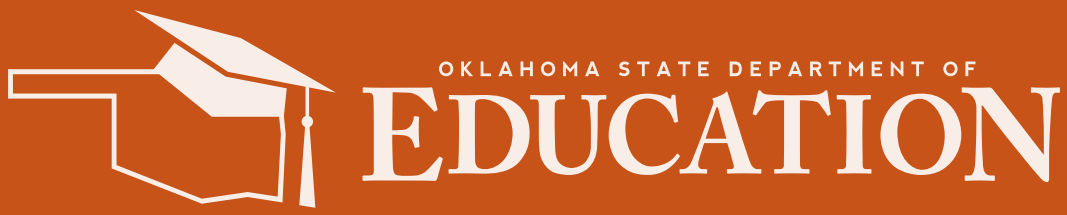
SPECIAL EDUCATION HANDBOOK



Oklahoma State Department of Special Education Services

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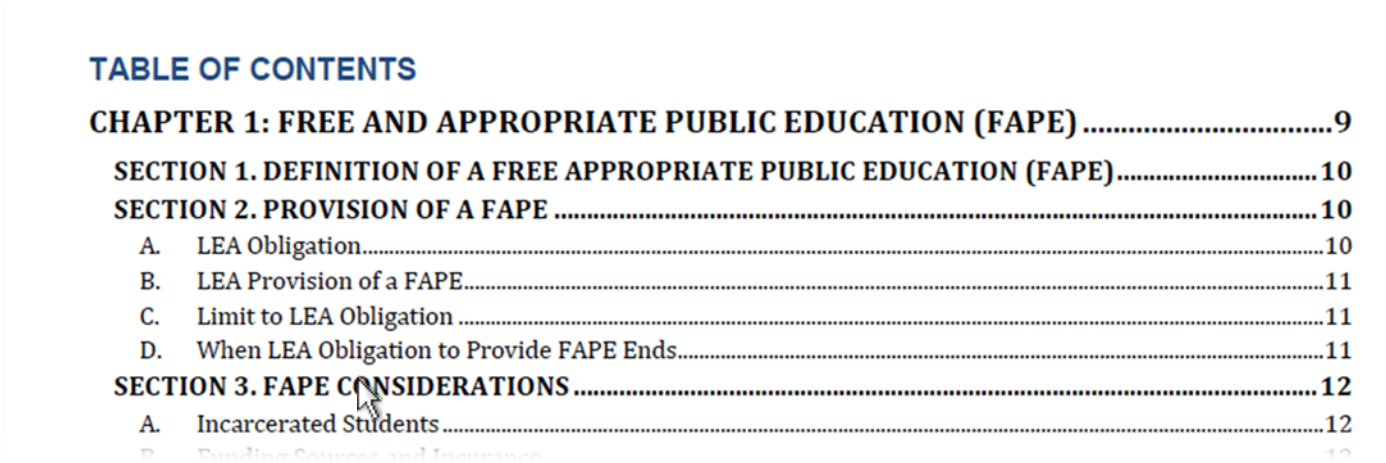
HOW-TO GUIDE ON USING THIS MANUAL

Navigation

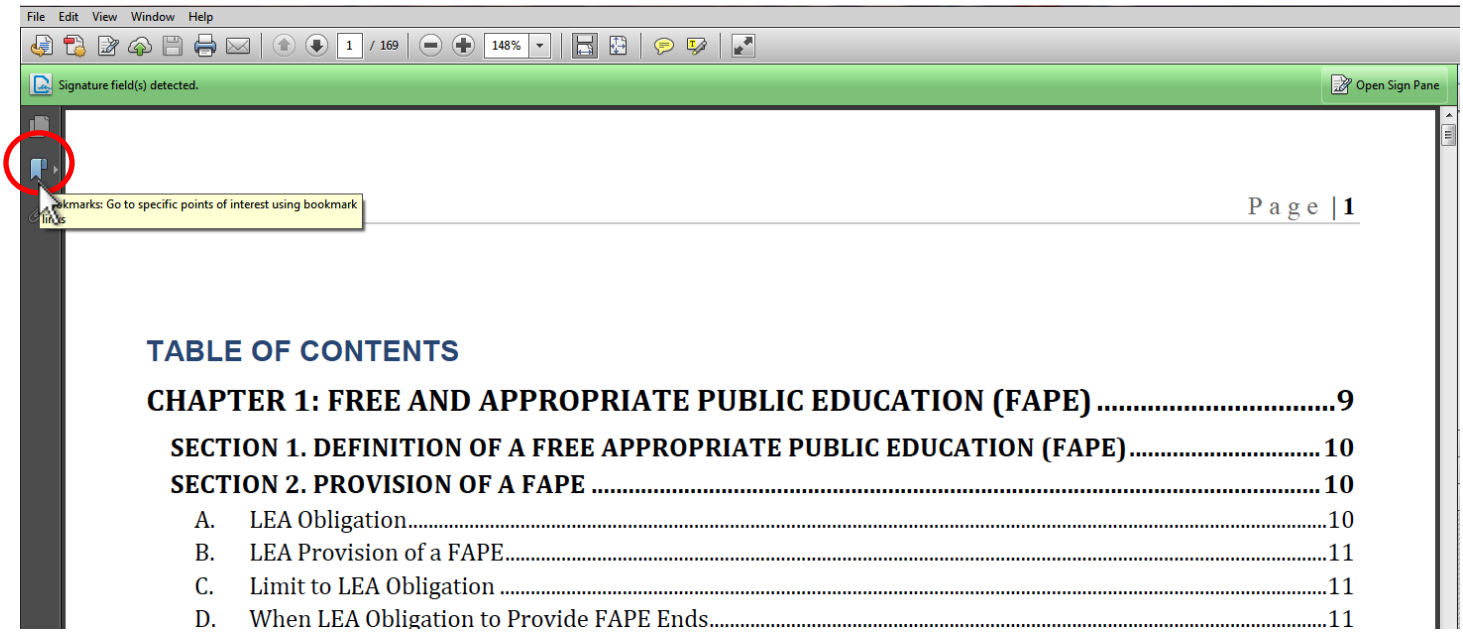
A. Option 1

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.

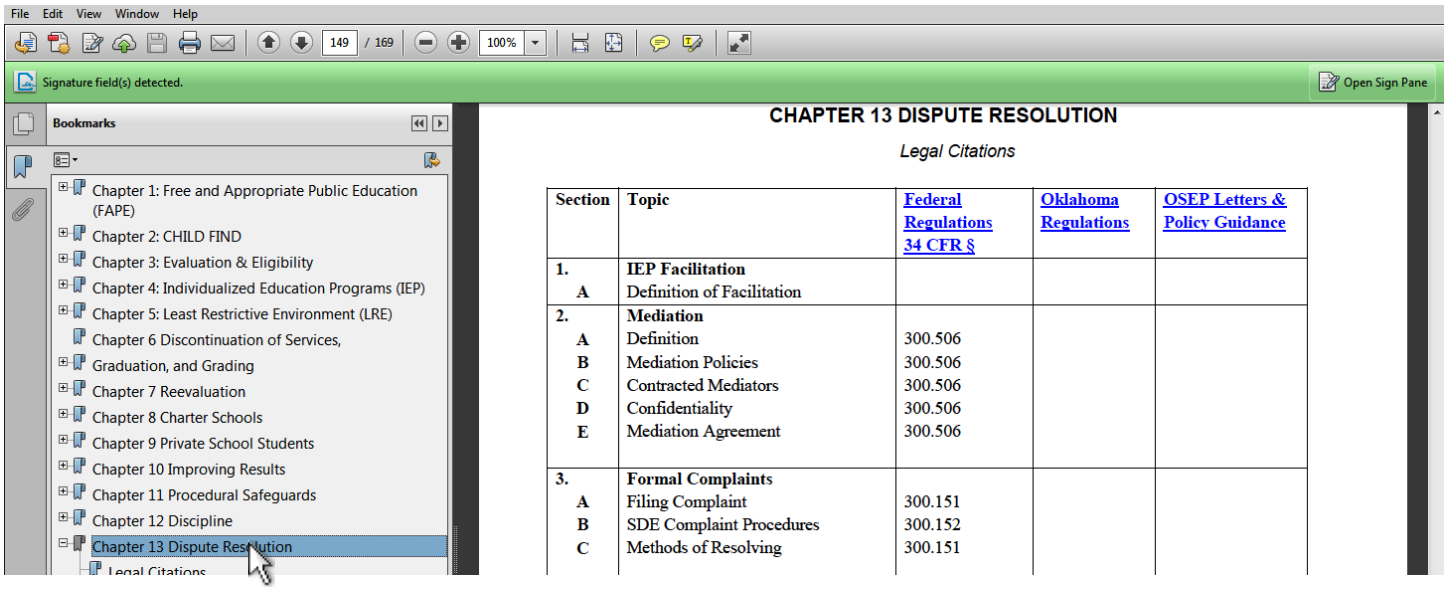


B. Option 2

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



Single click on the bookmark to navigate to the desired section, as shown below.



Interactive Legal Citations

The *Legal Citations* page in each Chapter includes topical information linked to specific federal regulations, Oklahoma Statutes and Regulations, and policy guidance letters from the Office of Special Education Programs (OSEP). OSEP letters are not legally binding. The row headings circled in red hyperlink to their respective Web sites. The OSEP Letters & Policy Guidance column boxed in light green link to topical listings (before 2008) on OSEP's Web site or directly to the OSEP letter (after 2008).

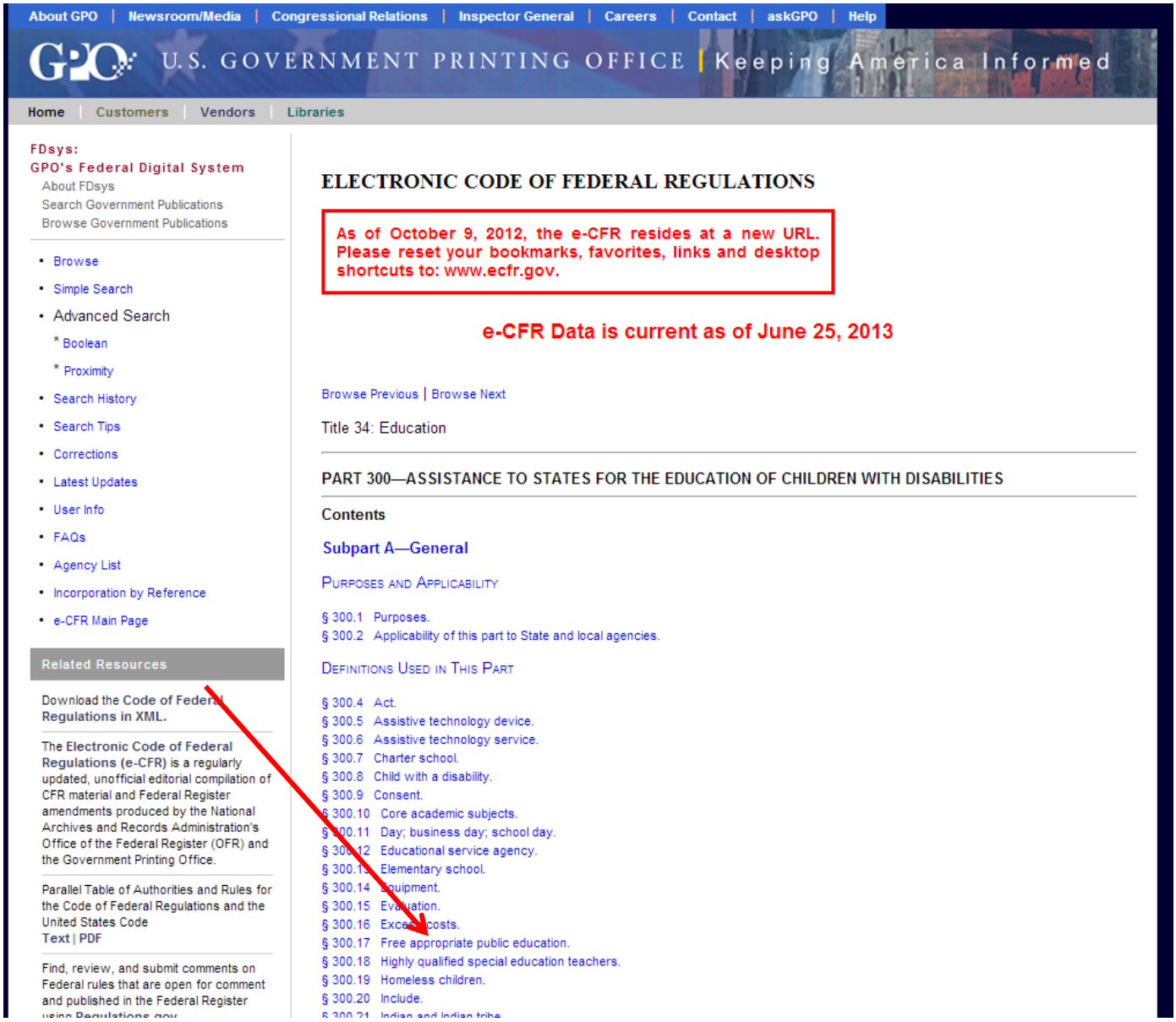
Direct hyperlink to 34 CFR § 300 (Some of the regulations in the *Legal Citations* pages may refer to other federal education regulations, such as 81 (GEPA) or 99 (FERPA)).

Legal Citations

Section	Topic	Federal Regulations 34 CFR §	Oklahoma Statute & Regulations	OSEP Letters & Policy Guidance
1.	**Referral**	300.301		(2000-2007) (1) Evaluation (2) Evaluations & Reevaluations (3) Evaluations & Parental Consent (4) IDEA & Disability *see disclaimer (2008) (1) Parental Consent (2) SLD (3) RtI (2009) (1) Evaluations &
2.	**Parent Rights**	300.500 -520	(OAC)340:75-6-50	
3. A. B.	**Review of Existing Data** Requirements if No Additional Data Needed Requirements if Additional Data Needed	300.305 and 304		
4. A. B. C.	**Written Notice/Parental Consent** Written Notice Request for Consent Failure to Respond or Provide Consent	300.300 300.9, 503 300.503 300.300		
5. A. B. C.	**Evaluation** Evaluation Group Parent Participation Timeline	300.300-311 300.305 300.301, 304 300.314-		

A. Accessing Federal Regulations

After clicking the **Federal Regulations 34 CFR § 300** link on the legal citations page, click the desired federal regulation from the listed index to access it, as shown below.



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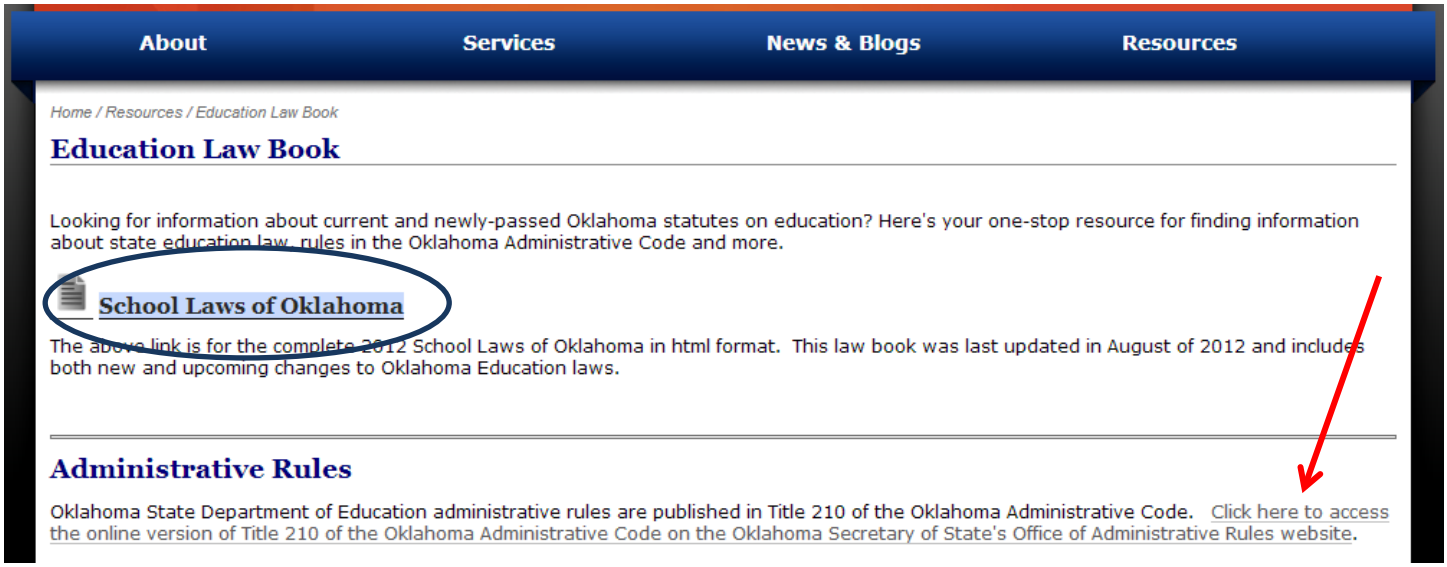
B. Accessing Oklahoma Statute & Regulations (Oklahoma Administrative Code)

After clicking the link in the Legal Citations page for the Oklahoma Statute & Regulations, the following page will display. Access to Oklahoma School Laws may be found by clicking the link in the dark blue circle. Access to the Oklahoma Administrative Code (OAC: Title 210) may be found by clicking the text below the red arrow.

