

# Special Education Policies and Procedures

## Oklahoma State Department of Education

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The education of students with disabilities is firmly rooted in the legal guarantees of nondiscrimination which involve the “protection of vulnerable minorities.” This relationship means that the provision of services to students with disabilities is a civil right. The major special education law passed to ensure these civil rights is the Individuals with Disabilities Education Improvement Act (IDEA) 20 United States Code (U.S.C.), Sections 1400 et. seq.

The purpose of this policies and procedures document, is to establish legal requirements for the State Education Agency (SEA), local education agencies (LEA), and other public agencies involved in the provision of special education and related services to children with disabilities. These policies incorporate by reference all of the IDEA’s statutory requirements (20 U.S.C. §§1400 et. seq) and regulatory requirements (34 Code of Federal Regulations (C.F.R.), Part 300). In addition, these policies establish additional legal requirements by the State of Oklahoma that exceed federal law.

The IDEA is aligned with the Elementary and Secondary Education Act (ESEA). The IDEA preserves the basic structure and civil rights of previous reauthorizations and emphasizes both access to education and improved results for students with disabilities based on data and public accountability.

Those unfamiliar with the basics of federal statute (20 U.S.C. §§1400 et. seq) and regulations (34 C.F.R., Part 300) related to special education should seek information online at <https://sites.ed.gov/idea/>. The definitive source concerning issues of Oklahoma law and regulation related to schools (including special education) can be found online at <https://sde.ok.gov/special-education> and the Administrative Rules and Archives can be found online at <https://sde.ok.gov/administrative-rules>.

### **State Administration**

Section 608(a) of the IDEA requires each State that receives funds under this title to: (1) ensure that any State rules, regulations, and policies relating to this title conform to the purposes of this title; (2) identify in writing to local educational agencies located in the State and the Secretary any such rule, regulation, or policy as a State-imposed requirement that is not required by this title and Federal regulations; and (3) minimize the number of rules, regulations, and policies to which the local educational agencies and schools located in the State are subject under this title. The State is required to inform LEAs in writing of State-imposed rules, regulation, or policy (20 U.S.C. § 1407(a); 34 C.F.R. § 300.199).

## Oklahoma Policies

The Oklahoma State Department of Education (OSDE) establishes the following State requirements which exceed[s] requirements imposed by the IDEA:

- Ten (10) school day timeline between review of existing data and parent consent for an initial evaluation.
  - Required evaluation components by category of disability(ies).
  - Forty-five (45) school day initial evaluation timeline.
  - Draft summary of evaluation results must be provided to the parents at least two school days prior to the formal eligibility team meeting.
  - Qualified professionals for the eligibility team members defined.
  - Draft IEP must be provided to the parents at least two school days prior to the formal IEP team meeting.
  - An IEP for move-in students must be in place within 10 school days from the student's first day of attendance.
  - Service types defined.
  - Secondary transition services must be in effect before the beginning of the ninth-grade year, or on or before the age 15, whichever comes first.
  - Before making the determination to shorten the student's day/week based on behavior requires an FBA/BIP be in place.
  - Caseload-Class size requirements.
1. If the LEA determines that additional data is required for an initial evaluation (as documented on the Review of Existing Data (RED) form), the LEA must gain signed parental consent or document the parent's refusal for the initial evaluation within 10 school days. Refer to Chapter 4 "Evaluation and Eligibility", Section 3 "Review of Existing Data" for more information.
  2. For comprehensive evaluations, LEAs are required to select assessment and evaluation components tailored to specific areas of educational need and all areas related to the suspected disability, which are defined as either required, recommended, or as needed and delineated by disability category. For more information, refer to Chapter 4 "Evaluation and Eligibility", Section 10 "Disability Categories and Evaluation Components."

3. The initial eligibility determination must be completed within 45 school days of receiving parental consent for the evaluation. The timeframe does not apply if the parent of a child repeatedly fails or refuses to produce the child for the evaluation. It also does not apply if the child enrolls in a school of another LEA (new receiving district) after the relevant timeframe for the initial evaluation has begun in the sending LEA (previous district), and prior to a determination by the child's previous LEA as to whether the child is a child with a disability. However, the receiving LEA must make sufficient progress to ensure a prompt completion of the initial evaluation, and the parent and the LEA must agree to a specific time when the evaluation will be completed. See 34 C.F.R. § 300.301(c)(1)(i) and Authority: 20 U.S.C. § 1414(a).
4. If an LEA has requested and received parental consent for additional assessments during the initial or reevaluation process, the LEA must provide the parent with a draft summary of the evaluation results at least two (2) school days prior to the eligibility meeting. For more information, refer to Chapter 4 "Evaluation and Eligibility" and Section 11 "Multidisciplinary Evaluation and Eligibility Group Summary (MEEGS)."
5. The determination of whether a child is a child with a disability under IDEA for either an initial evaluation or reevaluation must be made by the child's parents and a team of qualified professionals, which must include:
  - The child's general education teacher (at least one). For a child of less than school age, an individual qualified to teach a child of their age.
  - A special education teacher.
  - A representative of the local education agency (LEA administrative representative).
  - At least one person qualified to conduct individual diagnostic examinations of children, such as a certified school psychologist, certified school psychometrist, speech-language pathologist, a remedial reading teacher, occupational therapist, physical therapist, etc.

