providing services in accordance with an IEP and cannot unilaterally change the amount of services, including the duration, amount or frequency.

If an LEA chooses to implement a 4-day school week, documentation regarding a student's special education and related services may need to be amended to reflect such a change. If a new 4-day school week is implemented district-wide, the amount of services in a student's IEP should be modified—not reduced—to reflect the change. Currently, a student's IEP may reflect that a particular service is provided 5 times per week. The amount of services could be provided 4 times per week instead of 5 if instructional time in the school day is the same as their non-disabled peers. To make such a change, the student's IEP team, including the parent, must convene a meeting to address how services will be delivered in the new 4-day school week format.

An IEP addendum would be appropriate to reflect this change. If a student's IEP reflects a particular service in minutes or hours per week only, a change to the IEP would only be necessary if the IEP team feels that amount of service is inappropriate in a 4-day school week.

To make a change to a student's IEP, the LEA must ensure appropriate steps are taken, including convening an IEP team meeting, if necessary. If no changes are made to the current IEP, the LEA will be responsible for providing the services stated in the current IEP.

Section 2. Parent Participation and the IEP Team

Parents must be afforded the opportunity to participate in any meeting to propose or refuse a change to the provision of FAPE for a student with a disability. Each public agency must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP team meeting or are afforded the opportunity to participate. In addition, decisions made regarding the educational placement and provision of a FAPE for a student with a disability must be made by a student's IEP team. That team must consist of the parent, a special education teacher, a regular education teacher and an administrator.

Section 3. Extended School Year Services (ESY)

ESY services are defined as special education and related services which are available to children with disabilities beyond the regular instructional year as a necessary part of a FAPE required by the IDEA. ESY services, which are beyond the school day, may be provided during, but are not limited to, the following times: in the evening, after school, on weekends, during holiday breaks, and during the summer. Each LEA is responsible for establishing an ESY policy and to provide ESY special education and related services to students with disabilities whose IEP teams have determined these services are necessary.

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APPENDIX E. SHORTENED DAY GUIDANCE

Students with disabilities must attend school for the same number of hours and minutes as non-disabled students, unless a student's individualized education program (IEP) team determines otherwise based on a student's unique, disability-related needs. Shortening a student's day raises issues regarding the provision of a free appropriate public education (FAPE) under the Individuals with Disabilities Education Act (IDEA), as well as potential discrimination under Section 504 of the Rehabilitation Act. The Oklahoma State Department of Education Special Education Services Division (OSDE-SES) recommends that any offer of a shortened day as FAPE should be for a specific purpose and designed to meet a student's unique needs. A student's IEP should reflect team discussion of the continuum of services and placement, including shortened day and any alternatives considered as appropriate. IEP teams should exercise caution when placing a student on a shortened day as it may limit a student's ability to make adequate progress, to access the general education curriculum, to meet graduation requirements, and to receive a FAPE.

- 1) FAPE and the LRE
- 2) Compulsory Attendance and Length of the School Day
- 3) Appropriate Uses of a Shortened Day
- 4) Inappropriate Uses of a Shortened Day
- 5) Procedural Questions

Section 1. FAPE & LRE

A. FAPE

All students with an Individualized Education Program (IEP) are entitled to a free appropriate public education (FAPE). This includes students who are eligible for special education from the ages of 3 through 21 [[20 U.S.C. §1412\(a\)\(1\)\(A\)](#) and OAC 210:15-13-2]. FAPE is individually determined for each student with a disability. FAPE must include special education in the least restrictive environment (LRE) and may include related services, transition services, supplementary aids and services, and/or assistive technology devices and services. The Local Education Agency (LEA) is required to ensure a FAPE is available to students enrolled in the LEA who are eligible for special education.