The direct link to the School Laws of Oklahoma and OAC: http://www.ok.gov/sde/education-law-book



ACRONYMS AND ABBREVIATIONS

ABS	American Association on Mental Retardation Adaptive Behavior Scale
ADA	Americans with Disabilities Act
ADD	Attention Deficit Disorder
ADHD	Attention Deficit Hyperactivity Disorder
ADM	Average Daily Membership
APR	Annual Performance Report
ASD	Autism Spectrum Disorder
ASHA	American Speech-Language-Hearing Association
ATAP	Assistive Technology Act Program
AT	Assistive Technology
AYP	Adequate Yearly Progress
BIP	Behavioral Intervention Plan
CAP	Corrective Action Plan
CBM	Curriculum-Based Measurement
CEC	Council for Exceptional Children
CEIS	Comprehensive Early Intervening Services
C.F.R.	Code of Federal Regulations
CIP	Continuous Improvement Plan
COTA	Certified Occupational Therapist Assistant
DB	Deaf-Blindness
DD	Developmental Delay
DHS	Department of Human Services
DOC	Department of Correction
DP	Due Process
DSM	Diagnostic and Statistical Manual of Mental Disorders
ED	Emotional Disturbance
ESEA	Elementary and Secondary Education Act
ESL	English as a Second Language
ESY	Extended School Year
FAPE	Free and Appropriate Public Education
FAS	Fetal Alcohol Syndrome
FBA	Functional Behavioral Assessment
FERPA	Family Educational Rights and Privacy Act
GED	General Education Development
GEPA	General Education Provisions Act
GPA	Grade Point Average
G/T	Gifted/Talented
HI	Hearing Impairment
HOUSSE	High Objective Uniform State Standard of Evaluation

IAES	Interim Alternative Educational Setting
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 Services Plan
IQ	Intelligence Quotient
ISP	Individualized Services Plan
LEA	Local Education Agency
LEP	Limited English Proficiency
LRE	Least Restrictive Environment
MD	Multiple Disabilities
NAEP	National Assessment of Educational Progress
NCLB	No Child Left Behind Act
OAC	Oklahoma Administrative Code
OCR	Office for Civil Rights
OJA	Office of Juvenile Affairs
OHI	Other Health Impairment
OI	Orthopedic Impairment
OMB	Federal Office of Management and Budget
OSDE	Oklahoma State Department of Education
OSEP	Office of Special Education Programs
OSERS	Office of Special Education and Rehabilitation Services
OT	Occupational Therapy
PBIS	Positive Behavioral Interventions and Supports
PBS	Positive Behavioral Supports
PT	Physical Therapy
PTA	Physical Therapist Assistant
RtI	Response to Intervention
504	Section 504 of the Rehabilitation Act of 1973
SBI	Serious Bodily Injury
SBE	State Board of Education
SBR	Scientifically-Based Research
SD	Standard Deviation
SEA	State Education Agency
SIG	State Improvement Grant
SLP	Speech-Language Pathologist
SLPA	Speech-Language Pathologist Assistant
SOP	Summary of Performance (secondary)
SLD	Specific Learning Disability
SPP	State Performance Plan
SS	Standard Score

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.

Accommodation. Changes in the curriculum, instruction, or testing format or procedures that enable students with disabilities to participate in a way that allows them to demonstrate their abilities rather than disabilities. Accommodations are generally 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 (modification). Changes to curriculum, instruction, or assessments that fundamentally alter the requirements, but that enable a student with an impairment that significantly impacts performance an opportunity to participate. Adaptations include strategies that change the level of learning expectation. Adaptations invalidate assessment results and provide incomparable results.

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.

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.

Articulation. The ability to speak distinctly and connectedly.

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 compromises 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.

Behavioral Intervention Plan (BIP). A plan comprising practical and specific strategies designed to increase or reduce a definable behavior. These strategies address preventative techniques, teaching replacement behaviors, how to respond or resolve behaviors, and crisis management, if necessary.

Benchmark. A major milestone which describes the progress the student is expected to make toward annual goals within a specified period of time. Similar to an objective.

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.

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 attained 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.

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 free appropriate public education.

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 defined in the ESEA.

Corrective Action Plan (CAP). LEAs are required to develop a CAP when there are findings of non-compliance. LEAs that recieve an issuance of findings are required to address areas of non-compliance 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.

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.

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 SERC-appointed hearing officer to resolve disputes concerning discipline for which shortened timelines are in effect in accordance with the IDEA.

Expulsion. Removal of a student from school for an extended period of time. For general education students, services usually cease during an expulsion.

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.

FAPE (see Free Appropriate Public Education).

FERPA (see Family Educational Rights and Privacy Act).

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.

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.

High Objective Uniform State Standard of Evaluation (HOUSSE). A rubric developed by the State Department of Education that can be used by a district as one way to determine if a teacher meets the federal definition of being "highly qualified" to teach in a given core academic subject and grade level designation.

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.

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. A team established by the IDEA and comprised of the student's general education teacher, a special education teacher, a district representative, parents, the student when appropriate, and other knowledgeable persons. The team is responsible for developing an IEP, determining placement, and reviewing and revising the student's IEP and placement at least annually.

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)

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.

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, schoolwork, 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:

Parent and/or Adult student.

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

(2) A foster parent;

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

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

(5) A surrogate parent who has been appointed 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 offered to students without disabilities.

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

Problem-Solving Team. A general education team established at the local level, whose name may vary, with the purpose to problem solve regarding the educational needs of any student. Procedures, meeting schedules, and team membership are established locally. The team is likely to include general educators and administrators and could include counselors, specialists, and special education personnel. Parent participation is valuable, but not required.

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.

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 is charged with the responsibility to conduct assessments and determine a student's cognitive, academic, social, emotional, and/or behavioral functioning. This professional also provides direct services to students, consults with district staff, and may be a member of the evaluation and/or IEP team. (See also, psychometrist/educational diagnostician)

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.

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 (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 post-secondary 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.

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 Section 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 (FAPE)

Legal Citations

Section	Topic	Federal Regulations 34 CFR § 300	Oklahoma Statute & Regulations	OSEP Letters & Policy Guidance
1.	**Definition of a FAPE**	.17	70 O.S.§1-107	(2000-2007) FAPE Letters *See Disclaimer (2010) (1)Interim IEPs & FAPE (2)FAPE (2013) (1) Funding Sources and Insurance
2.	**Provision of a FAPE**	.109		
A.	LEA Obligation	.101	70 O.S.§1-114	
B.	LEA Provision of FAPE		70 O.S.§13-103	
C.	Limit to LEA Obligation	.102	70 O.S.§8-103	
D.	When LEA Obligation to Provide a FAPE ends	.102; .300 & .305		
3.	**FAPE Considerations**			
A.	Incarcerated Students	.102		
B.	Funding Sources and Insurance	.103		
C.	Accessible Instructional Materials and Assistive Technology	.105; .172 & .210		
D.	Physical Education	.108	70 O.S.§11-103.9	
E.	Residential Placement	.104	70 O.S.§3-130	
F.	Extended School Year	.106	70 O.S.§3-142	
I.	Charter Schools	.209		
J.	Medication	.174	70 O.S.§1-116.2& 70 O.S.§1-116.3	
4.	**Case law interpretations of a FAPE**			
A.	Cases related to a FAPE			

Section 1. Definition of a Free 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).

In other words, a FAPE is a basic floor of opportunity, it does not guarantee a certain level of educational performance, but it does require an evaluation of the student's circumstances as a whole even if the student is advancing from grade to grade or achieving passing grades.

Section 2. 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).

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. (See Chapter 9: Private School Students, for more information)

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 (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

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 3. 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 Department of Juvenile Justice (DJJ) 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. DJJ 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 Instructional Materials and Assistive Technology

LEAs must provide print instructional materials in an accessible format to students who are blind or other print disabled. These materials 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, or digital text, but do not include the altering of the content.

The National Instructional Materials Accessibility Standard (NIMAS) was established 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 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, if appropriate, should be trained in the use of any assistive technology made available to the student.

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.

D. 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.

E. 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.

F. Extended School Year

Each LEA must provide extended school year (ESY) services to students who need such services to receive a FAPE. 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)).

G. 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 are 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.

H. 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 4. 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)]

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CHAPTER 2: CHILD FIND

Legal Citations

Section	Topic	Federal Regulations 34 CFR § 300	Oklahoma Statute & Regulations	OSEP Letters & Policy Guidance
1.	**LEA Responsibility**	.111 .131		(2000-2007) Child Find *See Disclaimer (2011) (1) RtI, SLD, & Child Find (2)OSEP 11-07-(RtI) (3) Early Childhood Transition (2012) (1) RTI/CEIS
2. **A.** **B.**	**Locating Students** Coordination Public Awareness	.111		
3. **A.** **B.**	**Identifying Students** Screening Coordinated Early Intervening Services (CEIS)	.111 .302 .226		
4.	**Special Education Referral**	.111; .301		
5. **A.** **B.** **C.**	**Early Childhood Considerations** Transition Planning Conference Late Referrals to SoonerStart Late Referrals to LEA	.124	70 O.S.§§13-121-129	

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 3: 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 legal 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. 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 (DHS).

B. 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 the students' 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 their Part B funds for CEIS.

Section 4. Special Education Referral

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 may be made for a variety of reasons, including but not limited to academic and/or behavioral concerns. (See Chapter 3: Initial Evaluation & Eligibility**).**

Section 5. Early Childhood Considerations

LEAs 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.

The LEA is responsible for the following:

- Determining whether the referred child is eligible for special education services.
- Assuring written notice and parent consent requirements are met and parents have available the rights and protections.
- Developing and implementing an individualized education program (IEP).

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.

If the child's birthday is in the summer, SoonerStart is encouraged to schedule in the spring to allow for availability of LEA staff and time for the plan to be in place before the school year begins.

A. Transition Planning Conference (TPC)

1. **Purpose**
   a. To promote a seamless transition from IDEA Part C services (SoonerStart) to potential services after the child's third birthday.
   b. To introduce the family to the LEA staff.
   c. To provide the family a better understanding of School Based Special Education Services.
   d. 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.

2. **Topics at the TPC**
   a. Eligibility and timeline requirements;
   b. The similarities and the differences under the IDEA between the SoonerStart program (Part C) and special education programs (Part B);
   c. The process for consenting to an IDEA Part B evaluation; and
   d. The steps needed to be completed to determine eligibility for IDEA Part B services.

3. **Members who may attend a TPC**
   a. Family members
   b. Persons invited by the family

c. SoonerStart Staff
d. LEA Staff
e. Other community program staff (Head Start, Community Child Care, etc.)

B. 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.

C. Late Referrals to LEA

A child is considered a late referral to SoonerStart if he/she is determined eligible for SoonerStart services after 33 months of age (or less than 90 calendar days from the 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:

1. Conduct an initial evaluation, assessment and initial IFSP meeting for the child.

2. If the child is potentially eligible for IDEA Part B services, SoonerStart will provide notification to the LEA with parent consent as soon as possible.

3. Information pertaining to the child, initial evaluation, assessment and IFSP, will be shared with receiving LEA or community services with written consent.

4. A TPC is recommended but is **not** required.

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CHAPTER 3: INITIAL EVALUATION & ELIGIBILITY

Legal Citations

Section	Topic	Federal Regulations 34 CFR § 300	Oklahoma Statute & Regulations	OSEP Letters & Policy Guidance
1.	**Request for Initial Evaluation**	.301		(2000-2007) (1) Evaluation (2) Evaluations & Reevaluations (3) Evaluations & Parental Consent (4) IDEA & Disability *see disclaimer (2008) (1) Parental Consent (2) SLD (3) RtI (2009) (1) Evaluations & ACT/SAT (2010) (1) Consent Req. (2) RtI & Head Start (3) Gifted&Talented (2011) (1) RtI & Child Find (2) Screenings vs Evaluations (3) OSEP 11-07 (RtI) (2012) (1) Letter: Various Topics (2) Timely Initial Evals
2.	**Parent Rights**	.500-520	(OAC)340:75-6-50	
3.	**Review of Existing Data**	.305; .304		
A.	No Additional Data Needed	.305		
B.	Additional Data Needed	.305		
4.	**Written Notice/Parental Consent**	.300; .503		
A.	Written Notice	.503		
B.	Request for Consent	.9; .300		
C.	Failure to Respond or Provide Consent	.300		
5.	**Evaluation**	.300-311		
A.	Evaluation Group	.305; .308		
B.	Parent Participation	.301; .304		
C.	Timeline	.301		
D.	Evaluation Procedures	.304; .305		
E.	Definition of Evaluation and Assessment	.15		
F.	Evaluation Comprehensiveness	.304		
6.	**Evaluation Considerations for Eligibility**			
A.	Autism			
B.	Deaf-Blindness			
C.	Deafness- Hearing Impairment			
D.	Developmental Delay			
E.	Emotional Disturbance			
F.	Intellectual Disabilities			
G.	Multiple Disabilities			
H.	Orthopedic Impairment			
I.	Other Health Impairment			
J.	Specific Learning Disability	.307-.311		
K.	Speech or Language Impairment			
L.	Traumatic Brain Injury			
M.	Visual Impairment (including blindness)			

7.	**Eligibility**	.306-.311		(3) RtI & CEIS
A.	Multi-Disciplinary Evaluation and Eligibility Group Summary (MEEGS)			(2013)
B.	Consideration of Data	.306; .311		(1) Written Notice to access insurance benefits
C.	Eligibility Determination	.306; .309		

As discussed in Chapter 2, 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 Act (IDEA).

Section 1. Request for Initial Evaluation

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

- Early Childhood Screening
- SoonerStart Early Intervention
- Intervention Teams
- Parents

A request for an initial evaluation is made when it is suspected that a student may be a student with a disability. 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.

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.

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 independent educational evaluations (IEEs).

Section 3. Review of Existing Data (RED)

When a request has been made for an initial evaluation of a student, the LEA staff must conduct a review of existing data and utilize OSDE Form 3 (RED) for documentation. 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 assessment 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 assessment and the reasons for the refusal. The parent(s) may request mediation or due process if they dispute the refusal to conduct an evaluation. See Written Notice (OSDE Form 8) and Parent Consent (OSDE Form 4) at http://ok.gov/sde/documents-forms)

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. See Written Notice (OSDE Form 8) and Parent Consent (OSDE Form 4) at http://ok.gov/sde/documents-forms)

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:

1. 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;

2. 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

3. 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).

See Parent Consent (OSDE Form 4) at http://ok.gov/sde/documents-forms

***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. Reasonable attempts are defined as at least 2 contacts by 2 different methods (phone calls, letters, visits, email, etc.). 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 for 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.

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:

1. The parents of the student;
2. A general education teacher;
3. A special education teacher;
4. A representative of the local education agency who:

    a. Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of students with disabilities,
    b. Is knowledgeable about the general education curriculum, and
    c. Is knowledgeable about the availability of resources of the public agency;

5. An individual who can interpret the instructional implications of evaluation results;
6. At least one person qualified to conduct individual diagnostic examinations of students;
7. 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
8. 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 (OSDE Form 8) 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 time between eligibility determination and implementation of the individualized education program (IEP) cannot exceed 30 calendar days.

D. 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 in order to determine:

1. If the student is a student with a disability;
2. Whether the student needs special education services;
3. The educational needs of the student; and
4. The present levels of academic achievement and functional performance (related developmental needs) of the student.

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, and
- Motor abilities.

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 purports to measure).

E. 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:

1. Evaluation refers to 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.**

2. Assessment is integral to the evaluation process and includes 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 also include observations, interviews, medical reports, data regarding the effects of general education accommodations and interventions, and other formal or informal data.

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.

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 should 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
- 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)

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

A. Observation

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, a group member must observe the child in an environment appropriate for a child of that age. This information is then summarized on the MEEGS (OSDE Form 5).

B. Academic/achievement/developmental

Information regarding academic achievement or developmental progress may include, but is not limited to: standardized achievement tests, observation(s), grades, criterion referenced test(s) (CRT), district-wide assessment(s), curriculum based measurement(s), benchmark assessment(s), progress monitoring(s), and developmental activities.

C. Social/cultural factors

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.

D. Disability Category Information

Disability Category	OSDE Fact Sheet	NICHCY Fact Sheet	Other	Other
Autism	OSDE Fact Sheet	NICHCY Fact Sheet	Autism Resources	
Deaf-Blindness	OSDE Fact Sheet	NICHCY Fact Sheet	Blind/Visually Impaired Resources	
Deafness/Hearing Impaired	OSDE Fact Sheet	NICHCY Fact Sheet	Center for Disease Control: Hearing Loss Fact Sheet	
Emotional Disturbance	OSDE Fact Sheet	NICHCY Fact Sheet		
Intellectual Disability	OSDE Fact Sheet	NICHCY Fact Sheet	Intellectual Disabilities Resources	Intellectual Disability Fact Sheet (CDC)
Hearing Impairment	OSDE Fact Sheet	NICHCY Fact Sheet	Oklahoma School for the Deaf	Oklahoma Association of the Deaf (OAD)
Multiple Disabilities	OSDE Fact Sheet	NICHCY Fact Sheet		
Orthopedic Impairment	OSDE Fact Sheet			
Other Health Impairment	OSDE Fact Sheet	NICHCY Fact Sheet	Attention Deficit Hyperactivity Disorder: Instructional Strategies and Practices	Center for Disease Control: ADHD Fact Sheet
Specific Learning Disability	OSDE Fact Sheet	NICHCY Fact Sheet	Learning Disabilities Association of Oklahoma	
Speech or Language Impairment	OSDE Fact Sheet	NICHCY Fact Sheet	American Speech Language and Hearing Association (ASHA)	National Association for Hearing and Speech Action (NASHA)
Traumatic Brain Injury	OSDE Fact Sheet	NICHCY Fact Sheet	Brain Injury Association of Oklahoma	
Visual Impairment	OSDE Fact Sheet	NICHCY Fact Sheet	Blind/Visually Impaired Resources	
Developmental Delay		NICHCY Fact Sheet	Oklahoma Developmental Disabilities Council (ODDC)	Developmental Screening (CDC)

http://ok.gov/sde/disability-category

E. 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.

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 (OSDE Form 9) may be utilized. Although a medical diagnosis of autism is not required to provide special education services to a student suspected of having autism, the information provided may be beneficial for educational planning purposes.