Refer to 34 C.F.R. §§ 300.306 and 300.308, as well as Chapter 4, Section 11(B) "Group Members Required to Attend Eligibility Meeting" and Appendix "B" of the "Oklahoma Special Education Policies and Procedures" for more information.
6. The IEP (i.e., initial, subsequent, or interim) must be drafted and provided to the parents at least two (2) school days prior to the IEP team meeting. Refer to Chapter 5 "Individualized Education Programs (IEP)", Section 2 "IEP Timelines" for more information.
7. When a student, who has been served on an IEP in another Oklahoma district, enrolls in a new LEA, the new LEA must adopt the previous district's IEP or develop and finalize a new IEP within 10 school days from the student's first day of attendance. For more information, refer to Chapter 5 "Individualized Education Program", Section 2 "IEP Timelines."

8. Special education and related services are provided in a variety of service types and are defined as follows:

- **Consultation:** No direct student services; however, consultation occurs between the special education teacher and/or related service provider with the general education teacher, as well as other professionals to discuss topics related to instruction, accommodations, interventions, behavior, etc. to problem solve the specific needs of the student with a disability (e.g., accommodations to the core instruction, training on how to utilize the assistive technology with the student, implementation of the behavior intervention plan, etc.).
- **Monitoring:** The student receives primary instruction from a general education teacher. The special education teacher or related service personnel monitors the student with a disability for a variety of components related to the student's IEP (e.g., collecting data on goals; observing to make certain accommodations are implemented as written, checking on chronic absenteeism reasons, grades, assignment completion, etc.).
- **Collaboration:** The student receives primary instruction from a general education teacher. The special education teacher and/or related service provider supports through re-teaching and reinforcing skills, etc. This type of service support may occur within a general education setting (push-in model) or within a special education setting (pull-out model).
- **Co-Teaching:** The student receives primary instruction from **both** a teacher who holds a general education credential(s) and a special education teacher who holds a special education credential(s). The special education teacher may also hold content credential(s). The two teachers have an equal partnership in responsibility for the students' progress.
- **Direct Instruction:** The student receives primary instruction from a special education teacher with special education credential(s) and meet the OSDE requirements for the content credential(s) regarding the specific secondary content area or for elementary or early childhood. This type of service is provided outside of the general education classroom.

For more information, refer to Chapter 5 "Individualized Education Program", Section 3 "IEP Development", G. "Type of Service/Placement, and Support Components."

9. The Individualized Education Program (IEP) must include secondary transition services that are in effect on or before the student's 15th birthday or before the beginning of the student's ninth grade year, whichever comes first, or younger, if determined appropriate by the IEP team, and updated annually. See 34 C.F.R. § 300.320(b) (Authority: 20 U.S.C. § 1414(d)(1)(A) and (d)(6)). For more information refer to Chapter 5 "Individualized Education Program", Section 3 "IEP Development", M. Secondary Transition."

10. Before determining the need to shorten a student’s day/week due to behavior, the IEP team must conduct a Functional Behavioral Assessment (FBA) and develop a Behavior Intervention Plan (BIP) for behavior supports that may also include increased special education program service time with additional direct instruction for social skills. For more information, refer to Chapter 10 “Behavior”, Section 4 “Shortened Day.”

11. Class Size/Caseload:

The following chart details class size requirements for placements in special education:

Full Day Self-Contained	Maximum of ten (10) students per classroom	These classrooms are designed predominantly for the support of students with significant, moderate, or multiple disabilities. Multiple courses are taught to the same students for the majority of the day. For example, students who are served inside the general education classroom for less than 40% of the day.
Direct Support/Resource	Grades K-4: Maximum of ten (10) students per classroom  Grades 5-12: Maximum of fifteen (15) students per classroom	These classrooms are designed to provide a higher level of support than what is provided in the regular classroom. Students receive direct support services for specific subjects. They are also available for students seeking extra help to complement regular classroom instruction.

Caseload: The following chart details maximum full-time equivalent (FTE) caseload based on each child’s placement.