B. LRE

The Individuals with Disabilities Education Act (IDEA) states that, to the maximum extent appropriate, all students with disabilities, 3 through 21 years of age, are to be educated with age appropriate peers, both with and without disabilities ([20 U.S.C. §1412\(a\)\(5\)](#)). This is known as the least restrictive environment (LRE). The LRE is the appropriate balance of settings and services to meet the student's individual needs. The LEA must have an array of services and a continuum of educational setting options available to meet the individual LRE needs of each student. An appropriate LRE is one that enables the student to make reasonable gains toward goals identified in an Individualized Education Program (IEP). The student's IEP must indicate the individualized LRE placement. The IEP

team must consider to what extent, if any, the student will or will not participate in the general education classroom environment, the general education curriculum, and extracurricular or other nonacademic activities. In addition, consideration must be given to any potential current or long term harmful effect on the student or on the quality of services the student needs, including the student's ability to graduate and achieve his or her post high-school goals.

C. Compulsory Attendance and Length of the School Day

Under Oklahoma State law, LEAs share responsibility with parents/guardians to ensure school-age children (ages 5-18) are enrolled in and attending appropriate educational programs ([70 O.S. §10-105](#)). Further, all children between the ages of five (5) and twenty-one (21) are entitled to attend school free of charge ([70 O.S. §1-114](#)) and students with disabilities have a civil right of access to a free, appropriate, public education (OAC 210:15-13-2).

Under Oklahoma State Law, a school day is defined under [70 O.S. §1-111](#).

D. Appropriate Uses of a Shortened Day

The only time it is appropriate to shorten the school day for a student with a disability is when the student's IEP team determines a shortened day is required to address the student's unique disability-related needs. For example, if because of the student's medical needs, the student is physically unable to tolerate a full school day, a shortened day may be appropriate. Before deciding to shorten the student's day, the IEP team must consider if there are other ways to meet the student's needs.

When a student's school day is shortened, the student's IEP must include:

1. An explanation of why the student's disability-related needs require a shortened day;
AND
2. A plan for the student's return to school for a full day, including a plan to meet more frequently to review student data and determine whether the student is able to return to school full-time.

The student should return to a full school day as soon as she or he is able, and under most circumstances, a shortened school day should be in place for only a limited amount of time. The IEP team must meet as often as necessary to review the plan and to determine when the student is able to return to school full-time.

Examples of brief, specific-purpose shortened days that may not result in less than FAPE in an LRE (this is not an exhaustive list):

- Student with a recent brain trauma, currently in recovery, needs a transitional reduced day due to cognitive fatigue associated with recovery;

- Physician of a student transitioning to new seizure medications requests gradually increasing the length of day;
- Recently adopted student from another country is experiencing transition difficulties. Parents and therapist request a gradual transition to school.

E. Inappropriate Uses of a Shortened Day

Managing Student Behavior and as a Means of Discipline

- An LEA may not reduce a student's instructional time as a form of punishment or in lieu of a suspension or an expulsion. Attendance may also not be solely conditioned upon the student's taking medication or receiving treatment, therapies, or other outside services. The IEP team must develop an IEP that addresses the student's behavioral needs. In the case of a student whose behavior impedes the student's learning or that of others the IEP must include positive behavioral interventions, supports and strategies reasonably calculated to enable the student to participate in the full school day. School removals are not positive behavioral supports. On August 1, 2016, the U.S. Department of Education's Office of Special Education and Rehabilitative Services (OSERS) issued guidance in the form of a Dear Colleague Letter (DCL) that emphasizes the requirement that schools provide positive behavioral supports to students with disabilities who need them. It also clarifies that the repeated use of disciplinary actions may suggest that many children with disabilities may not be receiving appropriate behavioral interventions and supports. When schools fail to consider and provide for needed behavioral supports through the IEP, it is likely to result in a child not receiving the free appropriate public education to which they are entitled under federal law.

Accommodating Transportation Schedules

- An LEA may not reduce a student's instructional time by starting the student's school day later or releasing the student earlier than nondisabled peers in order to accommodate a transportation schedule. For example, it is not permissible for a school to release students with disabilities earlier than their nondisabled peers in order to schedule an earlier bus route. Any LEA that has permitted such actions up to now should take immediate steps to correct the resulting denial of equal opportunity.