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.

F. 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.

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

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. 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.

G. 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.

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.

H. 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.

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 (i.e., 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.

Students ages 3 through 9 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.

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 students, Kindergarten school age (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.

I. 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:

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

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.

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:

1. Behavior/adjustment scales
2. Personality profiles
3. Self-report inventories
4. Interviews
5. 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.

J. 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.

Components of a Comprehensive Evaluation

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

Evaluation Considerations

Students with an intellectual disability have a full-scale intelligence standard score (IQ) at or below 70, plus or minus the standard error of measurement (at the 95 percent confidence level) of the assessment. A qualified examiner using an individually administered intelligence test makes this determination. 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.

Students with an intellectual disability may exhibit concurrent deficits in adaptive functioning expected for his or her age in at least two of the following areas: communication, self-care, home living, social/interpersonal skills, and use of community resources, self-direction, functional academic skills, work, leisure, health, or safety. The group may identify degrees of intellectual disability as mild/moderate or severe/ profound, or by the levels of support needed.

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.

K. Multiple Disabilities (MD)

Multiple Disabilities are two or more co-existing severe impairments, one of which usually includes an intellectual disability, 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 life long, 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.

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.

L. 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).

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 (OSDE Form 9) 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.

M. 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.

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. The Medical Report (OSDE Form 9) 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.

N. 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, 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.

The term does not include a student who has needs that are primarily the result of visual, hearing, or motor disabilities; intellectual disability; emotional disturbance; or environmental, cultural, or economic disadvantage.

Components of a Comprehensive Evaluation

- Documentation of scientifically research-based instruction
- 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 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 should be documented. This data should 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 should 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 a process based on a student's response to scientific research-based intervention(s) or the traditional discrepancy model. Regardless of the process used for identification the following criteria must be met and documented:

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 skills
5. Reading fluency skills
6. Reading comprehension
7. Mathematics calculation
8. Mathematics problem solving

AND

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

1. 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

2. 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, Aims WEB, 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:

1. Use 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

2. 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 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 please refer to: *Oklahoma Tiered Intervention System of Support* (OTISS) *Web site.*

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 Intervention(s): 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

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:

1. The targeted skill, including the present levels of performance and a measurable goal;

2. The scientific research-based interventions used, including intensity, frequency, and duration; and

3. Interventionist(s), percent of integrity with which the intervention was delivered, and the results of the intervention.

Option 2. 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 and 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** and the standard score from a **broad area of achievement** in one or more of the areas listed for evaluation considerations for SLD.

O. 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:

1. The form of language (morphological and syntactic systems);

2. The content of language (semantic systems); and/or

3. 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.

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 dysfluencies 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 dialectic 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.

P. 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.

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.

Q. 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.

Components of a Comprehensive Evaluation

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

Evaluation Considerations

An ophthalmologist's or optometrist's report stating the diagnosis and description of the student's visual problems is required. 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 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.

Section 7. Eligibility

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 (OSDE Form 5) documents the variety of assessment tools and strategies, results, conclusions, and the determination of the group.

A. Multi-Disciplinary Evaluation and Eligibility Group Summary (MEEGS)

1. Documentation

The MEEGS (OSDE Form 5) documents the full and individual evaluation of the educational functioning and needs of the student, utilizing various evaluation procedures which are

selected and tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient or cognitive score. The form documents evaluation information, evaluation procedures, and results as the information is received, culminating with the overall determination of eligibility.

2. **The MEEGS must include the following statements:**
   a. Whether the student is a student with a disability;
   b. The basis for making that determination;
   c. Relevant behavior noted during the observation of the student;
   d. Educationally relevant medical findings, if any; and
   e. 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 intervention(s);

   f. 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:
      i. A visual, hearing or motor disability;
      ii. Intellectual disability;
      iii. Emotional disturbance;
      iv. Cultural factors;
      v. Environmental or economic disadvantage; or
      vi. Limited English proficiency.

   g. 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.

   h. 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.

B. 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.

C. 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

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.

Special Rule for Eligibility Determination

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 should 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 (OSDE Form 5) 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.

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CHAPTER 4: INDIVIDUALIZED EDUCATION PROGRAMS (IEP)

Legal Citations

Section	Topic	Federal Regulations 34 CFR § 300	Oklahoma Statute & Regulations	OSEP Letters & Policy Guidance
1.	**Special Education and IEPs**	.22; .320	(OAC)340:40-7-31	(2000-2007) (1) IEPs *see disclaimer (2008) (1) Consent (2) Parent Participation (3) Notification of Meeting (4) Transition (2009) (1) Revocation of Consent (2) Transition Goals (2010) (1) IEP Team Meeting (2) IEP Services (3) Physical Education (4) Interim IEPs & FAPE (5) Revocation of Consent (6) Seclusion & Restraints (2011) (1) IEP Team Members (2) Surrogate Parents (3) Transition Goals (4) Graduation Rate
A.	Purpose of Meeting	.39; .322	(OAC)210:15-34-16	
B.	Team Decision Making	.320-.324	70 O.S.§13-101	
C.	IEP Team Members and Roles	.321	70 O.S.§13-102	
D.	Parent Participation	.322; .501	70 O.S.§1210.273	
E.	Method of Parent Participation	.322	(OAC)340:75-6-50e	
F.	Excusal from the Meeting	.321	(OAC)612:20-1-2	
G.	Recording Guidelines	.501	(OAC)612:10-7-245	
2.	**IEP Timelines**	.323	70 O.S.§13-102	
3.	**IEP Development**	.320-.324	70 O.S.§1210.275	
A.	Present Levels	.320	(OAC)317:30-5-102(4)	
B.	Considerations of Special Factors	.324	(OAC)210:10-1-19	
C.	Parent Concerns	.324	(OAC)210:35-31-3	
D.	Goals and Benchmarks/ Objectives	.320	(OAC)210:10-13-11 70 O.S.§13-103	
E.	Progress Toward Goals	.320	70 O.S.§1210.508	
F.	Service and Support Components	.320	70 O.S.§1210.511	
G.	Statewide and district wide Assessment	.320	(OAC)210:10-13-2 (OAC)210:10-13-16	
H.	Extended School Year Services	.106	70 O.S.§1210.508	
I.	LRE Explanation	.114; .320	70 O.S.§1-109.1	
J.	Consent for Initial Placement	.300	70 O.S.§1210.513	
K.	Assistive Technology	.5; .6; .324	70 O.S.§1210.557	
L.	Transportation	.34	(OAC)612:10-1-2	
M.	Secondary Transition	.43; .320	(OAC)317:30-5-1023 (OAC)210:30-5-1 (OAC)612:10-7-246 (OAC)612:10-7-248 (OAC)210:35-13-234B (OAC)780:20-30-1 (OAC)210:35-11-21 (OAC)340:100-17-25	

4. **A.** **B.** **C.**	**IEP Reviews** Annual IEP IEP Amendments Following the Annual Meeting	.324 .324 .324 .324		(2012) (1) IEP Services (2) IEPs & Transfers (3) Written Notice
5. **A.** **B.**	**IEPs for Transfer Students** Transfer within Oklahoma school district Transfer from Out-of-State	.323 .323 .323	70 O.S.§24-101.4 (OAC)210:10-1-19 (OAC)210:10-1-18 70 O.S.§18-110 70 O.S.§8-101.2	(2013) (1) Parent Participation (2) Written Notice to Access Insurance Benefits
6. **A.**	**IEPS for Children From IDEA Part C to Part B** IDEA Part C to Part B Transition Planning	.323; .124 .321 .321		

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:

1. Address the unique needs of the student that result from his or her disability; and

2. 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; and
- The academic achievement, developmental, and functional needs of the student.

In addition, the IEP team should develop an IEP that is reasonably calculated to benefit the student keeping in mind the IEP is a basic floor of opportunity, avoid including non-mandatory items in the IEP, and consider the provisions of a 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 team plans the special education service calculated to enable the student to receive educational benefits 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 between 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 free appropriate public education (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 the most 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 who are responsible for developing, reviewing, or revising an IEP for a student with a disability.

Student's Parents (Required Member) **or Adult Student if Rights Have Transferred**	• 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 responsible for student's welfare). • 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).
Special Education Teacher/Provider (Required Member)	• Holds appropriate certification. • Participates in the development of the IEP.

Regular Education Teacher of the Student (Required Member)	• 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)	• 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)	• 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	• 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)	• Included as a member of the IEP team whenever appropriate. • The student must be invited upon turning 16 years of age or the first IEP in the ninth grade, whichever comes first.
Representative of Transition Agency(s) (Parental consent must be obtained in order for the Transition Agency Representative to participate in the IEP team meeting.)	• 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. • Must have parent consent to transition agency attending the IEP meeting.
Part C Coordinator (SoonerStart) Representative (When Appropriate)	• May participate at the request of the parent. • The student previously was served under Part C and transitioning to Part B.
Other Representatives	• 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. If the parent(s) cannot attend, (unable or choose not to attend), the LEA must use other methods to ensure opportunity for parent participation, including individual or conference telephone calls. Meetings must be held at a mutually agreed upon time and place. An LEA may limit the times of an IEP meeting to the regular school day or business day.

E. Method of Parent Participation

Notification of Meeting (OSDE Form 6).	• The parent(s) must receive sufficient 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	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. • Time and place indicated are reasonably convenient to the parent(s), student, LEA personnel, and others involved. • Attempts to arrange parent participation are maintained on the Record of Parent Contact (OSDE Form 2). • 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.

A minimum of two different types of contacts are made:	1. Personal contact (e.g. documented home visits, phone calls, video conference, mail, e-mail) 2. Written contact (e.g. Notification of meeting OSDE Form 6)

F. Excusal from the Meeting

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

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.

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.

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 tape 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

	Timeline (school days/calendar days)
Initial IEP	30 calendar days from date eligibility is established.
Subsequent IEPs	No less than annually from the development of the most current IEP.
Amended IEP	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 IEP	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.

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

    a. The results of the initial or most recent evaluations of the student, including any state or LEA assessments;

    b. A description of academic, developmental, and/or functional strengths and needs:

        i. Academic (e.g., math, language arts, sciences, etc.)
        ii. Developmental (e.g., communication, motor, cognitive, social/emotional, etc.)
        iii. Functional (e.g., self-care, social skills, daily living, communication, social/emotional, etc.)

    c. Impact of the disability on involvement and progress in the general education curriculum; and

    d. 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 instructional 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.

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.

1. 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.

2. The student's eligibility category should not drive the goals or educational placement.

3. If the student will be assessed through alternate achievement standards, then the IEP team must address benchmarks/objectives.

E. Progress Toward Goals

The IEP includes a statement describing:

1. How the student's progress toward IEP goals will be measured;

2. 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.

F. Service and Support Components

Each student's IEP includes descriptions regarding:

1. Special education services;
2. Related services;
3. Supplementary aids and services;
4. Program modifications; and
5. Supports for personnel.

These components are designed to enable the student:

a. To advance appropriately toward attaining the annual goals.

b. To be involved in and make progress in the general education curriculum and to participate in extracurricular and other nonacademic activities.

c. To be educated and participate with other students with disabilities and nondisabled students, as appropriate.

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 setting, 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 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, tape recorders, note takers, and computers with spell check.

Adaptations/modifications are changes in educational expectations for the student with a disability compared to peers without disabilities. These adaptations/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 adaptations/modifications are needed to ensure academic progress, these are indicated in the IEP. Any accommodations and/or

adaptations/modifications required in physical education, vocational education, and state wide or district wide assessments are included in the IEP.

G. State Wide and District Wide Achievement Testing

Students with disabilities are to be included in all state wide and district wide assessments. The IEP team determines how the 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.

H. Extended School Year Services (ESY)

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. LEAs provide ESY services for students with disabilities as determined by the IEP team (*Johnson v. Independent Sch. Dist. No*. 4 921 F.2d 1022 (Oklahoma 1990)). The IEP team considers the following in the development and provision of an ESY program:

1. The term "extended school year services" means special education services that are provided beyond the regular school year:

    a. To a student with a disability;
    b. In accordance with the student's IEP; and
    c. 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.

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

    a. **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; or

    b. **Regression-Recoupment**: The student would regress to such an extent and the amount of time required to relearn a skill or behavior becomes so significant that the student would be unable to benefit from his or her special education; or

    c. **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.

3. 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:

   a. **Criterion-referenced test data**: Consider daily/weekly probes or pre-test/post-test data.

   b. **Norm-referenced test data**: Consider pre-test/post-test data.

   c. **Anecdotal records:** Consider information collected throughout the school year.

   d. **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.

   e. **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.

   f. **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.

   g. **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.

   h. **Parent input**: Consider parent observations of the student as well as parent requests for ESY services.

4. The ESY services are clearly delineated in the IEP. The LEA can meet this requirement by amending the current IEP.

5. The LEA may not limit ESY services to particular categories of disability or unilaterally limit the amount or duration of these services.

I. 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 5: Least Restrictive Environment (LRE) for additional information on LRE.

J. 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.

K. 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. "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. Assistive technology services include the following:

1. An evaluation of the student's assistive technology needs, including a functional assessment in the student's customary environment;

2. Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices;

3. Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;

4. Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

5. Training or technical assistance for a student with a disability or, if appropriate, that student's family;

6. 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;

7. The LEA must ensure that the hearing aids worn by deaf or hard-of-hearing students in school are functioning properly; and

8. 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.

L. 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:

1. travel to and from school and between schools to access special education;
2. specialized equipment including lifts and ramps, if required to provide special transportation;
3. travel in and around school buildings; or
4. other services that support the student's use of transportation, such as:

    a. Special assistance (e.g., an aide on the bus and assistance getting on and off the bus);
    b. Safety restraints, wheelchair restraints, and child safety seats;
    c. Accommodations (e.g., preferential seating, a behavioral intervention plan for the student on the bus, and altering the bus route);
    d. Training for the bus driver regarding the student's disability or special health related needs; or
    e. Attending non-academic and extracurricular activities if required by the IEP.

M. 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.

Secondary transition services are defined as a coordinated set of activities for a student with a disability that are designed within a results-oriented process focused on improving the academic and functional achievement of the student to facilitate movement from secondary school to post school activities (e.g., postsecondary education, vocational education, integrated employment, and supported employment, continuing in adult education, adult services, independent living, or community participation). The coordinated set of activities may include instruction, 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 not later than 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 IEP must include:

1. Appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills.

2. 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.

3. 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.

4. 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.

5. 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 (Summary of Performance, OSDE Form 11).

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 (OSDE Form 8) 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;

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 (OSDE Form 8) 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.

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.

Section 5. 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.

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.

B. From Out-of-State

When a student with a disability moves from an out of state LEA to an Oklahoma LEA with a current IEP, the Oklahoma LEA must provide the student with a FAPE. This includes services comparable to those described in the previously held IEP, in consultation with the parent, until such time as the LEA conducts an evaluation, if deemed necessary. Upon determining eligibility, the IEP team develops, adopts, and implements a new IEP.

If the Oklahoma LEA has formally received a request from an out-of-state LEA, the Oklahoma LEA must take reasonable steps to promptly respond to the request from the new LEA. (See Chapter 14: Transfers, IEP Service Agreements and Move-In Students)

Section 6. IEPs for Children from IDEA Part C to Part B

A. IDEA Part C to Part B Transition Planning

The transition from Part C (SoonerStart, Oklahoma Early Intervention Program for children Birth to 3 years of age), to Part B, preschool special education services, must be initiated by

SoonerStart Early Intervention 6 to 12 months prior to a child's third birthday. SoonerStart will notify the child's LEA, with parental permission, at the appropriate time for a 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.

Three to 9 months prior to the child's third birthday, the LEA must be invited to the Transition Planning Conferences (TPC) arranged by SoonerStart. TPCs provide an opportunity to address any necessary evaluations and assessment information in preparation for determination of eligibility for Part B, special education and related services, on or before the child's third birthday.

The TPC may include, but should not be limited to:

1. Parent(s);
2. SoonerStart Resource Coordinator;
3. Professional(s) directly involved in evaluating the child;
4. Professional(s) who are providing services to the child and family;
5. LEA representative; and
6. Service providers, as appropriate.

Parental consent must be obtained prior to SoonerStart's release of the child's records to the LEA. In those situations where such consent is not granted or the LEA determines that additional information is necessary to provide a FAPE to a child, the LEA must seek to evaluate the child in any area necessary before the child's third birthday. Parental consent is necessary for the LEA to conduct such evaluations (OSDE Form 4). 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.

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

1. Determining whether the referred child is eligible in accordance with Oklahoma's evaluation considerations for special education services under Part B of the IDEA (See Chapter 3: Initial Evaluation & Eligibility for more information);

2. Developing and implementing an individualized education program (IEP) in accordance with State policies and practices for special education; and

3. Assuring that the Part B written notice and parent consent requirements are met and parents have available the rights and protections under Part B.

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CHAPTER 5: LEAST RESTRICTIVE ENVIRONMENT (LRE)

Legal Citations

Section	Topic	Federal Regulations 34 CFR § 300	Oklahoma Statute & Regulations	OSEP Letters & Policy Guidance
1.	**LRE Considerations**	.114-.120	(OAC)340:75-6-50	(2000-2007) (1)LRE Letters (2)Educational Placements *see disclaimer (2008) (1)LRE & APR (2)FAPE & LRE (2009) (1)Continuum (2010) (1)Placement (2011) (1)Placement (2)Residential Placement (2012) (1) Preschool LRE (2) Transition & LRE (3) Placement
A.	When to Make and Review Placement Decisions	.116; .320		
B.	Considerations in Placement Decisions	.114-.117		
2.	**LRE & Continuum of Settings and Services**	.116		
A.	Explanation of the Continuum of Settings and Services	.115; .320		
B.	Continuum of Alternative Placements and LRE Decision Tree	.115		
C.	Nonacademic and Extracurricular Activities	.117		
D.	Program Options	.110		
E.	Special Circumstances		70 O.S.§6-146	
F.	Continuum of Alternative Placements for Preschool Children	.115		
3.	**Federal Reporting of LRE**	.601	70 O.S.§13-101	

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. **Placement is not the same as location.**

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.