PLACEMENT	CASELOAD	
	PERCENTAGE (FTE)	TOTAL
Regular Class Full-time (inside the regular class more than 80% of the day). Students are receiving consultation and/or monitoring services for special education.	.025	40
Regular Class Full-time (inside the regular class more than 80% of the day). Students are receiving collaboration, co-teaching, and/or direct instruction for special education.	.04	25

PLACEMENT	CASELOAD	
	PERCENTAGE (FTE)	TOTAL
Special Class Part-time (inside the regular class 40% to 80% of the day)	.05	20
Special Class Full-time (inside the regular class less than 40% of the day)	.067	15
Special Class Full-time (inside the regular class less than 10% of the day)	.1	10
Outside of Public School Setting (home instruction, hospitals, institutions public/private residential facilities, public/private separate day school facilities, correctional facilities, parentally placed in private schools)	.025	40
Half-day preschool continuum	.05	20 (10 students per .5 day)
Speech/Language 60 minutes; or less per week	.020	50
More than 60 minutes per week	.0250	40

### Exceptions to Caseload/Class Size

For permission to adjust caseload/class size for programs serving children with disabilities that exceed the limits set, the LEA must obtain a letter of approval from the OSDE-SES. The LEA must document that the exceptions to caseload/class size do not interfere with the provision of a FAPE. The LEA must ensure that IEPs are implemented as developed to meet the educational needs of the children served, with special consideration for any potential harmful effects to the child 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.

For more information, refer to Chapter 13 “Special Education Staffing”, Section 7 “Caseload and Class Size Requirements.”

# CHAPTER 1: FREE APPROPRIATE PUBLIC EDUCATION

## Introduction. Free Appropriate Public Education (FAPE)

All students with disabilities are entitled to a Free Appropriate Public Education (FAPE). This includes students who are eligible for special education from the ages of 3 through the end of the school year in which they turn 22.

FAPE is determined for each student with a disability by the Individualized Education Program (IEP) team. The IEP team must develop an IEP that is reasonably calculated to enable the student to make progress appropriate in light of their unique circumstances. Reasonably calculated means to take into consideration the student's unique needs and circumstances in the development of their goals/objectives, including the requirement of providing postsecondary transition. As a result of Endrew F., each child's educational program must be appropriately ambitious in light of their circumstances and *"every child should have the chance to meet challenging objectives."* LEA officials must *"be able to offer a cogent and responsive explanation for their decisions that shows the IEP is reasonably calculated to enable the child to make progress appropriate in light of his or her circumstances"*. (Endrew F.) The IEP must provide *"more than de minimis progress."*

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 (34 C.F.R. § 300.17) means special education services that:

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

A FAPE requires an Individualized Education Program (IEP) to be:

- Reasonably calculated to enable the student to make progress appropriate in light of their unique circumstances.
- Appropriately ambitious in light of the child's circumstances; and every child should have the chance to meet challenging objectives.

## Section 1. Provision of a FAPE

### A. LEA Obligation

The Local Education Agency (LEA) is required to ensure a FAPE is available to students enrolled in the LEA who are eligible for special education and related services. This includes students who reside in group homes, foster homes, institutions, and residential treatment facilities, if their parent(s) are residents of Oklahoma. This is applicable even if the parent(s) resides in another LEA. It also includes students who are migratory or homeless as defined by the [McKinney-Vento Homeless Assistance Act](#).

The LEA also has the obligation to locate, evaluate and identify children with disabilities residing within its boundaries. Not meeting this obligation also may be determined to result in a denial of a FAPE to a child with a disability. Refer to Chapter 2. Child Find for more information.

Foster children may be brought to school for enrollment by their parents, foster parents, social workers, or other legal guardians. The LEA has the obligation to immediately enroll these children in school. After immediate enrollment, the following guardianship or legal custody documents shall be provided for verification: Power of attorney, affidavit, and court order. ESSA (Every Student Succeeds Act), §1111(g)(1)(E) stipulates that enrollment must not be denied or delayed for children in foster care because documents normally required for enrollment have not been provided.

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

- 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.
- 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 student would receive if enrolled in a public school. However, the LEA is responsible for locating, identifying, and evaluating unilaterally placed private school students. For more information refer to Chapter 8 “Private, Charter, Residential and Other Settings”, Part 1 “Private Schools.”
- 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.
- The General Educational Development (GED) is a certificate of high school “equivalency” yet is not considered a standard diploma. If a student with a GED decides to reenroll in a public school district, the LEA must provide a FAPE to students with disabilities identified through the IDEA who have chosen to return to obtain credits towards a standard high school diploma. However, if a student is not enrolled in high school and is working towards a GED, the LEA is not required to provide a FAPE to students with disabilities not enrolled in public schools.