Administrative Convenience

- A student's school day may not be shortened for administrative convenience including staffing shortages.

Accommodating Regularly Scheduled Outside Therapies

- IEP teams may not shorten a student's school day based solely on a parent's request to accommodate regularly scheduled non-school medical or therapeutic appointments. Parents and schools should communicate regarding absences. When absences are frequent, the IEP team should meet to determine how to ensure the continued provision of FAPE in order for

the child to continue to progress and meet the annual goals in the IEP. Schools must refer to their local attendance and excusal policies to determine whether absences are excused.

Upon Parent Request

- If a parent requests a change in the length of the student's school day, the LEA must respond to the parent's request. Schools must refer to their local attendance and excusal policies to determine whether absences are excused. However, any changes to the regular school schedule must be made by the student's IEP team, which includes the parent. The only time it is appropriate to shorten the school day for a student with a disability is when the student's IEP team determines a shortened day is required to address the student's unique disability-related needs. This decision must be reflected in the student's IEP, including documenting the reasons for the shortened day and providing a plan for returning to a full day.

As a Standard for All Students with Disabilities or For a Group of Students with Disabilities

- Any decision to shorten a student's school day must be made on an individual, case-by-case basis by the student's IEP team.

F. Procedural Questions

Q. Must an IEP team meeting be held before the school district shortens the length of a student's school day?

A. Yes. Shortening a student's school day is a decision that must be made through the IEP team process.

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Q. How should a shortened school day be documented in the student's IEP?

A. The IEP must include a clear description of the special education services, related services, and supplementary aids and services to be provided including the amount, frequency, location, and duration of services. The team would explain the total length of the school day and describe the extent that the team would meet to discuss the student's plan to return to an increased school day.

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Q. After an IEP team has implemented a shortened school day for a student, what obligation does the LEA have to monitor the shortened day program?

A. LEAs, through the IEP team process, should continuously monitor and review the student's progress and plan frequent IEP team meetings to determine whether a shortened school day continues to be necessary to meet the student's unique, disability-related needs. The student should return to a full day as soon as he or she is able, and under most circumstances, a shortened day should be in place for only a limited amount of time.

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Q. What can a parent do if they disagree with an IEP team's decision to implement a shortened school day?

A. If a parent disagrees with the decision to implement a shortened school day, the OSDE recommends that the parent request an additional IEP meeting to discuss their concerns. In some cases, parents may wish to reach out to Special Education Directors or other district special education contacts to resolve any disagreement. Parents may also contact the OSDE to facilitate the resolution of any disagreements. In addition, parents may elect to participate in formal dispute resolution procedures, such as mediation, state complaints, or due process hearing. Mediation is a voluntary process conducted by a trained, neutral mediator who helps facilitate discussion and assists parties in reaching a resolution. The parent may also file a special education complaint with the OSDE. The complaint must be in writing, signed, and submitted within one year of the decision to shorten the school day. Additionally, the parent may file a request for a due process hearing challenging the IEP team's decision. The request must be filed within two years of the decision to shorten the school day. For more information on dispute resolution options under the IDEA please visit <http://sde.ok.gov/sde/special-education-dispute-resolution>.

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APPENDIX F. CASELOAD AND CLASS SIZE REQUIREMENTS

Full Day Self-contained	Maximum of ten (10) students per classroom	These classrooms are designed predominantly for the support of students with significant, moderate, or multiple disabilities. Multiple courses are taught to the same students for the majority of the day. For example, students who are served inside the general education classroom for less than 40% of the day.
Direct Support/Resource	<u>Grades K-4:</u> Maximum of ten (10) students per classroom <u>Grades 5-12:</u> Maximum of fifteen (15) students per classroom	These classrooms are designed to provide a higher level of support than what is provided in the regular classroom. Students receive direct support services for specific subjects. They are also available for students seeking extra help to complement regular classroom instruction.

Caseload: The following chart details maximum full-time equivalent (FTE) caseload based on each student's placement.