A. When to Make and Review Placement Decisions

Placement decisions for a student with a disability are made following the determination of the individual needs, goals, and required services.

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 are reconsidered when an IEP team is convened to review a student's academic, functional, and developmental progress.

B. Considerations in Placement Decisions

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:

1. <u>Based on student's individual needs:</u> 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.

2. Age Appropriate Peers: Students with disabilities must be educated with age-appropriate peers to the maximum extent appropriate.

3. 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.

4. 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.

5. 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.

6. Participation in Nonacademic and Extracurricular Services and Activities:

    a. 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.

    b. 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.

Section 2. LRE & Continuum of Settings and Services

A. Explanation of the Continuum of Settings and Services

The continuum of settings and services includes instruction in general classes, special classes, special schools, home instruction and instruction in hospitals and institutions. In addition, the continuum makes provision for supplemental services, such as resource services or itinerant instruction, to be provided 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 alternate 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 considerations also apply to preschool age students with disabilities who are entitled to receive a free appropriate public education (FAPE). Settings for preschool age children 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 preschool students without disabilities are not required to initiate such programs solely to satisfy LRE requirements, but must provide all appropriate services in the LRE for preschool age students, which may include but not limited to:

1. Providing opportunities for participation (even part-time) of preschool students with disabilities in public or private regular early childhood programs, such as Head Start;

2. Placing preschool students with disabilities in the following:

    a. Private early childhood programs for preschool students without disabilities; or

    b. Private early childhood programs or other community-based early childhood settings that integrate students with and without disabilities; and

    c. Locating classes for preschool students with disabilities in elementary schools.

B. Continuum of Alternative Placements and LRE Decision Tree

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.

Regular 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, and may include students with disabilities placed in:
• General education class with special education and related services provided within general education classes.
• General education class with special education and related services provided outside general education classes.
• General education class with special education services provided in resource room.

Special class 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, and may include students with disabilities placed in:
• Resource rooms with special education and related services provided within the resource rooms.
• Resource rooms with part-time instruction in a general education class.

Special class 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, and may include:
• Self-contained special classrooms with part-time instruction in a general education class.
• Self-contained special classrooms with full-time special education instruction.

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), and may include:
• Public and private day schools for students with disabilities.
• Public and private day schools for students with disabilities for a portion of the school day (greater than 50%) and in regular school buildings for the remainder of the school day.
• Public and private facilities if the child does not live in the facility.

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), and may include:
• Public and private residential schools for students with disabilities.
• Public and private residential schools for students with disabilities for a portion of the school day (greater than 50%) and in separate day schools or regular school buildings for the remainder of the school day. Do not include students who receive education programs at the facility, but do not live there.

Home Instruction/Hospital Environment
The child receives education (1) through home instruction, or (2) in a hospital program.
• The IEP team has determined home instruction will best meet the student's educational needs.
• This does not include students with disabilities whose parents have opted to homeschool.

Correctional Facility
The child receives education in a:
• Short-term detention facility (community-based or residential)
• 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.

C. Nonacademic and Extracurricular Activities

LRE may also include nonacademic and extracurricular services. LEAs must consider supplementary aids and services necessary to provide students with disabilities the equal opportunity to participate in nonacademic and extracurricular activities. This may include, but is not limited to, participation in clubs, referral to agencies that provide services, special interest groups, employment assistance, counseling, health services, or athletics. An IEP does not negate eligibility requirements such has having to try out for the team or having an "A" average to be in French Club.

D. Program Options

Students, identified as a student with 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.

E. 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:

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

2. 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

3. 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).

F. Continuum of Alternative Placements for Preschool Age Children (3-5)

The educational needs of preschool aged children who demonstrates delay(s) in assessed domain(s) (See Chapter 3: Initial Evaluation & Eligibility**)** is determined by considering the placement, location, or services to be provided to meet the child's needs. This applies to children ages 3 through those who are turning 5 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 the IEP. Preschool children must be educated in the environments 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:

Early Childhood Program
This includes a child who attends a program that includes at least 50% nondisabled children. Early childhood programs include, but are not limited to:
• Head Start • Kindergarten • Reverse mainstream classrooms • Preschool classes offered to an eligible pre-kindergarten population by the public school system • Group child care
Attendance at an early childhood program need not be funded by the IDEA Part B funds. If a child attends an early childhood program, the LEA must specify the amount of time the child receives special education and related services in the early childhood program.

Special Education Program
If a child attends a special education program, the LEA must identify the type of program.

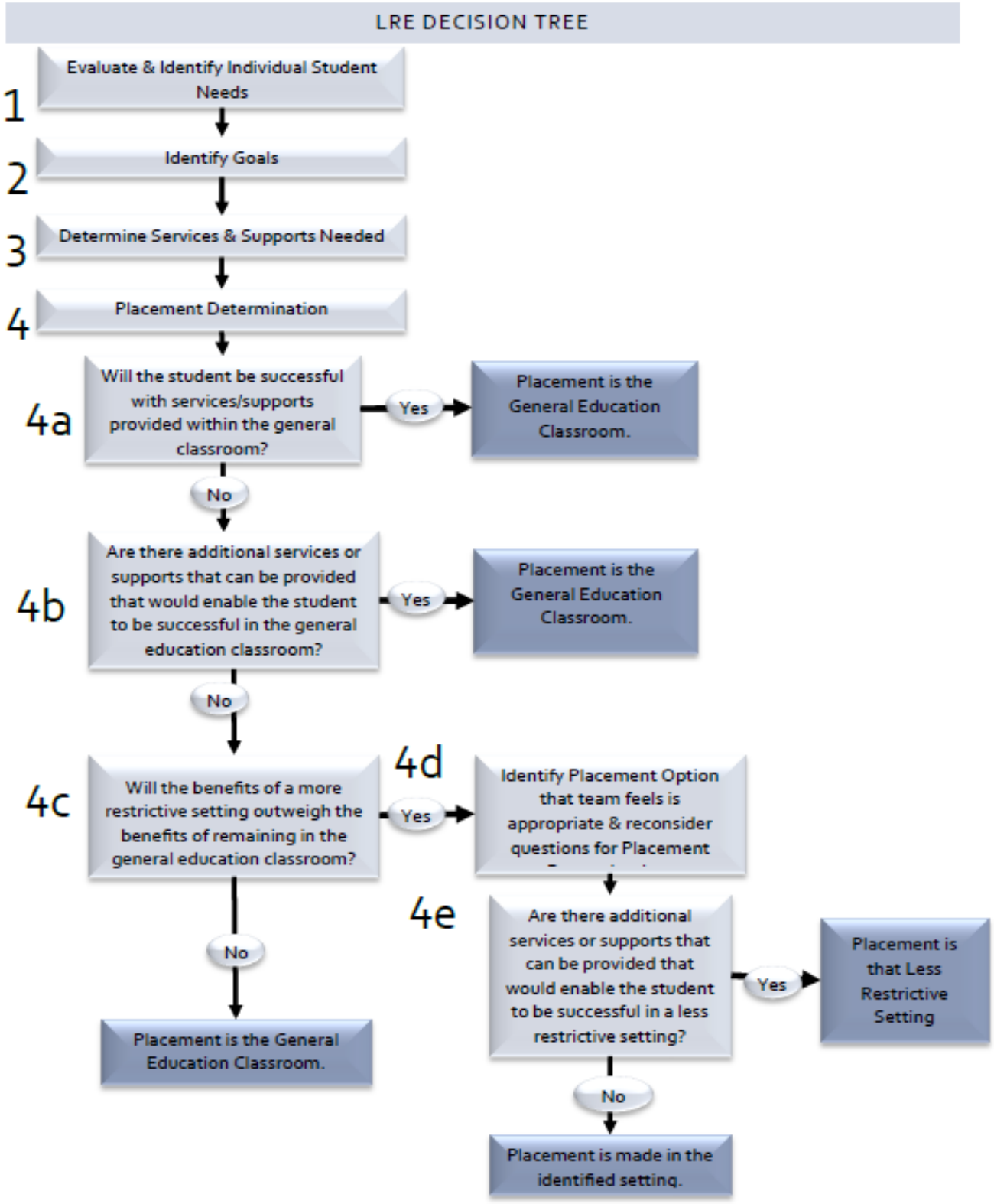
Separate Class
Special education and related services are provided in special education classrooms.

Separate School
Special education and related services are provided in a separate school (public or private day schools designed specifically for students 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.

Residential Facility
Special education and related services are provided in publicly or privately operated residential schools or residential medical facilities on an inpatient basis.

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.

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.


LRE DECISION TREE
1
Evaluate & Identify Individual Student Needs
2
Identify Goals
3
Determine Services & Supports Needed
4
Placement Determination
4a
Will the student be successful with services/supports provided within the general classroom?
Yes
Placement is the General Education Classroom.
No
4b
Are there additional services or supports that can be provided that would enable the student to be successful in the general education classroom?
Yes
Placement is the General Education Classroom.
No
4c
Will the benefits of a more restrictive setting outweigh the benefits of remaining in the general education classroom?
Yes
4d
Identify Placement Option that team feels is appropriate & reconsider questions for Placement
4e
Are there additional services or supports that can be provided that would enable the student to be successful in a less restrictive setting?
Yes
Placement is that Less Restrictive Setting
No
Placement is made in the identified setting.
No
Placement is the General Education Classroom.

Section 3. Federal Reporting of LRE

The IEP includes a section for reporting the educational environments required for the October 1 Child Count. This section is for reporting the amount of time the student spends in the general education environment, with or without special education and related services. After determining the LRE and the educational environments in which the student will receive their general education instruction and special education services, the IEP team will document the educational environment for federal reporting**.**

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CHAPTER 6: DISCONTINUATION OF SERVICES, GRADUATION, AND GRADING

Legal Citations

Section	Topic	Federal Regulations 34 CFR § 300	Oklahoma Statute & Regulations	OSEP Letters & Policy Guidance
1.	**Discontinuation of Special Education Services**		(OAC)210:10-1-19	
A.	Students Who Are No Longer Entitled to Special Education Services	.305; .102; .300; & .306	(OAC)210:10-1-18	
B.	Change in LEA Obligation to Provide Services	.102		
C.	Parent Revokes Consent for Special Education Services	.9; .300		(1)Revocation of consent (August 2009)
2.	**Graduation**			
A.	IEP requirements regarding graduation Individualized Education Program	.102	70 O.S§11-103.6.	
B.	Graduation Ceremonies		(OAC)210:35-9-31	(2) Report Cards & Transcripts (Oct. 2008)
3.	**Transcripts and Diplomas**			
A.	Transcript			
B.	Diploma		(OAC)365:25-5-3	
4.	**Grades, Class Ranking, and Honor Roll**		(OAC)210:15-34-6	

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.

1. 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.

2. 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. Although this is considered a change of placement, a reevaluation is not required. Within 30 school days of graduation and the discontinuation of special education services the LEA:

   a. Must provide the parent with written notice that the LEA's obligation to provide special education services ends when the student obtains a regular high school diploma; and

   b. 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 (SOP, OSDE Form 11).

3. 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 the semester in which the child turns 22 years of age. This is considered a change of placement that does not require a reevaluation. Before a student turns 22 years of age, the LEA:

   a. Must provide the parent with written notice that the LEA's obligation to provide special education services ends at the completion of the semester in which the student turns 22 years of age; and

b. 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 (SOP, OSDE Form 11).

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.

1. 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 eligibility documentation.

2. 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 9: Private School Students)

C. Parent Revokes Consent for Special Education Services

Parents may, at any time, revoke consent for special education services in writing. However, the IDEA does not give parents the ability to revoke consent for a particular service; the revocation is in its entirety. Also, 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 (OSDE, Form 8) 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 IEP 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 may request, at any time after revocation, for the child to be reenrolled in special education. The student should be treated as any student in the Child Find process. The request is treated as an initial evaluation.

Section 2. Graduation

Graduation means meeting LEA and state requirements for receipt of a regular high school diploma. The IEP team determines the course of study for each student individually. Students

with disabilities are required to meet state graduation requirements. IEP teams do not have the authority to change graduation requirements.

A. IEP requirements regarding graduation

1. Determine whether the student meets all State or local requirements to be eligible to graduate from high school and the anticipated graduation date.

2. Determine the course of study, on an individual basis, as either the Achieving Classroom Excellence Act (ACE) College Preparatory/Work Ready Curriculum or the Core Curriculum no later than the first semester of the 9th grade year.

3. Students must also meet State testing requirements.

4. Students participating in the Oklahoma's Promise must complete the ACE College & Career Ready Curriculum.

5. The IEP team determines the student has completed all graduation requirements, including transition activities or services.

B. Graduation Ceremonies

A student with disabilities who completes his or her secondary program through meeting graduation requirements or criteria established on his or her IEP will be afforded the same opportunity to participate in graduation ceremonies and activities as students without disabilities.

Section 3. Transcripts and Diplomas

A. Transcript

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.

B. Diploma

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.

Section 4. Grades, Class Ranking, and Honor Roll

1. A student in special education may be given a failing grade because of refusal to complete work within the student's capability and/or poor attendance.

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

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CHAPTER 7: REEVALUATION

Legal citations

Section	Topic	Federal Regulations 34 CFR § 300	Oklahoma Statute & Regulations	OSEP Letters & Policy Guidance
1.	**Reevaluation and Continuing Eligibility**	.303-.305		(2000-2007) Reevaluations *see disclaimer
A.	Purpose of the Reevaluation	.305		
B.	Need for the Reevaluation	.303		
2.	**Parent Rights**	.500; .305		
3.	**Review of Existing Data**	.305		(2008) (1) SLD (2)IEE & RtI
A.	No Additional Data Needed			
B.	Additional Data Needed			
4.	**Written Notice/Parental Consent**	.9; .300; & .503		(2009) (1)Evaluations & ACT/SAT
A.	Written Notice	.503		
B.	Request for Consent	.300		
C.	Failure to Respond or Provide Consent	.300		
5.	**Reevaluation**	.303-.305		(2010) (1)Consent Requirements (2)IEEs (3)Criteria for an IEE
A.	Members of the Reevaluation Group	.305		
B.	Parent Participation	.305; .501		
C.	Conducting the Reevaluation	.303-.305		
6.	**Determining Continued Eligibility**	.305		
A.	Documenting Continued Eligibility	.306; .311		
7.	**Reevaluations for a Child Identified as Developmentally Delayed**	.8		(2011) (1)Review of data & Individualized assessment(s) (2)OSEP 11-07 (RtI) (3)IEE Results (2012) (1)Letter: Various Topics (2013) (1)FBAs

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 the Reevaluation

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

1. If the student continues to be a student with a disability;

2. The educational needs of the student;

3. The present levels of academic achievement and functional performance (related developmental needs) of the student;

4. Whether the student continues to need special education and related services; and

5. 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. Need for Reevaluation

A reevaluation must be conducted if the Local Education Agency (LEA) determines that the special education service(s) needs, including improved academic achievement and functional performance of the student, warrant a reevaluation, or, if the student's parent or teacher requests a reevaluation. A reevaluation must be conducted before an LEA determines a student is no longer a student with a disability. However, a reevaluation should not occur more than once a year, unless the parent and the LEA agree otherwise.

If a parent has requested a reevaluation, the LEA must ensure that the group has conducted the evaluation process based on specific concerns. If, through a review of existing data, the group determines that no additional data are needed the LEA must provide notice to the parents of their rights to request additional assessments. 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.

There are 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 is required for the change of placement;

2. Due to exceeding the age of eligibility for a FAPE, (on the 22nd birthday), Written Notice is required; or

3. When the LEA and parent mutually agree that a reevaluation is not needed.

Section 2. Parent Rights

The LEA must provide parent(s) a copy of the *Parents Rights in Special Education: Notice of Procedural Safeguards*.

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)

Whenever a request for a reevaluation occurs, the LEA staff must conduct a review of existing data and utilize OSDE Form 3 (RED) for documentation. This data includes evaluations and information provided by the parents, current classroom-based, local, 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 all data will be collected within the evaluation timeline and parental consent obtained for additional assessments. The procedures used to collect the data should be described on the Parental Consent (OSDE Form 4).

Section 4. Written Notice/Parental Consent

A. Request for 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 (OSDE Form 8) 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 to Provide Consent

The LEA must make reasonable attempts to obtain consent from the parents to conduct the reevaluation. Reasonable attempts are defined as at least two contacts by two different methods (phone calls, letters, visits, email, etc.). The LEA should 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 (refuses) consent or fails to respond to a request to provide consent for a reevaluation, the LEA may, but is not required to, pursue the reevaluation by utilizing mediation or by requesting a due process hearing.

Section 5. Reevaluation

A. Members of the Reevaluation Group

The members of the group that conduct the reevaluation and determine continued eligibility must include:

1. Parent(s)
2. General education teacher(s)
3. Special education teacher
4. A representative of the local education agency who:
    a. Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of child with disabilities,
    b. Is knowledgeable about the general education curriculum, and
    c. Is knowledgeable about the availability of resources of the public agency.
5. An individual who can interpret the instructional implications of reevaluation results.
6. 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 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 has a record of at least 2 reasonable attempts to schedule meetings at a mutually agreed on time and place. In these cases, Written Notice to Parents (OSDE Form 8) 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 public agency must administer such assessments and other evaluation measures as needed to produce the data.