## ***B. LEA Provision of a FAPE***

LEAs must provide every eligible child a FAPE by means of a uniquely tailored IEP that is appropriately ambitious in the light of the child's circumstances, every child should have the chance to meet challenging objectives. As a result of Rowley, the "Rowley Standard" is a two-part test to determine if an LEA has met its obligations to provide FAPE:

1. Has the school complied with the procedures of the Act?
2. Is the IEP developed through the Act's procedures reasonably calculated to bring about educational benefit?

The LEA's provision of a FAPE can be met by:

1. Directly providing special education services for eligible students who reside within the LEA;
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. Placing the student in a public or private residential program, as determined necessary by the IEP team. The program, including non-medical care and room and board, must be provided at no cost to the parents of the student. For more information regarding residential placement see Chapter 8, "Private, Charter, Residential and Other Settings", Part 3 "Residential and Other Settings".

## ***C. Limit to LEA Obligation***

LEAs are responsible for Child Find activities to ensure individuals suspected of having a disability who are not enrolled in a public school (including students who are homeschooled or enrolled in private school, Head Start, treatment facilities, etc.) 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. At the end of the school year in which the student turns 22 years of age.
  - a. FAPE through the end of the school year in which the student turns 22 is not required in all circumstances. For example:
    - A student with a disability who completed all credits required to obtain a standard high school diploma, received an IEP that was reasonably calculated to enable the student to make progress toward their goals/objectives in light of their unique circumstances or abilities and was provided appropriate postsecondary transition activities, would graduate with their age peers (e.g., age 17 or 18).
    - A student with a disability who dropped out of school their senior year and lacked only one semester of credits could return to enroll at age 21, due to the fact their 22nd birthday is in November. The student would be allowed to continue past the age of 22 until they completed the semester classes to graduate with a standard diploma in December. The student would not need to return to complete the end of the school year in May, since the student had met the requirements for a standard diploma in December.
2. When the student meets the LEA requirements that apply to all students for receipt of a standard high school diploma; or
3. When the student no longer meets the eligibility criteria for special education services, as determined by the evaluation group after a reevaluation; or
4. When a parent (or student at age of majority) revokes consent for special education and related services.

## **Section 2. Potential Barriers to LEAs Provision of FAPE**

LEAs are responsible for providing a FAPE to all students residing within the boundaries of the district. This section addresses situations or circumstances that should be considered by IEP teams in the provision of a FAPE. An oversight of these factors may present barriers to the LEAs provision of a FAPE and may result in a denial of a FAPE for some students.

### ***A. Funding Sources and Insurance***

LEAs may use whatever federal, state, private, or other sources of funds are available to provide a FAPE to students. 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 a FAPE if such use is at no cost to the parents and does not decrease the lifetime coverage available.

The IDEA of 2004 granted states the flexibility to set aside a percent of funds reserved for state-level activities to establish a funding mechanism that would reimburse LEAs for costs of high needs students with disabilities (34 C.F.R. § 300.704(c)). The out-of-state residential placement is Tier 1 of Oklahoma's high needs funds. Tier 2 includes funding for all other high needs students with excessive costs to the LEA. These funds are limited and are provided to LEAs on a first come basis for those districts who meet the application criteria. For more information regarding Tier 1 or Tier 2 application for possibly funding high needs students with disabilities, see the Oklahoma State Department of Education's website under the Special Education Finance tab. For more information refer to Chapter 8 "Private, Charter, Residential, and Other Settings".

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 for eligible students.

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 inter-governmental 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 parental consent for accessing public insurance benefits. LEAs must inform parents of their right to refuse LEA's 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 must 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 of services 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, 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 the continuing provision of special education services, it must see that the determination of eligibility or 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 must 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.

### ***B. Accessible Educational Materials (AEM)***

LEAs must provide educational materials in an accessible format to students who are blind or other print disabled. Students with a print disability are those who cannot access information in a print

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

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

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

The [National Instructional Materials Accessibility Standard \(NIMAS\)](#) was established in 2004 by the United States Secretary of Education to be used in the preparation of electronic files suitable and used solely for efficient conversion in specialized formats. NIMAS files are provided for the sole, express purpose of producing student-ready instructional materials for elementary and secondary school students who are blind, visually impaired, or print disabled.

The [National Instructional Materials Access Center \(NIMAC\)](#) is a federally funded, searchable online file repository of K-12 print textbooks in the XML-based NIMAS format.