Placement	Caseload	
	Percentage (FTE)	Total
Regular Class Full-time (inside the regular class more than 80% of the day) - Consultation and Monitoring Only	.025	40
Regular Class Full-time (inside the regular class more than 80% of the day) Collaboration or Co-teaching	.04	25
Special Class Part-time (inside the regular class 40% to 80% of the day)	.05	20
Special Class Full-time (inside the regular class less than 40% of the day)	.067	15
Special Class Full-time (inside the regular class less than 10% of the day)	.1	10
Outside of Public School Setting (home instruction, hospitals, institutions public/private residential facilities, public/private separate day school facilities, correctional facilities, parentally placed in private schools)	.025	40
Half-day preschool continuum	.05	20 (10 students per .5 day)
Speech/Language 60 minutes or less per week	.020	
More than 60 minutes per week	.0250	

Exceptions to Caseload/Class Size

For permission to adjust caseload/class size for programs serving students with disabilities that exceed the limits set, the LEA must obtain a letter of approval from the OSDE-SES. The LEA must document that exceptions to caseload/class size do not interfere with provision of a FAPE. The LEA must ensure that IEPs are implemented as developed to meet the educational needs of the students served, with special consideration for any potential harmful effects to the student or the quality of the program. To request an exception to caseload/class size, the LEA must submit the Caseload/Class Size Request for Exception form.

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APPENDIX G. RELATED SERVICES PERSONNEL QUALIFICATIONS

Profession/ Discipline	Services Provided	State Licensure or Credential	Requirements for Professional Licensure or Credential	Teaching Certification or Credential	Requirements for OSDE Certification
Advanced Registered Nurse Practitioner *333	Medical and Other Health services	Yes	Must hold a Master's degree in nursing, and State licensure as an ARNP ¹²		
Audiologist *309	Audiology services	Yes	OBESPA ¹¹ State licensure in audiology - Before December 31, 2006 - Must hold a Master's degree, or the equivalent, with a major emphasis in audiology - After December 31, 2006 - New applicants must hold an AuD or PhD with an emphasis in audiology.		
Educational Interpreter *328	Educational interpreting services	Yes	Complete one of the following: an interpreter training program, obtain a Bachelor's degree, or work a minimum of 3 years in an area related to deaf education; and maintain certification at a minimum level of QAST ¹⁰ III, EIPA ¹ 3.5, ESSE ³ 3.5, RID ⁶ , NIC ⁹ , or NAD ⁴ .		

Profession/ Discipline	Services Provided	State Licensure or Credential	Requirements for Professional Licensure or Credential	Teaching Certification or Credential	Requirements for OSDE Certification
Licensed Counselor *203	Counseling services	Yes	Master's degree; state licensure as LPC ² , LMFT ⁵ , or LBP ⁸		
Occupational Therapist *334	Occupational therapy services	Yes	Bachelor's degree; state licensure		
Orientation and Mobility Specialist	Orientation and Mobility services		Bachelor's or Master's degree; ACVREP ⁷ certification		
Physical Therapist *338	Physical therapy services	Yes	Doctoral degree; state licensure		
Physician *339	Medical services	Yes	MD ¹³ or DO ¹³ ; state licensure		
Psychological Clinician *343	Psychological and counseling services while working in state agencies		Master's degree; OPM ¹⁵ requirements		
Rehabilitation Counselor	Rehabilitation Counseling services		Master's degree; OPM ¹⁵ requirements		
School Counselor *203	Counseling services			Yes	Master's Degree; state certification test
Registered School Nurse *347	School health services	Yes	Associate's or Bachelor's degree; state licensure as a registered nurse	Yes; Cannot add other areas to certification	Associate's (bachelor's degree within 10 years) or Bachelor's degree; state licensure as RN
Licensed Practical Nurse *507	Medical and Other Health services	Yes	Approved LPN program; state licensure		