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:

1. Evaluation refers to procedures used to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs. Prior to the initial placement of a child with a disability, a full and individual evaluation must

be accomplished in all areas related to the suspected disability of the child 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 child'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.**

2. Assessment is integral to the evaluation process and includes 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 also include observations, interviews, medical reports, data regarding the effects of general education accommodations and interventions, and other formal or informal 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 group, including the parent, to understand the student's strengths and weaknesses and how the student is progressing in the general curriculum in addition to information about the student's disability and needs for special education.

As is the case in all reevaluations, 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 group 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 3, Section 6. Evaluation Considerations for Eligibility, for a complete discussion of the eligibility considerations**.**

Section 7. Reevaluations for a Child Identified as Developmentally Delayed

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.

LEAs are allowed to identify students ages 3 through 9 as a student with a developmental delay (DD). Federal regulations clarify that the use of the category of developmental delay is optional for the LEA and may be used for students ages 3 through 9. By July 1, the LEA must declare whether they have chosen to use the term “developmental delay” on their LEA Agreement with the OSDE.

If a student ages 3 through 9¸ was determined eligible as a child with DD, a reevaluation 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.

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CHAPTER 8: CHARTER SCHOOLS

Legal Citations

Section	Topic	Federal Regulations 34 CFR § 300	Oklahoma Statute & Regulations	OSEP Letters & Policy Guidance
1.	**Definition and Parent/Student Rights**		70 O.S.§§3-132(C)	(2000-2005) Charter Schools *see disclaimer
A.	Definition of Charter or Virtual Charter Schools	.7		
B.	Rights of Charter School Students and Their Parents	.209		
2.	**Responsibility for Services**	.2		
A.	Charter Schools Sponsored by an LEA	.209		
B.	Charter Schools Designated as LEAs	.209		
3.	**Essential Components of a Special Education Program**	.209		
5.	**Funding**	.2		
A.	State Funds	.209		
B.	Federal Funds		70 O.S.§76.787	
C.	Establishment and Funding for a New Charter School		(OAC)210:40-87-5	
D.	Sample Template/Free and Reduced Lunch	.704		
E.	Sample Template/Child Count	.705		
F.	Expending Funds	.705		

Section 1. Definition and Parent/Student Rights

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.

A. Definition of Charter or 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 nonprofit, 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). A charter school will comply with all federal and State laws, relating to the education of students with disabilities, in the same manner as an LEA.

B. Rights of Charter or Virtual Charter School Students and Their Parents

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 No Child Left Behind Act (NCLB); Section 504 of the Rehabilitation Act (Section 504); the Americans with Disabilities Act (ADA); and the Family Educational Rights and Privacy Act (FERPA). Oklahoma law specifically states that charter schools cannot discriminate against any student on any basis prohibited by federal, State, or local law. Under Oklahoma law, the charter of an authorized charter school outlines specific mission statements, policies and procedures or practices. 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 2. Responsibility for Services

A. Charter and Virtual 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:

1. 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.

2. 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).

3. The charter school will participate in all monitoring activities conducted by the OSDE.

4. 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.

B. Charter and Virtual Charter Schools Sponsored by One of the Entities Listed in Section 1.A.2

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:

1. Participate in all monitoring activities conducted by the OSDE; and,

2. 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.

Section 3. Essential Components of a Charter and Virtual Charter School Special Education Program

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. The charter school must have in effect policies, procedures, and practices that are consistent with State policies, procedures, and practices in special education. Recommended areas to be addressed include the following:

1. Nondiscriminatory enrollment procedures.

2. 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 as follows:

    a. 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;
    b. Conduct Child Find activities and evaluations;
    c. Develop, review, and revise IEPs in accordance with State and federal law;
    d. Meet least restrictive environment (LRE) requirements;
    e. Implement the IDEA discipline procedures; and
    f. Protect student and parent rights.

3. 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.

4. 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.

5. 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.

6. 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.

7. Provisions for notifying the LEA of the charter school in the event that a formal complaint or due process hearing request is filed by or on behalf of a charter school student.

Section 4. Funding

A. State Funds

The OSDE will make an apportionment of State allocations to each charter school (or a virtual charter school) based on attendance figures. The OSDE will pay State funds directly to charter schools using the funding formula described in State law. IDEA requires that charter schools receive Part B funds on the same basis as any other school.

B. Federal Funds

1. The OSDE disburses federal flow-through funds to all LEAs, including charter schools.

    a. In accordance with IDEA Part B, LEAs must first be provided a base amount equal to the amount the LEAs would have received in school year 1999-2000 had the OSDE-SES flowed 75 percent of the state grant award to LEAs. Effective July 1, 2009, each State must distribute funds to eligible LEAs, including public charter schools that operate as LEAs.

b. Of any additional funds distributed to LEAs, 85 percent is distributed on a pro rata basis according to public and private elementary and secondary school enrollment, and 15 percent on a pro rata basis according to the number of students living in poverty (defined as the free and reduced lunch count within the LEA).

2. Charter schools (including virtual charter schools) must be in full compliance with the IDEA Part B and Oklahoma laws.

   a. A charter school sponsored by a board of education of an LEA is considered an LEA for the purposes of federal funding. Both federal allocations and federal payments will be provided **directly** to each charter school sponsored by a local board of education of an LEA.

   b. Federal allocations and federal payments for charter schools sponsored by a university will be computed as if the charter was an LEA, but payments will be made to the sponsoring university.

C. Establishment and Funding for a New Charter School

Each LEA (including charter and virtual charter schools) must make available, upon request, information needed by the State Education Agency (SEA) to meet the requirements of the IDEA. In addition, each LEA must, upon request, provide information to the public regarding the eligibility of the LEA for the IDEA Part B funds. The LEA must also cooperate in any efforts to aid in the transfer of records for migratory students. The LEA must assure that it will make available to parents of students with disabilities and to the general public all documents relating to the eligibility of the agency under the IDEA Part B.

The ESEA definition of charter school, defines a charter school as a public school that, in accordance with a specific State statute authorizing the granting of charters to schools, a charter school is exempted from significant State or local rules that inhibit the flexible operation and management of public schools, but not from any rules relating to the other requirements of this paragraph.

A charter school that is opening for the first time or significantly expanding its enrollment must notify the OSDE in writing, at least **120 days** in advance of the date the charter school is scheduled to open or expand. In addition, the charter school must:

1. Meet with an OSDE IDEA Part B Compliance, Data, and Finance (CDF) Specialist for technical support. Contact the OSDE-SES at (405) 521-3351 to schedule an appointment.

2. Establish its eligibility to receive funds under the particular program and comply with all program requirements. Please see the current *Special Education Funding Manual for IDEA Part B* and other important information here.

3. Provide the OSDE with any data or information available to the charter school that the State may reasonably need to **estimate** the amount of funds the charter school will be eligible to receive when it actually opens or expands. The charter school will:

   a. Provide estimated student free and reduced lunch count age 3-21.
   b. Identify each **free/reduced lunch** student (count) from each sending county and LEA.
   c. Provide student population age 3 – 21.
   d. Identify each student (count) from each sending county and LEA.
   e. Provide IDEA student population age 3 – 21.
   f. Identify each IDEA student (count) from each sending county and LEA.

D. Sample Template/Free and Reduced Lunch

Site Name: _____

3 – 21 Free Lunch Enrollment	3 -21 Reduced Lunch Enrollment	Total Site Enrollment 3 – 21 Population

IDEA Part B - Please enter data for free and reduced lunch counts

If the Charter School LEA is not using the free or reduced lunch program please attach documentation on how the LEA determined the poverty data.

Sending*County Name	Sending* LEA Name	Free lunch count (3-21) from Sending County & LEA	Reduced lunch count (3-21) from Sending County & LEA
Total (should match 3-21 Free and Reduced Lunch Enrollment Count from page 7.)			
*Sending county and LEA is the county and LEA that the student would have attended.			

*Once a charter school actually opens or expands, **it must provide** actual enrollment and eligibility data to the State.

E. Sample Template/Child Count

Site Name: _____

Total Site Enrollment 3-21 Population	Total Site Enrollment of children on Individual Education Programs (IEP)

IDEA Part B - Please enter data for Child Count

If the Charter School LEA has students who are receiving Special Education services or related services and are currently on an IEP, please enter the student information below:

Student Name	Student Birthdate	Sending* County Name	Sending* LEA Name

A new charter school (including a new virtual charter school) must furnish the OSDE, Special Education Services (SES) with the following information:

1. Is the charter school created by a developer as a public school, or is adapted by a developer from an existing public school, and is operated under public supervision and direction? Please indicate which criteria apply to your charter school.

2. Does the charter school operate in pursuit of a specific set of educational objectives determined by the school's developer and agreed to by the authorized public chartering agency? Please briefly describe the educational objectives.

3. Does the charter school provide a program of elementary or secondary education, or both?

4. Is the charter school nonsectarian in its programs, admissions policies, employment practices, and all other operations, and is not affiliated with a sectarian school or religious institution?

5. Does the charter school charge tuition?

6. Does the charter school compile with the Age Discrimination Act of 1975, Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, and Part B of the Individuals with Disabilities Education Act? Is this expressly stated in the Charter School policies?

7. How does the charter school, a school to which parents choose to send their children, admit students if more students apply for admission than can be accommodated?

8. Does the charter school agree to comply with the same Federal and State audit requirements as do other elementary and secondary schools in the State, unless such requirements are specifically waived for the purpose of this program?

9. Does the charter school meet all applicable federal, State, and local health and safety requirements?

10. Does the charter school operate in accordance with State law?

11. Does the charter school have a written performance contract with the authorized public chartering agency in the State that includes a description of how student performance will be measured in charter schools pursuant to **State assessments** mutually agreeable to the authorized public chartering agency and the charter school?

A charter school must meet each element of this definition in order to receive funds under a covered program in accordance with the final regulations.

F. Expending Funds

Each LEA receiving IDEA Part B funds must expend those funds in accordance with the federal regulations which appear in the *Special Education Funding Manual for IDEA Part B*. The *Special Education Funding Manual for IDEA Part B* is a technical assistance document for use

by LEAs in implementing the funding requirements of the IDEA Part B. Within the *Part II, IDEA Part B LEA Application for Federal Special Education Funds*, each LEA receiving funds must:

a. Assure that those funds are used only to pay the excess costs of providing special education and related services to students with disabilities;
b. Assure that the funds are used to supplement, not supplant, State and local funds;
c. Must maintain time and effort reports for all employees paid with federal funds;
d. Budget IDEA Part B funds according to the procedure set forth in the *Special Education Funding Manual for IDEA Part B*; and
e. Know that all IDEA Part B funds are available on a claims reimbursement basis only.

Send all required documentation as specified to:

Oklahoma State Department of Education
ATTN: Dr. Rene Axtell, Assistant Superintendent
Special Education Services, Suite 412
2500 North Lincoln Blvd.
Oklahoma City, OK 73105-4599

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CHAPTER 9: PRIVATE SCHOOL STUDENTS

Legal Citations

Section	Topic	Federal Regulations 34 CFR § 300	Oklahoma Statute & Regulations	OSEP Letters & Policy Guidance
1.	**Private School Students**	.2; .129-.148	(OAC)565:10-1-2	(2000-2007) Children in Private Schools *See Disclaimer (2011) (1)Unilateral Placements (2)Offer of a FAPE (3)Unilateral Placement & FAPE (2012) (1)Preschool LRE (2013) (1)Equitable Participation & Parents who live outside the U.S.
A.	Definitions of Private Schools	.13; .36; .130		
B.	Definition of Offering a FAPE	.145-.147	70 O.S.§21-101	
2.	**Definitions of Private School Placements**		70 O.S.§3-104(10)	
A.	Definition of Voluntary Enrollment by a Parent	.130		
B.	Definition of LEA Placement	.145		
C.	Definition of Unilateral Placement	.148		
D.	Definition of Students not Considered Parentally Placed			
3.	**LEA Responsibilities for Parentally Placed Private School Students**			
A.	LEA Consultation with Private School Representatives	.134-137		
B.	Compliance with the Consultation Process	.135; .136		
C.	Child Find Requirements	.134 & .131		
D.	Annual Count of Eligible Students	.132	(OAC)210:10-17-1	
E.	Provision of Services		(OAC)210:15-13-5	
F.	Dispute Resolution	.140		
G.	Private Schools and IDEA B Funding	.133		
H.	Carryover of Unspent			

I.	Funds Maintenance of Effort for the Proportionate Share	.133-134 .133		
4. **A.** **B.** **C.**	**Lindsey Nicole Henry Scholarship** LNH Scholarship Calculation Criteria Application Procedure LNH Scholarship & Child Count		(OAC)210:15-13-7 70 O.S.§13-101.2	

Section 1. Private School Students

The Individuals with Disabilities Education Act (IDEA) includes the following:

1. Statutory and regulatory language, which states that students who are voluntarily enrolled in private schools are not entitled to all of the same services, including the right to a free appropriate public education (FAPE), as public school students; and

2. The legal requirements that come into play when a parent unilaterally enrolls his or her child in a private school and asks the Local Education Agency (LEA) for administrative remedies.

A. Definitions of Private Schools:

1. Elementary school means a nonprofit institutional day or residential school, including a public elementary charter school, which provides elementary education, as determined under State law.

2. 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.

3. 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.

B. Definition of Offering a FAPE:

An LEA is "offering a FAPE" when the IEP team has convened and developed a comprehensive IEP for IDEA eligible students that identifies the special education and related services appropriate for the child. LEA personnel may state on the IEP that it reflects the LEA's offer of services to be provided to the student <u>upon his or her enrollment or reenrollment in the LEA</u>. The only situation when the LEA need not offer FAPE to the student – as described above –is when the parent plainly states that he or she does not want the team to meet and has no interest in any services the LEA might offer and will not consider enrolling their student in the LEA.

Section 2. Definitions of 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.)

A. Definition of Voluntary Enrollment by a Parent

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.

B. Definition of 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.

C. Definition of an 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. The parents may attempt to seek reimbursement for the costs associated with the placement by requesting a due process hearing. All students who are placed by a parent when FAPE is an issue are voluntarily enrolled in a private school. Specific information regarding a parent's request for administrative remedies through dispute resolution are discussed in Chapter 13: Dispute Resolution**.**

Section 3. LEA Responsibilities for Parentally Placed Private School Students

A. LEA Consultation with Private School Representatives

To ensure timely and meaningful consultation, an LEA will consult with private school representatives and representatives of parents of parentally placed private school students with disabilities during the design and development of special education services for the students. This may be done in coordination with Title 1 requirements for consultation. The LEA in which the private school is located has the responsibility for consultation. The consultation process must include:

1. Child Find: The Child Find process and how parentally placed private school students suspected of having a disability can participate equitably, including how parents, teachers, and private school officials will be informed of the process.

2. Proportionate Share of Funds: The proportionate amount of federal funds available to serve parentally placed private school students with disabilities under this subparagraph are determined by a specific calculation rubric. Refer to Section G, Private Schools and IDEA Part B Funding, of this chapter for information regarding the calculation of the proportionate share of funds.

3. Determination of Special Education and Related Services: Given the amount of funds to be dedicated by the LEA, the discussion will include the consideration of how, where, and by whom special education and related services will be provided for parentally placed private school students with disabilities, including:

    a. Types of services, including direct services and alternate service delivery mechanisms;

    b. How such services will be apportioned if funds are insufficient to serve all students;

c. How and when these decisions will be made; and

d. How the provided services will be evaluated.

4. Ongoing Communication: Clarify how the private school and the LEA will operate throughout the school year to ensure that parentally placed private school students with disabilities identified through the Child Find process can meaningfully participate in special education and related services. Annual consultation is not required to make these decisions. The LEA determines the period between consultations based on changing circumstances within the LEA, such as significant changes in the total amount of funds to be expended and/or the number and location of private school students with disabilities.

5. Written Affirmation: When timely and meaningful consultation has occurred:

   a. The LEA will obtain a written affirmation signed by the representatives of participating private schools;

   b. If the representatives do not provide the affirmation within a reasonable period of time the LEA will forward the documentation of the consultation process to the Oklahoma State Department of Education (OSDE).

6. LEA Decisions: Following consultation with the private school representatives, the LEA will make final decisions concerning items a-d addressed above in number 3.

7. Written Explanation by the LEA Regarding Services: If the LEA disagrees with the views of the private school officials on the provision of services or the types of services, whether provided directly or through a contract, the LEA will provide to the private school officials a written explanation of the reasons why the LEA chose not to provide services directly or through a contract.

B. Compliance with Consultation Process

1. General Compliance: A private school official has the right to submit a complaint to the OSDE if either the LEA:

   a. Did not engage in consultation that was meaningful and timely; or
   b. Did not give due consideration to the views of the private school official.

2. Procedure for Complaint:

   a. If the private school official wishes to submit a complaint, the official will provide the basis of the complaint to the OSDE.
   b. The LEA will forward the appropriate documentation to the OSDE.
   c. If the private school official is dissatisfied with the decision of the OSDE, the official may submit a complaint to the Secretary of the US Department of Education by providing the basis of the complaint against the LEA to the Secretary, and the OSDE will forward the appropriate documentation to the Secretary.

C. Child Find Requirements

The LEA must have an ongoing Child Find system to locate, identify, and evaluate all students with disabilities ages 3 through 21 who are educated within the LEA's geographic boundaries. This includes students who have been placed by a parent in a non-profit, private elementary or secondary school (including a religious school) or home schooled students located in the LEA regardless of the student's state or local residency.

The Child Find process will be designed to encompass the following:

1. The Child Find process will ensure parentally placed private and home school students with disabilities will receive referral and appropriate evaluation comparable to public school students.