AEM includes accessible digital learning materials for students who are deaf or hearing impaired/hard-of-hearing. Students who are deaf or hearing impaired tend to have limited auditory access to spoken language, may have difficulty developing an understanding of the phonological structure of language and how it relates to the written word (Luckner et al., 2005/2006). Closed Caption (CC) videos help define content words heard in the videos and help the student remain engaged, including assisting the student on how to pronounce novel words, to recognize vocabulary items, and to draw inferences about what happened in the videos that would not be possible without Closed Caption (CC). Closed Caption (CC) options that could be watched through a hypertext version or through a videotaped version in American Sign Language (ASL), Signing Exact English (SEE), or Cued Speech provide other accessible formats ([National Center on Accessible Educational Materials](#)-Tips for Teaching with Video and Creating Accessible Video).

### **C. Assistive Technology**

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

LEAs must have in place procedures and practices to ensure the proper functioning of hearing aids. Regular inspection of hearing aids must 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***

##### **General:**

Physical education (PE) services, including specially designed PE--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.

Regular Physical Education (PE) does **not** include competitive athletics:

Each child with a disability must be afforded the opportunity to participate in the regular PE program available to nondisabled children unless:

- (a) The child is enrolled full time in a separate facility; or
- (b) The child needs specially designed PE, as written in the child's IEP; or
- (c) The IEP team determined that the student should not participate in regular or adapted PE, then the IEP team must document the reasons why; including other options considered to modify the PE curriculum/activities for the student to fully participate, and the reasons why these options were determined not appropriate.
- (d) The LEA enrolls children without disabilities and does not provide a regular PE program to nondisabled children in the same grades as children with disabilities (N/A is noted on the IEP).

If specially designed PE is written in a child's IEP, the LEA responsible for serving the child must provide the services directly or make arrangements for those services to be provided through other public or private programs.

#### ***E. Extended School Year (ESY)***

Each LEA must provide extended school year (ESY) services to students who need such services to receive a FAPE. Each LEA is responsible for establishing an ESY policy and to providing ESY special education and related services, including transportation, to students with disabilities whose IEP teams have determined these services are necessary on an individual basis. 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 ESY determination on an annual basis 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 students of a specific category of disability. 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)). For more information on ESY refer to Chapter 5 “Individualized Education Program (IEP), Section 3 “IEP Development” J. “Extended School Year Services.”

## **F. Enrollment**

FAPE is a civil right of a child with a disability which requires LEAs to provide equal access to public education and services. Therefore, enrollment must not become a barrier.

1. LEAs may not require medication as a condition of attending school. 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 their health or education, it may refer the family to the Department of Human Services (DHS) for assistance.
2. LEAs may not require a doctor’s order as a condition of attending school. School districts are not allowed to administer medications or conduct any daily medical procedures (e.g., tube feeding) without a doctor’s order; however, the parent may come to the school to administer the medication or conduct the medical procedure until doctor’s orders are provided to the LEA. Once a doctor’s order is provided to the school district along with the medication, the LEA is able to administer the medications or conduct any daily medical procedures outlined by the physician.
3. LEAs may not require a discharge summary as a condition of attending school. LEAs may request all existing data from the parent in order to assist with the transition, evaluation, or updating services of a student who has been discharged from a hospital setting. However, it is the parent’s right not to provide any outside confidential records. The LEA may request the parent sign a release of confidential information form to obtain the discharge summary and then document upon the parent’s refusal. The LEA who provided the educational services while the student was attending the hospital setting, may disclose the student’s educational records to the LEA of residence. *“The disclosure is, subject to the requirements of § 99.34, to officials of another school, school system, or institution of postsecondary education where the student seeks or intends to enroll, or where the student is already enrolled so long as the disclosure is for purposes related to the student’s enrollment or transfer”* (34 C.F.R. § 99.31(a)(2)).
4. LEAs may not require a physical copy of the student’s previous IEP as a condition of attending school. The LEA must take all necessary actions (e.g., calling previous district) to confirm the student’s eligibility of IDEA special education and related services. “A district [sending district] that receives a request for the education records of a student who formerly was enrolled in the district shall forward the records within three (3) business days of receipt of the request [to receiving district]. The records shall include the student’s disciplinary records” (70 O.S. §24-101.4). If the parent does not disclose that the student is a child with a disability, then the LEA does not have knowledge and is not held accountable until they have knowledge.

5. Students who are homeless or in foster care must be enrolled immediately, even if they lack the appropriate documents for enrollment. Offer privacy and assistance in completing enrollment forms, including searching for lost documents (e.g., searching the Oklahoma State Immunization Information System-OSIIS for immunization records). If the parent states the student had previously received special education services, then contact the previous LEA to confirm services and offer comparable services through an IEP.