Profession/ Discipline	Services Provided	State Licensure or Credential	Requirements for Professional Licensure or Credential	Teaching Certification or Credential	Requirements for OSDE Certification
School Psychologist *343	Psychological, educational and counseling services	Required if working in a clinical setting	Master's degree; state licensure or Education Specialist Degree (Ed.S.) and state licensure.	Yes	Master's degree/Ed.S.; special course of study; state certification test; or NCSP ¹⁶ certification
School Psychometrist *510	Psycho-educational assessments		Master's degree	Yes	Master's degree; state certification test
Social Worker *352	School social work services	Yes	Master's degree; state licensure; OPM ¹⁵ requirements		
Speech Language Pathology Assistant *216	Speech and language therapy services under the general direction of a licensed Speech Language Pathologist	Yes	Minimum of Associate's degree in SLPA or appropriate coursework and clinical hours; OBESPA ¹¹ state licensure	No; Paraprofession al Certification	
Speech Language Therapist Assistant *215	Speech and language therapy services under the general direction of a licensed Speech Language Pathologist	Yes	Bachelor's degree in Speech Pathology or Communication Sciences and Disorders; OBESPA ¹¹ state licensure	Yes; no additional certificates will be issued; renewal only for current certificates	Bachelor's degree in Speech Pathology or Communication Sciences and Disorders; OBESPA ¹¹ state licensure
Speech Language Therapist *351	Speech and language therapy services			Yes; no additional certificates will be issued; renewal only for current certificates	Bachelor's degree in Speech Pathology or Communication Sciences and Disorders prior to 2010

Profession/ Discipline	Services Provided	State Licensure or Credential	Requirements for Professional Licensure or Credential	Teaching Certification or Credential	Requirements for OSDE Certification
Speech Language Pathologist *353	Speech, language, and swallowing services	Yes	Master's degree in SLP ¹⁷ or Communication Sciences and Disorders; and OBESPA ¹¹ state licensure in Speech Language Pathology; recommended ASHA ¹⁴ certification	Yes	Master's degree in SLP ¹⁷ or Communication Sciences and Disorders; recommended ASHA ¹⁴ certification; OBESPA ¹¹ state licensure in Speech Language Pathology (if billing for Medicaid reimbursement or supervising an SLTA or SLPA).
Physical Therapy Assistant *417	Physical therapy services under the general direction of a licensed Physical Therapist	Yes	Associate's degree; state licensure		
Occupational Therapy Assistant *416	Occupational therapy services under the general direction and supervision of a licensed Occupational Therapist	Yes	Associate's degree; state licensure		
Special Education Paraprofessional *413 or 414	Special education and related services under the general direction and supervision of a certified or licensed professional staff				High School diploma or GED ¹⁸ ; completion of approved training, CPR ²⁰ and First Aid certification; Please see additional requirements for <u>Title 1</u> .

1- Educational Interpreter Performance Assessment 2- Licensed Practicing Counselor 3- Educational Sign Skills Evaluation 4- National Association of the Deaf 5- Licensed Marriage and Family Therapist 6- Registry of Interpreters for the Deaf 7- Academy for Certification of Vision Rehabilitation and Education Professionals	8- Licensed Behavioral Therapist 9- National Interpreter Certification 10- Quality Assurance Screening Test. 11- Oklahoma Board of Examiners for Speech Language Pathology and Audiology 12- Advanced Registered Nurse Practitioner 13- Medical Doctor or Doctor of Osteopathy 14- American Speech Language Hearing Association	15- Office of Personnel Management 16- Nationally Certified School Psychologist (NCSP) 17- Speech Language Pathology 18- General Educational Development 19- Oklahoma Department of Career and Technology Education 20- Cardiopulmonary resuscitation 21- Enriching Children's Communication Opportunities
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The IEP team may identify the need for other related services not listed in this chart for the child to benefit from special education. Such services must be provided by qualified personnel who hold OSDE approved or recognized licensure, certification, or other comparable requirements for the scope of practice and training in the identified area(s) of related services. Utilization of additional related services personnel must not be in conflict with the standards outlined in Oklahoma State law and the Oklahoma Special Education Policies.

*See the [Oklahoma Cost Accounting System](#) Job Classification Dimension Definitions for more information regarding services provided and other requirements. Please note that some codes are “best fit”.