2. The Child Find activities for private school students will be similar to Child Find activities for public school students, which include the evaluation process within comparable timelines.

3. The LEA will consult with private school representatives and representatives of parents who place their children in private schools regarding the Child Find procedures.

D. Annual Count of Eligible Students

The LEA must conduct an annual count on October 1 and report to the OSDE the number of private school students evaluated, the number found eligible and the number who are provided with special education services. This includes 3-5 year olds identified through the Child Find process who are enrolled in non-profit, private schools that meet the definition of an elementary school. This count will be 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.

E. Provision of Services

Provision of services applies to all eligible students who attend non-profit, private schools within the LEA's geographical boundaries regardless of where the students reside. Parentally placed private school students with disabilities do not have an individual right to receive some or all of the special education services that the student would receive if enrolled in a public school. Services offered to parentally placed private school students are determined through the LEA and private school consultation process.

1. <u>LEA Responsibilities:</u>

    a. Private school students with disabilities may receive a different amount of services than public school students with disabilities based upon the consultation process between the private school and LEA; they are not entitled to every service or the amount of service that they would receive if enrolled in public school.

b. The LEA is required to offer a FAPE to private school students who reside in their LEA conditioned on the parent enrolling their student in the LEA, including when the student attends a private school outside of the LEA boundaries unless the parent makes clear their intention to keep their child in the private school.

2. Eligibility for Services: If an evaluation group determines that a student needs special education services:

   a. The LEA of residence makes FAPE available through the development of an IEP and upon enrollment in an LEA; or

   b. If the parent chooses not to enroll the student in the LEA and dependent upon the agreement between the private school and the LEA plan for services, an Individualized Services Plan (ISP) may be developed for the provision of services. The meeting will include a representative of the private school to develop an ISP.

   c. Any services the LEA provides to a private school student must be in accordance with an individualized services plan (ISP).

3. Individualized Services Plan (ISP) Development:
   The ISP describes the specific special education services that will be provided to the student in light of the determinations that have been made by the LEA. To the extent appropriate, the LEA must initiate and conduct meetings to develop, review, and revise ISPs in accordance with the following requirements:

   a. 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.

   b. An ISP is in effect at the beginning of each school year and accessible to each person responsible for its implementation.

   c. ISPs are reviewed and revised at least annually regarding student progress toward goals and in the general education curriculum.

   d. 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.

   e. 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.

f. 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.

g. If transportation is necessary for a private school student to benefit from or participate in the 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.

h. Special education services provided to parentally placed private school students with disabilities, including materials and equipment, will be secular, neutral and non-ideological.

i. 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.

j. 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.

F. Dispute Resolution

Due process hearings are available to parents of private school students only on the issue of Child Find and evaluation. Parents may challenge decisions regarding the provision of services by filing a formal complaint with the OSDE.

G. Private Schools and IDEA Part B Funding

The LEA must spend a proportionate share of both Section 611 federal grants (for students aged 3-21) and Section 619 grants (for children aged 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.

H. 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.

I. 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 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 2011. 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

1. 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 generated by that student for the applicable school year.

2. 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.

3. The maximum scholarship amount is calculated by the Oklahoma State Board of Education for each year the student is participating in the scholarship program.

4. 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.

5. 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.

6. The parent or legal guardian will restrictively endorse the warrant to the private school for deposit into the account of the private school.

7. 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. 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 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:

   - Is not in violation of the requirement to make available a FAPE to the child for its failure to provide services to the child;

   - Will treat the child as a nondisabled student for disciplinary purposes; and

   - 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.

C. LNH Scholarship & Child Count

Unless the IDEA eligibility is reestablished for an LNH student, the student is not to be listed on the LEA's Child Count as a child with a disability and is not eligible for services under an ISP, due to required revocation of consent upon acceptance of the LNH scholarship.

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CHAPTER 10: IMPROVING RESULTS

Legal Citations

Section	Topic	Federal Regulations 34 CFR § 300	Oklahoma Statute & Regulations	OSEP Letters & Policy Guidance
1.	**Special Education Data and Reporting**	.601; .640-646		(2000-2007) (1)SEA Authority (2)Disproportionality *see disclaimer (2008) (1)OSEP Memorandum 09-02 (2012) (1) Monitoring
A.	Data Collection	.601; .641		
B.	Data Reporting	.602; .642		
C.	District Data Profiles	.602; .641		
D.	Levels of Determination	.601		
E.	Summary of Significant Disproportionality	.646		
F.	Other Uses of Special Education Data	.600 .602		
2.	**Early Childhood Outcomes**	.640-.646		
A.	ECO Rating			
B.	Child Outcomes Summary Form (COS)			
3.	**Improving Results**	.600-.609		
A.	Critical Questions Framework			
B.	Oklahoma's Tiered System of Monitoring			
C.	Tiered Activities			

Section 1. Special Education Data and Reporting

A. Data Collection

Local Education Agencies (LEAs) report data through the **School District Reporting Site/Special Education – Child Count**. There are two major data collection efforts for Special Education: the **Child Count** and the **End of Year Data Report**.

- Child Count
  - Point in time, October 1st
  - Snapshot of a school day
  - Collected in October by the LEAs
- End of the Year
  - Period of time, July 1st to June 30th
  - Events and activities throughout the school year
  - Collected at end of school year by the LEAs

The Oklahoma State Department of Education, Special Education Services (OSDE-SES) offers data training twice per year and includes webinars, updated instructions, and technical assistance. The data system has been developed with many data checks and LEAs have many opportunities to maintain and verify the accuracy of their data. LEA staff can edit their data during the "open" period (until the data entry period is closed). The superintendent must "certify" the accuracy of reports after each data-entry period. Any changes afterwards will result in a penalty for inaccurate data. The OSDE-SES reviews data submissions for errors and anomalies and will contact LEAs for corrections after each major data-entry period. In addition, the OSDE-SES staff is always available for LEAs requesting technical assistance to complete their data requests.

There are several other sources of data that are used for reporting Special Education activities.

- Accountability and Assessment
- Oklahoma Cost Accounting System (OCAS)
- WAVE (Student Information System)
- Dispute Resolution activities
- Parent surveys
- Surveys for post-school outcomes

B. Data Reporting

The data collected from these sources are used to report to the Office of Special Education Programs (OSEP) as outlined in the IDEA. The individual tables submitted to OSEP throughout the year include:

- Child Count demographic information
- Child Count disability information
- Educational Environments

- Maintenance of Effort and Coordinated Early Intervening Services
- Personnel who provide service to students on an Individual Education Program (IEP)
- Exiting information
- Discipline events
- Dispute Resolution
- Assessment information

Each February, the OSDE-SES submits an **Annual Performance Report** (APR) and, if necessary, a revised **State Performance Plan** (SPP). These documents show the progress made in the previous school year, identify strengths and weaknesses, and explain how the State is addressing findings of noncompliance. OSEP has required that the states report on the following indicators:

- Graduations and Dropouts
- Assessment participation and results
- Least restrictive environment (LRE)
- Preschool Settings
- Child Outcomes for students in Early Childhood levels
- Parent Involvement
- Disproportionate Representation
- Timeliness of evaluation and eligibility
- Part C to B Transition
- Secondary Transition
- Post School Outcomes
- General Supervision
- Complaints and Dispute Resolution
- Data accuracy and timeliness

C. District Data Profiles

According to the Individuals with Disabilities Education Act (IDEA), states are required to report LEA performance on the indicators in the **State Performance Report** (SPP) and **Annual Performance Report** (APR) annually. **LEA Data Profiles** accomplish this task for Oklahoma.

The **District Data Profiles** for Oklahoma report the status of an LEA's performance on Indicators 1-15 and Indicator 20. These indicators include measurable and rigorous annual compliance and performance targets. All measurable and rigorous annual compliance targets have been established by the U.S. Department of Education (USDE), Office of Special Education Programs (OSEP) at 100% or 0%, depending on the indicator. Broad stakeholder input was obtained in the development of Oklahoma's measurable and rigorous annual performance targets. LEA percentages for each indicator are compared to the targets determined.

In addition to the profiles being sent to the LEAs, IDEA requires that the reports are made available to the public through "broad dissemination," such as on the State Educational Agency Web site. The OSEP has identified a broad audience for the reports which include "parents, policymakers, advocates, school board members, service providers, and others."

District Data Profiles report information as percentages of students and not as individual students. For profiles posted on the web for public reporting, where the group size is 10 or less, the percentage will not be reported but denoted with asterisks (the results will be included on the copy of the **District Data Profile** the LEA receives). **District Data Profiles** are used during monitoring compliance reviews, desk audit compliance reviews, LEA determinations, and reporting to the USDE.

D. Levels of Determination

IDEA also requires that States analyze the data collected for the indicators and identify a **Level of Determination** for each LEA. These are:

- Meets Requirements
- Needs Assistance
- Needs Intervention
- Needs Substantial Intervention

According to the guidance from OSEP, the State must consider the following in developing determinations for an LEA:

- Performance on compliance indicators;
- Whether data submitted is valid, reliable, and timely;
- Uncorrected noncompliance from other sources; and
- Any audit findings.

In addition, a State could also consider:

- Performance on performance indicators; and
- Other information from findings.

IDEA does not require the State to report to OSEP or to the public. The State is required to notify the LEAs of their determination.

Through stakeholder input over several meetings, the following indicators and calculations were identified for Oklahoma LEAs.

E. Summary of Significant Disproportionality

LEAs also receive a **Summary of Significant Disproportionality** to help them identify areas of overrepresentation of race and ethnic groups in special education, discipline, and disability categories. According to the IDEA, a state is required to annually use a quantitative approach to identify significance. With the assistance of a group of stakeholders, the OSDE-SES developed a process and guidelines for identifying LEAs that are significantly disproportionate. OSDE-SES identifies significant disproportionality in ANY of the 4 categories of analysis:

- **Identification of disabilities** – compare race/ethnic groups in special education and general education.
- **Identification of a specific disability** – compare race/ethnic groups within a disability category, for example: hearing impairment (HI), autism, specific learning disability (SLD), etc.
- **Education settings** – compare race/ethnic groups within learning environments. Oklahoma will not use the educational environment of students who received special education and related services in separate schools and residential facilities for disproportionality calculations.
    - 40% to 79% in general classroom
    - Less than 40% in general classroom
    - Separate schools and facilities
- **Disciplinary actions** – compare race/ethnic groups in special education and general education. Further investigation will examine if there are any discrepancies for a specific race/ethnic group in the LEA for type of discipline incidence, duration of discipline, and type of discipline (e.g., suspensions and expulsions).

To determine significant disproportionality, the OSDE-SES uses data collected through the Child Count and the End of Year Data Report. The following lists the data needed to complete the analysis:

- Child Count
    - LEA breakdown of race/ethnicity and child count special education
    - LEA breakdown of race/ethnicity for disability categories
    - State breakdown of race/ethnicity enrollment for each LEA general education
- Educational environment
    - LEA breakdown of race/ethnicity and environment for each LEA special education
    - LEA breakdown of race/ethnicity for disability categories
    - State breakdown of race/ethnicity and environment for each LEA special education

- Discipline
    - LEA breakdown of race/ethnicity and discipline for special education
    - LEA breakdown of race/ethnicity for disability categories.
    - State breakdown of race/ethnicity enrollment for each LEA general education

Oklahoma uses both a risk ratio (RR) and a weighted risk ratio (WRR) in determining areas of significant disproportionality. The RR measures the risk of a group compared to another group and the WRR looks at the same risk but calculates it using the demographic breakdown of each LEA. By utilizing both a RR and a WRR, OSDE-SES has applied all allowable scenarios to ensure fair and equitable results. To be identified as significantly disproportionate, the LEA must have a WRR and a RR that is 4.5 times greater than the other groups for 3 consecutive years.

Guidelines to calculate and analyze significant disproportionality have been identified as:

- At least 10 students in race/ethnic subgroup
- At least 10 in comparison group
- LEAs that do not meet the criteria to use risk ration and weighted risk ratio will be analyzed at an LEA level and an assurance statement will be required.
- There must be at least 2 racial/ethnic groups for comparison. Racial/ethnic groups used for this analysis include the seven race/ethnicity groups.

Significant Disproportionality is identified when an LEA meets the following criteria for 3 consecutive years:

- A risk ratio over 4.5 in any area of analysis, and
- A weighted risk ratio over 4.5 in any area of analysis.

LEAs identified as significantly disproportionate will be required to:

- Review and, if appropriate, revise policies, procedures and practices;
- Reserve the maximum amount of IDEA funds (15%) to provide comprehensive coordinated early intervening services; and
- Report to the public on the revision of those policies, procedures, and practices.

LEAs identified with significantly disproportionality will be required to reserve 15 percent of their IDEA funds for **Coordinated Early Intervening Services** (CEIS). LEAs that are required to use the full 15 percent for CEIS will not be able to take advantage of any of the flexibility for local maintenance of effort (MOE) reduction that would otherwise be available under IDEA section 613(a)(2)(C).

CEIS are services provided in Oklahoma to students in pre-kindergarten through grade 12 (with a particular emphasis on students in kindergarten through grade 3) who are not currently identified

as needing special education or related services, but who need additional academic and behavioral supports to succeed in a general education environment.

The IDEA regulations require each LEA that implements CEIS to report to the State on the number of students who received CEIS and the number of those students who subsequently received special education and related services under Part B during the preceding two-year period. This information is collected on our End of Year Report that occurs in the spring.

F. Other Uses of Special Education Data

The reporting described above is required by OSEP; however, OSDE-SES also uses the data for other activities. The level of determinations report identifies LEAs in need of support and technical assistance based on their results. All information requests from sources other than LEAs have to be submitted through the agency Open Records Request process. This process determines that all requests are reviewed and results are always prepared with consideration of protecting student identification and adhering to FERPA.

Section 2. Early Childhood Outcomes (ECO)

LEAs are required to report outcomes data for children served through the IDEA Early Childhood Program (619).

The 3 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

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.

1. All students with 6 months or more of IEP services must have an ECO Entry Rating.
2. All students with 6 months or more of IEP services must have an ECO Exit Rating.
3. An ECO Entry Rating on all 3 early childhood outcomes is required to be completed within 30 days of the initial Individualized Education Program (IEP).
4. The ECO Exit Rating is completed before the student's 6th birthday or as the student exits the program.

B. Child Outcomes Summary (COS)

The child outcomes 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 3 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 report 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.

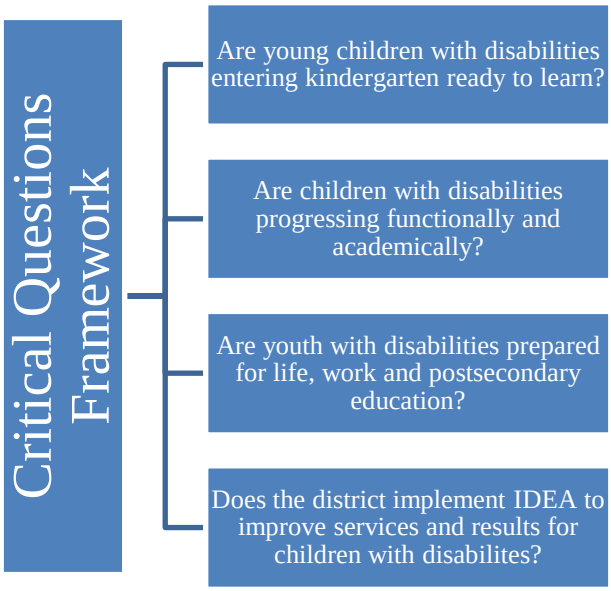
The service provider completing the Entry and Exit COSs should explain ECOs to the family and give them an opportunity to participate in the ratings for their child. Whether or not families choose to participate in the rating discussion, professionals must be able to explain why the rating is being done and what it means. The COS results are either entered into the Special Education Automation System (SEAS) or the Special Education Child Count System.

Role of the Family

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 3. Improving Results

The OSDE-SES maintains the responsibility for general supervision of compliance with federal and State requirements for providing special education and related services to students with disabilities in accordance with the Individuals with Disabilities Education Act (IDEA). The OSDE-SES focuses on improving educational results and functional outcomes for all students with disabilities. The OSDE-SES also ensures that LEAs meet the program requirements under the IDEA Part B, with a particular emphasis on those requirements that are most closely related to improving educational results for students with disabilities. The OSDE-SES provides activities (e.g., technical assistance, statewide dissemination of information, training, and guidance) to ensure that teachers, related service personnel, and administrators in all LEAs are fully informed about their responsibilities for implementing a free appropriate public education (FAPE).



A. Critical Questions Framework

Oklahoma's system of general supervision includes a tiered monitoring system to provide oversight in the implementation of IDEA requirements, related requirements, and performance on State Performance Plan (SPP) at the local level. A tiered system of monitoring and technical assistance (TA) supports LEAs. Performance of LEAs relative to other LEAs and to statewide data is determined using data on priority indicators, and will be used to determine the appropriate level of monitoring and technical assistance. Multiple data sources are used to monitor special education programs for continuous examination of performance for compliance and improvement. These data sources include the Oklahoma Special Education Child Count System, A-F Grading System, Communication Logs, Complaint Logs, other qualitative data, and critical and/or special investigative audits and findings related to special education.