### **G. Shortened Day**

LEAs may **not** implement a shortened school day solely for administrative convenience which may include one or more of the following condition(s):

1. transportation (arrival and departure times)
2. discipline (not including suspension)
3. staff shortages
4. school day schedule

The IEP team, which includes the parent, may determine a need to shorten the student's day to meet the child's unique circumstances (e.g., medical/physical condition). Before making a determination of shortening the student's school day, the IEP team should consider all other options and document the reasons why they were not appropriate. When the IEP team determines to shorten the student's school day documentation must be provided as to the reasons and the reintegration plan to increase the student's instructional day/week to the same length as nondisabled peers. It is recommended to monitor and review the reintegration plan frequently in an IEP meeting to determine whether a shortened day continues to be necessary. See Chapter 10 "Behavior", Section 4 "Shortened Day" for more information.

## **Section 3. Case Law Interpretations of a FAPE**

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

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

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

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

In *Endrew F. v. Douglas County School District* (2017), the United States Supreme Court ruled in favor of a special education student. The Supreme Court declined to further interpret the FAPE provision and what appropriate progress will look like from case-to-case. The Court also decided not to establish any one test for determining the adequacy of educational benefits for all children with disabilities; and therefore, the 1982 standard from *Rowley* case remained intact. However, Chief Justice John G. Roberts made it clear that “a student offered an educational program providing ‘merely more than de minimus’ progress from year to year can hardly be said to have been offered an education at all.” The court’s opinion stated:

1. An IEP must be “reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.”
2. A child’s educational program must be “appropriately ambitious in light of his [or her] circumstances”, and that “every child should have the chance to meet challenging objectives.”

For more information regarding the *Endrew F. v. Douglas County School District Re-1* see the [Questions and Answers on this U.S. Supreme Court Case](#) document.

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

## Legal Citations

### Code of Federal Regulations, Title 34: Education

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

## *OSERS/OSEP Policy Documents*

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

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

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

## CHAPTER 2. CHILD FIND

Each State must have policies and procedures to ensure that all children with disabilities, birth through age 21, residing in the State and who are in need of special education and related services, or early intervention services are identified, located, and evaluated. 34 C.F.R. § 300.111 – Child Find.

The Child Find system contains three 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 components are covered in Chapter 4: “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, age three 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. The Child Find system includes all students who reside within the LEA’s geographic boundaries including students who are:

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

## Section 2. Locating Students

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

### ***A. Coordination with other Community Partners***

The LEA should maintain open and ongoing communication with local community partners and agencies who may naturally have interactions with families through the work they do within the community. These community partners can help point families to the LEA if they encounter a child who may have delays or a suspected disability. These community partners may include, daycares, churches, head starts, doctor's offices, Department of Human Services (DHS), Women, Infants, and Children (WIC) programs, etc.

### ***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, including screening and evaluation procedures.

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, presentations, as well as electronic forms of communication. Regardless of the methods employed, LEAs must conduct comprehensive Child Find activities. In addition, during the annual timely and meaningful consultation with representatives from private schools and parents, LEAs are required to inform them of the LEA's Child Find procedures. See 34 C.F.R. § 300.134(a).

The LEA must document and keep the documentation of the public awareness activities for five school years, including documentation of at least two different ongoing or periodic activities such as: 1) advertisements; 2) posters and their placement location (e.g., doctor's offices, community stores, libraries, laundromats, pharmacies, hospitals, etc.); 3) mailings; 4) website or other electronic forms; 5) brochures, pamphlets and their placement location; 6) interviews on radio, podcasts, television; 7) public forums; 8) local newspapers or newsletters; etc.

Geographic factors, cultural and language diversity, in a local community must be considered in selecting suitable, effective methods and activities to inform the public of local Child Find identification process (e.g., If Spanish is spoken in the community, then public awareness activities need to be provided in English and Spanish).

The LEA must designate a person to coordinate and implement public awareness and Child Find activities. The position/title of the appropriate individual(s) to contact for more information should be included in the public awareness methods.

### **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) apply and a copy of the procedural rights must be provided to the parent when the student is referred for a special education evaluation by the parent or the LEA. Child Find is a critical part of the special education process for all children suspected of having disabilities. IDEA requires that children who are suspected of being a child with a disability and in need of special education are identified, located, and evaluated. 34 C.F.R. § 300.111. IDEA does not require that a child receive scientific, research, or evidence-based interventions before being referred for consideration for eligibility for special education and related services. See 34 C.F.R. § 300.111.

#### **A. Screening**

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

#### **B. Coordinated Early Intervening Services (CEIS)**

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

The overarching goal is to improve student achievement using evidence-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 behavioral domains;
- Identify students who are not meeting standards;
- Plan and provide evidence-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 must be based on whole-school approaches such as: scientifically-based curriculum and instruction; and a Multi-Tiered System of Support (MTSS) for behavior and academics. For more information regarding MTSS see Chapter 10 “Behavior”, Section 1.

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) apply when the student is referred for a special education evaluation by the parent or the LEA as defined above.

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.

### ***C. Significant Disproportionality***

Disproportionality is the overrepresentation (or underrepresentation) of a racial or ethnic group in a particular category (i.e., Special Education Identification involving specific primary categories of Disabilities, Placement, and Discipline in relationship to seven racial/ethnic groups). Disproportionality becomes significant when the overrepresentation exceeds a defined risk ratio threshold. If an LEA is above the risk ratio threshold for three (3) consecutive years in a single race-category pair, then the LEA is determined to be significantly disproportionate; and therefore, the

LEA is required to use 15% of its Part B funds for CEIS. There are 98 opportunities to be disproportionate with 7 racial/ethnic groups compared to 14 categories. See chart below listing the 14 categories within Identification, Special Education Placement, and Discipline, as well as the last column which lists the seven racial/ethnic groups:

Identification	Special Education Placement	Discipline	AND Racial/Ethnic Identities
1. Identified as Special Education (IEP)	8. Less than 40% of the day in general education	10. Out-of-school suspensions ten days or less (>10)	1. African American
2. Autism	9. Separate School Other Setting (correctional or residential facility etc.)	11. Out-of-school suspensions more than ten days (10<)	2. Asian
3. Emotional Disability		12. In-school suspensions ten days or less	3. Hispanic
4. Intellectual Disability		13. In-school suspensions more than ten days	4. Native American
5. Other Health Impairment		14. Total removals	5. Pacific Islander/Native Hawaiian
6. Specific Learning Disability			6. White
7. Speech/ Language Impairment			7. Two or more races

## Section 4. Special Education Referral for Evaluation

If through the Child Find process, a student is identified as possibly having a disability and needing special education services, parents or legal guardian will be asked for their written consent to evaluate the child. Child Find is not a passive process. LEAs should not wait for others to refer students for special education services. LEAs must seek out potentially IDEA eligible students. Special education referrals for evaluation may be made for a variety of reasons, including but not limited to academic and/or behavioral concerns. See Chapter 4, "Evaluation & Eligibility" for additional information.

## *Legal Citations*

### **Code of Federal Regulations, Title 34: Education**

§300.111 Child find.

§300.226 Early intervening services.

§300.302 Screening for instructional purposes is not evaluation.

## CHAPTER 3. YOUNG CHILDREN, AGES 3-5

### Introduction. Young Children, Ages 3-5

Early identification and intervention for young children with special needs is critical for their future success. The Individuals with Disabilities Education Act (IDEA) 2004 requires that services be provided for young children with disabilities beginning at birth through age five. SoonerStart is Oklahoma's Early Intervention Program under IDEA Part C for children birth to 3 years of age. Upon the child's third birthday, special education and related services will be provided by the public school if the child is eligible under IDEA Part B.

IDEA requires that the local school district locate, identify, and evaluate all students with disabilities ages 3 through 21 who reside within the Local Education Agency (LEA) geographic boundaries. The 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 and the transition for children ages birth to three years of age, who have previously been identified as a student with a disability through SoonerStart. See Chapter 2 "Child Find", Section 1: "LEA Responsibility" for more information.

### Section 1. Locating Young Children

Locating young children who may have disabilities involves coordinating with families, community organizations and agencies, as well as promoting public awareness.

#### A. Coordination

1. **Families** – LEA's will coordinate with families. Parents may request evaluations for children who are not yet school age or are not enrolled in public school. In cases where a child is within 45 calendar days of their third (3rd) birthday and has not received early intervention (SoonerStart services), the child would be considered a child to whom IDEA Child Find procedures apply. Therefore, the timeline of 45 school days between parent consent for the initial evaluation and eligibility determination will apply in these circumstances, and not the child's third birthday.
2. **LEA staff** – For students ages 3 to 5, who are enrolled in the public school, coordination of referrals will be between the LEA staff and the parent.
3. **SoonerStart** – Personnel from SoonerStart will coordinate with the LEA regarding children who are about to turn 3 years old and who have been identified as a child with a disability through the SoonerStart Early Intervention Program. See Section 3 for more information on Sooner Start.
4. **Community Organizations** – In addition, LEAs may work in coordination with local Head Start programs, daycares, tribal Head Starts/preschools, or private pre-schools

who provide services to young children to conduct Child Find activities. See Chapter 8 “Private, Charter, Residential, and Other Settings”, Part 3 “Residential and Other Settings, Section 5: “Head Start and Early Head Start” for more information about these collaborations.