Oklahoma's tiered monitoring system for continuous improvement is designed to:

1. Identify areas of compliance and noncompliance from a variety of sources;

2. Assist LEAs in correcting identified noncompliance with the IDEA Part B requirements and Special Education policies and procedures within a timeframe that does not **EXCEED** one calendar year;

3. Assist LEAs with the development of corrective action and program improvement plans;

4. Ensure that identified noncompliance is corrected as soon as possible, but no later than one year from the time of notification of existing noncompliance;

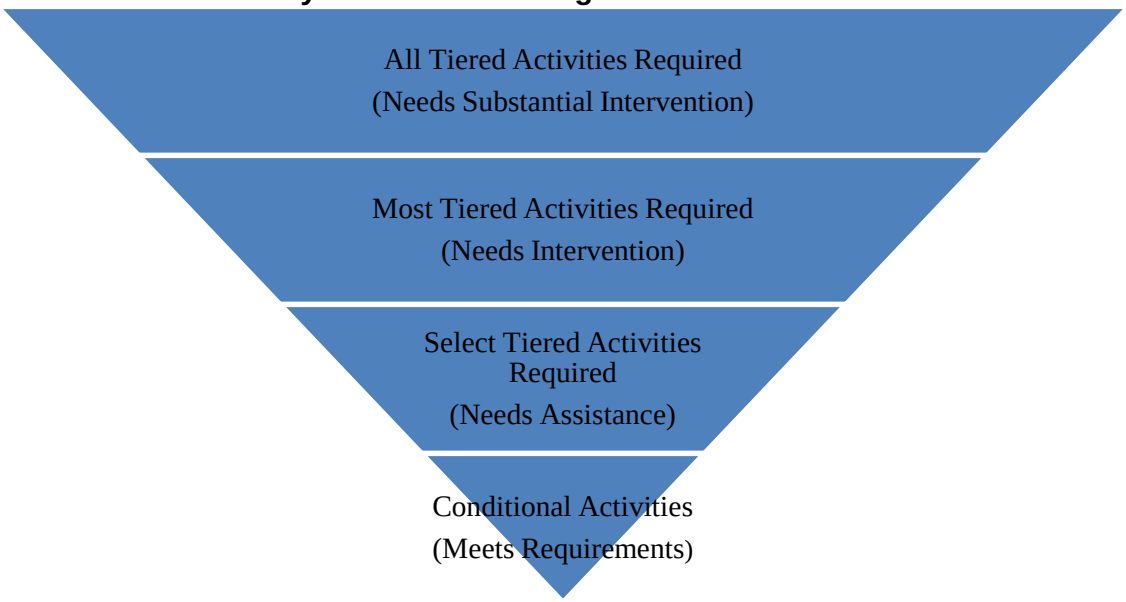
5. Provide the LEA sites with support and technical assistance;

6. Verify that the data reported reflect actual practice; and

7. Ensure consistency with the requirements set forth by the Office of Special Education Programs (OSEP Memorandum 09-02).

These procedures address compliance indicators, including results indicators and related requirements.

B. Oklahoma's Tiered System of Monitoring



The OSDE-SES conducts annual desk audits for all LEAs utilizing data that is submitted to the OSDE (see determination rubric at the end of this section). The review includes a comparison of LEA-reported information to the performance and compliance targets identified in the SPP. LEA determinations are made based upon this analysis. The annual desk audit identifies any areas of noncompliance for each LEA. The following weighted rubric is used to calculate LEA determination levels:

Summary of Total Weights for Determination Levels	
Level of Determination	**LEA Total Weight**
Meets Requirements	90% to 100%
Needs Assistance	80% to 89%
Needs Intervention	70% to 79%
Needs Substantial Intervention	less than 70%

C. Tiered Activities

The following details tiered activities according to level of determination:

Tiered Activities	Meets Requirements	Needs Assistance	Needs Intervention	Needs Substantial Intervention
Issuance of Finding(s)	Conditional	Required	Required	Required
Technical Assistance	Conditional	Required	Required	Required
Improvement Plan	Conditional	Required	Required	Required
Professional Development	Conditional	Conditional	Required	Required
Corrective Action Plan	Conditional	Conditional	Required	Required
Data Verification	Conditional	Conditional	Required	Required
On-site Review	Conditional	Conditional	Conditional	Required
Community Action Forum	Conditional	Conditional	Conditional	Required
Direct Part B Funding	Conditional	Conditional	Conditional	Required

*Conditional use of Tiered Activities will depend upon the type of noncompliance identified

Issuance of Finding(s):
Whenever a finding of noncompliance is identified, the LEA is notified of the area(s) of noncompliance and required to develop either an improvement plan and/or corrective action plan (CAP) that addresses identified areas of noncompliance and includes improvement strategies to ensure correction. The LEA must demonstrate child-specific corrections, as well as, systemic compliance through data verification conducted by the OSDE-SES, in accordance with the OSEP Memo 09-02. LEAs must demonstrate both prongs (child-specific and systemic) of correction as soon as possible, but no later than one year from the notification of non-compliance.

Technical Assistance:
The OSDE-SES provides outreach, support, and guidance to LEAs through in-service, phone consultation, intensive on-site consultation, video conferencing, and training to promote special education services. Technical assistance is customized to the finding and the LEA with intention of making corrections within one year of issuing a finding.

Improvement Plan:
An improvement plan is developed when a finding does not require a Corrective Action Plan. It focuses on improving results rather than compliance. LEAs with identified areas where the LEA results are below targets are required to form a small committee to develop a written plan addressing the areas of low performance and include improvement strategies to ensure growth.

Professional Development:
The OSDE-SES identifies needs of the LEA's personnel to ensure that they are appropriately and adequately trained to provide services to students with disabilities and meet IDEA Part B requirements.

Corrective Action Plan (CAP):
LEAs are required to develop a CAP when there are findings of non-compliance. LEAs receiving an On-Site Review and an issuance of findings are required to address areas of non-compliance 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.

Data Verification:
The OSDE-SES reviews student records to ensure correction of individual cases of non-compliance. Additional student records selected at random are also reviewed to ensure systemic correction and verify data reported in the Oklahoma Child Count System reflects actual practice.

On-Site Review (OSR):
LEAs receiving an LEA determination of "Needs Substantial Intervention" receive an On-Site Review. LEAs receiving determination of "Meets Requirements", "Needs Assistance", or "Needs Intervention" may receive an On-Site Review. On-Site Reviews are comprehensive in nature and may include:

- IDEA Part B fiscal reviews;
- Review of student records;
- Data verification review;
- Community forums/ individual parent meetings;
- Interviews with LEA personnel;
- Individual student tracking; or
- Other issues as identified.

A finding is issued for each area of noncompliance identified. The OSDE-SES may prescribe a CAP that addresses identified areas of non-compliance and include improvement strategies to ensure correction.

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CHAPTER 11: PROCEDURAL SAFEGUARDS

Legal Citations

Section	Topic	Federal Regulations 34 CFR § 300	Oklahoma Statute & Regulations	OSEP Letters & Policy Guidance
1.	**Procedural Safeguards Notice**			(2000-2007)
A	When the Procedural Safeguards Notice is Provided	.504		Procedural Safeguards *See Disclaimer
2.	**Domestic Considerations**			
A	Parent	.30		(2008) (1) Prior Written Notice
B	Surrogate Parent	.519		
C	Transfer of Rights	.520		
D	Married Minors		10 O.S.§ 10	(2009) (1) Revocation of Consent
E	Ward of the State	.45		
3.	**Informed Consent**			
A	Definition	.9		(2010) (1) Revocation of Consent
B	Actions Requiring Consent	.300		
C	When Consent is Not Required	.300		
D	Refusal to Give Consent	.300		(2012) (1) Revocation of Consent (2) Prior Written Notice
E	Failure to Respond for Consent	.300		
F	Revoking Consent	.300		
4.	**Written Notice**			
A	Definition	.503		(2013) (1) Written Notice to Access Insurance Benefits
B	Criteria for Written Notice	.503		
C	Written Notice is Required	.503		
D	Content of Written Notice	.503		
5.	**Confidentiality and Access to Records**	.610-.627		
A	Confidentiality	.616		
B	Access to Records	.613; .614		
C	Disclosure Not Requiring Consent	.622		
D	Destruction of Records	.624		
E	Request for Amendment of Records	.621 99(FERPA) 81 (GEPA) 76 (SAP)		

6.	**Guidelines for Minimizing the Use of Seclusion**			
7.	**Guidelines for Minimizing the Use of Physical Restraint**			
8.	**Independent Educational Evaluations**			
A	Definition	.502		
B	Right to an IEE	.502		
C	Procedures for Requesting an IEE	.502 .502		
D	Criteria for Reasonable Costs	.502		
E	LEA Responsibility			
F	Consideration of the IEE Results			

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:

1. Upon an initial referral or parent and/or adult student request for evaluation;

2. Upon the first occurrence of a filing of a due process hearing or an administrative complaint;

3. When a decision is made to take a disciplinary action that constitutes a change of placement; or

4. Upon request by the parent.

Section 2. Domestic Considerations

A. Definition of a Parent

- A biological, adoptive, or foster parent of a child;
- A guardian (but not the state if the child is a ward of the state);
- An individual acting in the place of a biological or adoptive parent (including a grandparent, 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.

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.

1. **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. A parent cannot be found after reasonable efforts to locate the parent.

b. 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.

c. The student is a homeless youth who is unaccompanied.

The LEA will make a good faith effort and maintain records of attempts to locate a parent. 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.

2. **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:

a. Have knowledge and skills that ensure effective representation;

b. Have no personal or professional interest that conflicts with the interest of the student; and

c. Meet the following conditions:

i. 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

ii. 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.

C. 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.

1. 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. A parent has obtained legal guardianship including the scope of educational matter; or

   b. The LEA must continue to provide notices to the parent, but nothing under the IDEA requires parent participation in the process.

D. 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.

E. 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

A. Definition

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.

B. 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:

1. Informed written consent *and* written notice are required when:

   a. Conducting assessments as part of an initial evaluation to determine whether a student is eligible for special education.

b. Initially providing special education and related services to a student with a disability.

c. Disclosing personally identifiable information to unauthorized persons, unless provided as an exception under the Family Educational Rights and Privacy Act (FERPA) regulations.

d. Accessing private insurance or public insurance benefits to pay for services listed in the IEP.

e. Inviting outside agency representatives providing transition services to an IEP team meeting.

C. When Consent Is Not Required

The LEA is not required to obtain informed consent when:

1. A review of existing data is part of an evaluation or a reevaluation.

2. Tests are administered to both general and special education students in a grade or class and consent is not required for all students.

3. 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.

4. Screening to determine appropriate instruction strategies for curriculum implementation.

5. A disclosure of personally identifiable information to persons authorized to have access under FERPA.

D. 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.

E. 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.

F. 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:

1. The LEA is not in violation of the requirement to make available a FAPE for its failure to provide services to your child.

2. The student will be disciplined as a general education student.

3. 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.

4. The parent or adult student or LEA may at a later date initiate a new request for an initial evaluation.

Section 4. Written Notice

A. Definition

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.

B. Criteria for Written Notice

Written notice must be provided in a reasonable amount of time before implementing the proposed action.

1. 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:

    a. The notice is translated orally or by other means in the native language or other mode of communication.

    b. The parent and/or adult student understands the content of the notice.

    c. 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.

C. Written Notice Is Required

The LEA must provide written notice before proposing to initiate or change the following:

1. Identification of the student;

2. Any assessments for initial evaluation or reevaluation;

3. Educational placement;

4. The provision of a FAPE;

5. 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;

6. If the LEA refuses to convene an IEP team meeting at the request of a parent and/or adult student;

7. 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; or

8. 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.

D. 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:

1. A description of the action proposed or refused by the LEA;

2. An explanation of why the LEA proposes or refuses to take the action;

3. A description of any other options the IEP team considered and the reasons why those options were rejected;

4. A description of each procedure, assessment, record, or report that the LEA used as a basis for the proposed or refused action;

5. A description of any other factors relevant to the proposed or refused action;

6. 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

7. 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:

1. Procedures for exercising the right to inspect and review education records;

2. Procedures for requesting amendment of records; and

3. 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:

1. Without delay but no later than 45 calendar days after the request;
2. Before any meeting regarding an IEP;
3. Before a resolution session; and
4. Not less than 5 business days before any due process hearing;

In addition, the LEA must:

1. 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;
2. Respond to any reasonable request made by a parent and/or adult student for an explanation and interpretation of a record; and
3. 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:

1. An LEA official or employee has a legitimate educational interest to access the records.

2. 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.

3. 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.

4. The health and safety of the student or other individuals is in jeopardy because of an emergency.

5. 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.

6. An organization conducts studies on behalf of education agencies or institutions under specified FERPA criteria.

7. 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).

8. The LEA has designated information as "directory information" under the conditions in FERPA.

9. 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).

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.

Any other personally identifiable information must be destroyed at the request of the parent and/or adult student if it is older than 5 years and no longer needed to provide special education. 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, may require longer maintenance of the records.

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:

1. 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.

2. 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.

3. 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

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.

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 risk of harm to him/herself or others;

2. Positive behavior intervention strategies and less restrictive measures appropriate to the behavior exhibited by the student and specified in the student's IEP or BIP, are currently being implemented but are not currently de-escalating the risk of injury; and

3. The seclusion lasts only as long as necessary to resolve the risk of danger or harm or while waiting for the arrival of law enforcement or crisis intervention personnel such as when the student has possessed a weapon or committed a crime.

School personnel may only utilize seclusion procedures if they have 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. Hold current CPR and First Aid certification; and
6. Monitoring the wellbeing of the student

Seclusion training should be recurrent with annual updates and result in some form of certification or credential. Any student who is placed in seclusion based upon the previously established criteria must be continuously monitored visually and aurally by a school employee.

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.

A building administrator should be informed immediately of any incident of seclusion and if unavailable, must be informed as soon as possible following each incident. At least one witness who is not involved in the seclusion incident should be available. Each incident of seclusion must be documented on OSDE Form 14. 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 2 school days after each seclusion incident, and prior to any extended breaks from school. An IEP meeting may be needed to review the students BIP and placement for any changes to placement or services.

Relevant Definitions:

Imminent risk of harm: an immediate and impending threat of a person causing serious bodily injury to self or others.

Seclusion: 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 and redirecting.

Seclusion room: a room or other confined area in which a student with a disability is placed in isolation from other persons from which the student is 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

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.

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 elements exist:

1. The student's actions pose an imminent risk of harm to him/herself or others;
2. Less restrictive measures appropriate to the behavior exhibited by the child have not effectively de-escalated the risk of injury; and
3. The physical restraint lasts only as long as necessary to resolve the risk of danger or harm; and
4. The degree of limitation or restriction of another person's freedom of movement that is applied may not exceed what is necessary to protect the student or other persons from imminent bodily injury.

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. No restraint that prevents a student from speaking or breathing is allowed.

School personnel who use physical restraint must have training in:

1. Conflict de-escalation
2. The crisis cycle and interventions at each stage
3. Possible effects of physical restraint
4. Hold current CPR and First Aid
5. Monitoring the wellbeing of the student

Physical Restraint training should be recurrent with annual updates and result in some form of certification or credential. 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. A building administrator should be informed immediately of any incident of a physical restraint and if unavailable, must be informed as soon as possible following each incident. Each incident of

physical restraint must be documented on OSDE Form 14. 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 2 school days after each physical restraint incident, and prior to any extended breaks from school. An IEP meeting may be needed to review the students BIP and placement for any changes to placement or services.

Relevant Definitions:

Chemical Restraint is defined as a drug or medication used to control behavior or restrict freedom of movement that is not prescribed by a licensed physician for standard treatment of the student's medical condition and administered for that purpose as prescribed (Public Health Service Act).

Imminent risk of harm is defined as the immediate and impending threat of a person causing serious bodily injury to self or others.

Mechanical Restraint is defined as the use of devices as a means of restricting a student's freedom of movement (Public Health Service Act).

Physical restraint is defined as a person restriction that immobilizes or reduces the ability of a student to move his/her torso, arms, legs, or head freely. The term physical restraint does **not** include a physical escort. Physical escort means a temporary touching or holding of the hand, wrist, 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)

A. Definition

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.

B. Right to an IEE

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.

1. The parent and/or adult student is entitled to only one IEE at public expense for each LEA evaluation.

2. 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.

3. 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.

C. 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:

1. The location for the evaluation;
2. The required qualifications of the examiner;
3. The eligibility requirements for the specific disability categories; and
4. Reasonable cost containment criteria applicable to personnel for specified 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.

D. Criteria for Reasonable Costs

LEAs may establish a schedule of reasonable fees for IEEs. If the maximum allowable fees are established, the fees must:

1. Not simply be an average of the fees customarily charged in the area.

2. Only eliminate excessive fees, while still allowing for the parents to choose from qualified examiners.

3. 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.

E. 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).

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.

F. 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. The results may also be presented as evidence at a hearing regarding the student. 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.

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CHAPTER 12: DISCIPLINE

Legal Citations

Section	Topic	Federal Regulations 34 CFR § 300	Oklahoma Statute & Regulations	OSEP Letters & Policy Guidance
1.	**General Discipline Guidelines**	.530-.536	70 O.S.§24-100.4 70 O.S.§24-101.3	(2000-2007) (1) Discipline Procedures (2) Student Discipline (3) Manifestation Determination (4) Due Process *see disclaimer (2008) (1) FBAs (2009) (1) Manifestation Determinations (2012) (1) Revocation of Consent (2) Hearing Officers (2013) (1) Resolution Sessions (2) FBAs
A.	Disciplinary Actions Resulting in Removal for 10 or Fewer Days	.530		
B.	Disciplinary Actions Resulting in Removal for more than 10 Days	.530; .536		
2.	**Actions Involving a Disciplinary Removal that Results in a Change of Placement**	.530; .536		
A	LEA Actions Resulting in a Change of Placement	.536 .530		
B	Hearing Officer Actions Resulting in a Change of Placement	.532 .531		
C	Court Actions Resulting in a Change of Placement			
3.	**FAPE Considerations**	.530; .531		
A	LEA Actions When There is Not a Change of Placement	.530 .530		
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C	FAPE Requirements in an IAES	.530		
D	Transportation			
4.	**Procedures for a Manifestation Determination**			
A	Actions Involving a Manifestation Determination	.530		
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5.	**Other Considerations**			
A	Request for an Expedited Hearing	.532		
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D	Referrals to and Action by Law Enforcement and Judicial Authorities	.535		
E	Transfer of Discipline Records	.535		
F	Parents Revoking Consent	.300	70 O.S.§24-101.4	

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, and that there will be frequent recognition of everyone in the school environment – not just students with disabilities – who perform of these behaviors.

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).

1. LEA personnel may remove a student from his or her current placement to an appropriate interim alternative education setting (IAES) or another setting for not more than 10 consecutive school days to the extent those alternatives are applied to students without disabilities.

2. LEA personnel may suspend any student out of school, including a student with a disability, for up to 10 consecutive school days in a school year if he or she violates the code of student conduct, and services to the student may cease during this period, except that:

   a. 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. Students who have not been determined eligible for special education may be entitled to an evaluation and other IDEA rights—including the right to a free appropriate public education (FAPE) during periods of disciplinary removal that extend beyond 10 cumulative school days in a school year if:

      i. The LEA is deemed to have knowledge that the student was a student with a disability prior to the behavior that precipitated the disciplinary suspension; and

      ii. The parent or adult student asserts the right to a FAPE.

3. 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, <u>and</u> 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 be deemed as a suspension counting toward the 10 cumulative school day limit before the IDEA disciplinary provisions are applied.

4. If the IEP team determines that special transportation is required and documents it as a related service on a student's IEP, these procedural safeguards under the IDEA will be afforded to the student in matters concerning suspension from LEA transportation. Whether a suspension from the bus counts as a suspension from school depends on whether bus transportation is identified on the IEP.

5. If bus transportation is identified as a related service on the IEP, a suspension from the bus would be 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 obtain access to the location where other educational services will be delivered.

6. If bus transportation is not identified as a related service on the IEP, a suspension from the bus would not be counted as suspension from school. In these cases, the student and the parent would have the same obligation to get to and from school as a student without a disability who had been suspended from the bus.

7. If the student's behavior on the bus results in a suspension from the bus, the IEP team must consider whether the behavior should be addressed in a Behavioral Intervention Plan (BIP).

A. Disciplinary Actions Resulting in Removal for 10 or Fewer School Days

Students with disabilities should be 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 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 following flow chart for a visual representation of the aforementioned steps: IDEA Discipline Flow Chart Example.

A. LEA Actions Resulting in a Change of Placement

LEA administrators change a student's placement unilaterally when they propose to remove the student from his or her current placement for disciplinary reasons:

1. For more than 10 consecutive school days in a school year; or

2. By subjecting the student to a series of removals that constitute a pattern as determined by school personnel. A pattern is established:

    a. When the series of removals total more than 10 school days in a school year;

    b. When the student's behavior is substantially similar to behavior in previous incidents that resulted in the series of removals; and

    c. When such additional factors as the length of each removal, the total amount of time the student is removed, and the proximity of the removals to one another.

An LEA's unilateral action to change a student's placement violates the IDEA. By convening a manifestation determination meeting and complying with other IDEA requirements, the LEA avoids a charge that it acted unilaterally in violation of the law.

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:

1. 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; or

2. 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

3. 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. A substantial risk of death;
    b. Extreme physical pain; or
    c. 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 USC 1365 (h) (3), Dangerous Weapon 18 USC 930(g) (2), Controlled substance 21 USC 812(c) & 202(c)]

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.

B. 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.

1. In requesting a hearing officer to place a student in an IAES, the LEA must:

    a. Demonstrate by substantial evidence that maintaining the current placement is substantially likely to result in injury to the student or others; and

    b. 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.

C. 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:

1. 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;

2. When there is a disciplinary change of placement.

A. 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.

B. 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:

1. Continue to participate in the general education curriculum;
2. Progress toward meeting the goals set out in his or her IEP; and
3. 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:

1) 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

2) 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 & Section 6. Expedited Due Process Hearings, for an explanation of a standard and an expedited due process hearing rights and procedures.

B. 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.

Basis of knowledge

1) 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:

   a. 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.

   b. The parent or adult student has requested that the student be evaluated for special education.

   c. 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.

No basis of knowledge

1) 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:

a. An evaluation was conducted and a determination was made that the student did not have a disability.
b. The parent or adult student refused to give written consent for an evaluation.
c. 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.

C. 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.

1. If the student is subsequently determined eligible for special education, the LEA will:

   a. Convene an IEP team meeting to develop an IEP; and
   b. Conduct a manifestation determination.

2. 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).

3. 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.

4. 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.

D. 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:

1. 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.

2. Student records may be disclosed in emergency situations where the disclosure is necessary to protect the health or safety of themselves or others.

3. Student records may be disclosed under limited circumstances pursuant to State laws concerning the juvenile justice system.

4. 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.

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.

F. 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.

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CHAPTER 13: DISPUTE RESOLUTION

Legal Citations

Section	Topic	Federal Regulations 34 CFR § 300	Oklahoma Statute & Regulations	OSEP Letters & Policy Guidance
1.	**Dispute Resolution**	.151-.153; .506-.518		(2000-2007) (1) Due Process (2) Complaint Resolution (3) Timeline for Appeals *See Disclaimer (2008) (1) Electronic Complaint Request (2) Timelines (2009) (1) Hearing Officers (2010) (1) Motion for Reconsideration[1] (2) Motions for Reconsideration[2] (3) Enrollment (4) Mediation Agreements (5) Resolution Meeting (6) Resolution Timelines (2012) (1) Resolution Meeting[1] (2) Resolution Meeting[2] (3) Hearing Participants (2013) (1) Resolution Meeting
2.	**IEP Facilitation**			
A	Definition of Facilitation			
3.	**Mediation**			
A	Definition	.506		
B	The Special Education Mediation Process	.506 .506		
C	Special Education Resolution Center (SERC)	.506 .506		
4.	**Formal Complaints**			
A	Filing Complaint	.151; .153		
B	OSDE Complaint Procedures	.152		
5.	**Due Process Hearing Requests**			
A	Definition	.507-.508		
B	Hearing Request by Parent and/or Adult Student	.507 .507		
C	Due Process Hearing Request by an LEA	.507		
D	Contents of a Request for a Due Process Hearing	.508 .510-.515		
E	Actions for Due Process Hearings	.518		
6.	**Expedited Due Process Hearings**			
A	Definition	.532		
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7.	**Appeals and Civil Action**	.516		
8.	**Attorney Fees**			
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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.

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.

A. Definition of Facilitation

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.

A. Definition

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.

B. The Special Education 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.

- **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.

C. 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.

B. OSDE Complaint Procedures

Upon receipt of a written complaint, the OSDE will do the following:

1. 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.

2. Notify the LEA that a complaint has been received and the timeline to submit documentation.

3. Give the complainant the opportunity to provide additional information about the allegations, either orally or in writing.

4. 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:

    a. 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

    b. The future provision of services for a student with a disability, if such clarification is needed.

5. 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.

A. Definition

Oklahoma's due process system has 2 types of hearings, a regular due process hearing and an expedited due process hearing:

1. 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.

2. 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.

B. 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.

1. 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.

2. A due process hearing can be initiated regarding issues pertaining to identification, evaluation, educational placement, or the provision of a FAPE if:

   a. The LEA proposes to initiate or change any of these matters; or

   b. The LEA refuses the parent's and/or adult student's request to initiate or change any of these matters.

C. 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:

1. Override a parent's and/or adult student's refusal of consent for an initial evaluation, reevaluation, or the release of information;

2. Ask a hearing officer to place a student in an interim alternate 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

3. 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.

D. 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:

1. The current date;

2. The student's name, address (or available contact information in the case of a homeless student), and LEA;

3. The signature of the individual making the request for a due process hearing;

4. A description of the nature of the problem, including supporting facts; and

5. A proposed resolution of the problem or the relief sought to the extent known and available at the time to the party.

E. Actions for Due Process Hearings

1. A Due Process Request is Filed

a. A request may be filed by either party.

b. 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.

c. 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 or 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. 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.

b. 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. 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

a. The other party must file a response within 10 calendar days, addressing the issues raised.

b. 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.

c. 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. A resolution session will be held within 15 calendar days of a request for a due process hearing unless:

   i. Both parties agree in writing to waive the resolution meeting;
   ii. Both parties agree to go to mediation; or
   iii. The LEA initiates the hearing. The IDEA requires the resolution session only if the parent has requested the due process hearing.

b. 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.

c. 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.

d. 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.

e. 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.

f. 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.

g. 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 for the due process hearing request starts the day after one of the following events:

a. Both parties agree in writing to waive the resolution meeting;

b. 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;

c. 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

d. The LEA files a hearing request.

7. Hearing Preparation

a. 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.

b. Not less than 5 business days prior to a due process hearing, each party will disclose to all other parties:

i. Evaluations completed by that date;

ii. Recommendations based on those evaluations intended to be used at the hearing; and

iii. Copies of exhibits which will be introduced and a list of witnesses each party intends to call at the hearing.

c. 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

a. 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.

b. 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.

c. 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.

d. 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.

e. 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.

f. During the hearing the LEA will provide reasonable accommodations as required by federal regulations. Disputes will be referred to the OSDE for resolution.

g. 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.

h. The party requesting the hearing will have the burden of proof in the due process hearing.

9. Decision of the Hearing Officer

a. The decision of the hearing officer will be based solely on evidence introduced at the due process hearing.

b. 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:

   i. Impeded the student's right to a FAPE;

   ii. Significantly impeded a parent's and/or adult student's opportunity to participate in the decision-making process; or

   iii. Caused a deprivation of educational benefit.

c. The decision will include findings of fact and conclusions of law and order as appropriate.

d. 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.

e. 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*]

f. After deleting personally identifiable information, the OSDE will make the decision available to the State Advisory Council (IDEA B Advisory Panel).

g. A hearing officer's decision will be enforceable in State and federal court:

   i. The decision specifies a different implementation date; or

   ii. 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:

i. 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.

ii. 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.

iii. 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.

iv. "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:

(1) With written consent of the parent, the student must be placed in the LEA until completion of all the hearing proceedings.

(2) If the parent does not give written consent, the student will not receive services until completion of the hearing proceedings.

(3) 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.

A. Definition

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.

B. Expedited Hearing Requests

1. 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.

2. A parent and/or adult student may request an expedited hearing if:

   a. He or she disagrees with a determination that the student's behavior was not a manifestation of the disability; or

   b. He or she disagrees with the LEA's discipline decision, which resulted in a change of placement.

C. 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:

1. A resolution center will appoint a hearing officer within 4 business days of a request.

2. 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.

3. 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.

4. 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.

5. 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.

6. 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.

D. 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:

1. 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.

2. 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

1. 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.

2. 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.

3. 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:

1. Award reasonable attorney fees as part of the costs to the prevailing party; and

2. 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

1. 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 or a judicial action; or

   a. For mediation that is conducted prior to a request for a due process hearing.

2. 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:

   a. The LEA makes an offer at least 10 calendar days before a due process hearing or a civil proceeding begins;

   b. The offer is not accepted by the parent and/or adult student within 10 calendar days after it is made; and

   c. 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:

1. During the course of the action or proceeding, the parent and/or adult student or his or her attorney unreasonably extended the final resolution.

2. 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.

3. The time spent and legal services rendered were excessive considering the nature of the action.

4. 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

1. 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.

2. 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.

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CHAPTER 14: TRANSFERS, IEP SERVICE AGREEMENTS AND MOVE-IN STUDENTS

Legal Citations

Section	Topic	Federal Regulations 34 CFR § 300	Oklahoma Statute & Regulations	OSEP Letters & Policy Guidance
1. **A** **B** **C**	**Introduction to Transfers** Open Transfers Emergency Transfers IEP Service Agreements		70 O.S.§13-101 70 O.S.§1-113 70 O.S.§§8-101.1-8-113 (OAC) 210:10-1-19 70 O.S.§13-103 70 O.S.§13-103(D) 70 O.S.§13-103(B)	(2012) (1) Transfers
2. **A** **B** **C** **D**	**Move-In Students** Student Chooses to Attend New District of Residence Student Chooses to Attend Previous District of Residence Move-in from Out-of-state district Transfer Matrix (Figure 1.0)		70 O.S.§24-101.4 70 O.S.§18-111	

Section 1. Introduction to 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.

Section 2. Move-In Students

A. Move-in from an Oklahoma school district – student chooses to attend new district of residence

When a student with a disability moves from one Oklahoma school district to another and chooses to attend the new district of residence, the new district of residence must provide the student with a FAPE. This includes services comparable to those described in the previously held IEP, in consultation with the parent, until such time as the district adopts the previously held IEP or develops, adopts and implements a new IEP. The new district of residence must promptly request records from the previous district of residence. Once the previous district of residence has received a request for a student's records from another Oklahoma school district, the previous district will forward copies or the original documents within 3 business days of receipt of the request. If originals are sent, the previous district will maintain a copy for audit purposes.

B. 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.

C. Move-in from an out-of-state school district

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 district must provide the student with a FAPE. This includes services comparable to those described in the previously held IEP, in consultation with the parent, until such time as the district conducts an evaluation, and develops, adopts, and implements a new IEP, if determined eligible.

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.

For more information regarding out-of-state move-in students and evaluations, please see Chapter 3: Initial Evaluation & Eligibility**.**

D. Transfer Matrix

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 the SY in the original district	Original District	Original District	Original District*	Original District	Original District	No

*McKinney-Vento Shared Cost Note

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APPENDIX A (Q & A DOCUMENTS)

Question and Answer Documents from IDEA.ed.gov

1. IEP - June 2010
2. Discipline Procedures
3. Disproportionality
4. Private School (Released 4.11)
5. Secondary Transition
6. Transportation
7. Highly Qualified Teachers Serving Children with Disabilities
8. Individualized Education Programs (IEP's), Evaluations and Reevaluations
9. Monitoring, Technical Assistance and Enforcement
10. Special Education and Homelessness
11. Questions and Answers On the National Instructional Materials Accessibility Standards (NIMAS)
12. Procedural Safeguards and Due Process Procedures For Parents and Children With Disabilities
13. Response to Intervention (RTI) and Early Intervening Services (EIS)
14. Serving Children With Disabilities Placed by Their Parents at Private Schools (April 2011)
15. Non-Regulatory Guidance on the IDEA Part B Supplemental Regulations Published December 1, 2008
16. IDEA Discipline Flow Chart Example

APPENDIX B (CASELOAD & CLASS SIZE REQUIREMENTS)

Full Day Self-Contained	Maximum of ten 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	Grades K-4: Maximum of ten students per classroom Grades 5-12: Maximum of fifteen 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

PLACEMENT	CASELOAD	
	PERCENTAGE (FTE)	TOTAL
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 More than 60 minutes per week	 .020 .0250	 50 40

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.

APPENDIX C (OSDE FORMS)

List of OSDE Forms

Form 1: Record of Access

Form 2: Record of Parent Contact

Form 3: Review of Existing Data (RED)

RED/MEEGS Evaluation Data

Form 4: Parent Consent

Form 5: Multidisciplinary Evaluation and Eligibility Group Summary (MEEGS)

Form 5RC: Reevaluation/Continuation of Eligibility

Form 6: Notification of Meeting

Form 7: Individualized Education Program (IEP)

Form 8: Written Notice to Parents

Form 9: Medical Report

Form 10: Surrogate Parent

Form 11: Summary of Performance

Form 12: Criteria Checklist for Assessing Students with Disabilities on Alternate Assessments

Form 13: ACE Alternate Determination for Students Assessed through the OAAP

Form 14: Seclusion and Physical Restraint Documentation

Form 15: Comment Form

Form 16: Child Outcomes Summary Form

Form 17: Modified Proficiency Score Worksheet

Parents Rights in Special Education: Notice of Procedural Safeguards

Early Childhood Outcomes Summary (COS)

Caseload/Class-Size

Letter to Law Enforcement re Special Student Records

Letter to Agency Seeking Juvenile Info

APPENDIX D (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].		
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		

Profession/ Discipline	Services Provided	State Licensure or Credential	Requirements for Professional Licensure or Credential	Teaching Certification or Credential	Requirements for OSDE Certification
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		
School Psychologist *343	Psychological and counseling services	Required if working in a clinical setting	Master's degree; state licensure	Yes	Master's degree; special course of study; state certification test; or NSPCS[16] certification
School Psychometrist *510	Pyscho-educational services in schools		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		

Profession/ Discipline	Services Provided	State Licensure or Credential	Requirements for Professional Licensure or Credential	Teaching Certification or Credential	Requirements for OSDE Certification
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; Paraprofessional 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
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		

Profession/ Discipline	Services Provided	State Licensure or Credential	Requirements for Professional Licensure or Credential	Teaching Certification or Credential	Requirements for OSDE Certification
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 Title 1.

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- National School Psychology Certification System
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

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”.

APPENDIX E (CERTIFICATION)

A. Special Education Certification

For information related to special education certification, please see this document: http://ok.gov/sde/sites/ok.gov.sde/files/documents/files/SpecEd.pdf

B. 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 teaching assistant in a **public** school in the area for which a teaching license is being pursued.
- Pass the Oklahoma General Education Test (OGET), Oklahoma Professional Teaching Exam (OPTE), and pass at least one subject area test in Early Childhood Education, Elementary Education, OR Special Education
- Two certificate areas are required to be the Special Education teacher of record.

Supporting Documents

FAQ **Application**

C. Special Education "Boot Camp" Certification Process and Procedures

The non-traditional route to special education teacher certification provides a method for individuals to obtain a special education certification. Candidates must complete a 150- hour program that includes 120 hours of special education training known as "Boot Camp" 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 Boot Camp 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;
- ✓ Commit to complete a Master's Degree or Certification in Special Education; and
- ✓ 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.

Supporting Documents

Information Letter | **Candidate Application** | **FAQ**