## **B. Public Awareness**

LEAs are responsible for providing public awareness activities for children ages 3 through 21 which are explained in Chapter 2 “Child Find”, including the required years for maintaining documentation of Child Find activities. However, the LEAs need to take into consideration that the selected public awareness activities must also reach families of young children ages 3 to 5 who are not enrolled in public school or are not age eligible for enrollment.

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

- The availability of special education services for children starting at age 3;
- A child, beginning at age 3, has a right to a Free Appropriate Public Education (FAPE) if eligible for IDEA Part B special education and related services;
- Confidentiality protections; and
- The special education referral process.

This information may be provided through a variety of methods to include, but not limited to: distributing brochures or flyers throughout the community (for example, public libraries, pediatrician offices, local grocery stores, and convenience stores), including information in school or LEA publications/website, disseminating articles and announcements to local newspapers, arranging for radio, podcast or television messages as well as electronic forms of communication that can reach families of preschool age children.

## **Section 2. Identifying Young Children 3-5**

The identification component of Child Find may include screening or Coordinated Early Intervening Services (CEIS) to identify children who may be in need of a referral for an evaluation to determine if they have a disability. It is best practice to provide targeted interventions to assist in academic and behavioral improvements prior to an initial evaluation. However, general education interventions cannot delay the initial evaluation of a student suspected of having a disability. OSEP Letter to Brekken dated 6-02-2010, states “IDEA does not require, or encourage, an LEA to use an RTI approach prior to a referral for evaluation or as part of determining whether a 3, 4 or 5-year-old is eligible for special education and related services.” This same OSEP letter indicates that States or LEAs who adopt the RTI approach as part of the eligibility criteria, among other components, for determining whether a child has a Specific Learning Disability (SLD) need to take into consideration that the category of SLD is generally **not** applicable to preschool age children. For children enrolled in kindergarten who are age 5, the LEA may choose to use a process based on the child’s response to scientific evidence-based intervention (RTI), if appropriate.

Additional information about the evaluation process for children ages 3-5 can be found in Chapter 4 “Evaluation and Eligibility.”

The procedural safeguards under the IDEA, apply when the student is referred for a special education evaluation by the parent or the LEA as defined in Chapter 2 “Child Find.”

### **Section 3. SoonerStart (Part C)**

SoonerStart is Oklahoma’s Early Intervention Program under IDEA Part C for children birth to 3 years. The program provides supports and resources to assist family members to enhance infants’ or toddlers’ learning and development through everyday learning opportunities. Children eligible for Part C are placed on an Individualized Family Service Plan (IFSP) for services. The IFSP will include steps and services to be taken to ensure a smooth and effective transition for toddlers receiving early intervention services to preschool under IDEA Part B with an LEA or other appropriate agency for services. Upon consent from the parent, SoonerStart will refer the toddler to the resident LEA prior to the child turning three years old.

#### ***A. Referral from SoonerStart***

SoonerStart is required to obtain written parental consent in order to release confidential information to the resident LEA regarding the specific child. SoonerStart will notify the LEA regarding the toddler who has been identified as a child with a disability in the SoonerStart program and is considered potentially eligible for IDEA Part B services. A Transition Planning Conference (TPC) will occur 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 a child will reach the third birthday during the summer, the Transition Planning Conference (TPC) must occur a minimum of 90 calendar days prior to the child turning 3 years old. Both the LEA and SoonerStart are required to participate in the TPC. This TPC may occur at the end of the school year prior to summer. SoonerStart is encouraged to schedule the TPC in the spring prior to the child’s third birthday to allow for the availability of LEA staff and time for the plan to be in place before the school year begins.

#### **The LEA is required to conduct a Review of Existing Data (RED)**

The LEA, along with the parent, must conduct a Review of Existing Data (RED). The LEA must consider all information provided by the parent, including outside private evaluations, and the most current evaluation data provided by SoonerStart. If after the RED is completed and the need to gather additional data is determined, then the LEA must obtain parental consent to conduct an initial evaluation under IDEA Part B federal program (Refer to Chapter 4 “Evaluation and Eligibility” for more information). If it is not necessary to evaluate a child again and sufficient data exists to determine eligibility under Part B, the LEA must convene a meeting with the parent to complete the Multidisciplinary Evaluation and Eligibility Group Summary (MEEGS), where existing information will be documented. If the child is eligible for a disability category under IDEA Part B, then the LEA must meet with the parent and develop an Individualized Education Program (IEP) on or before the child’s third birthday. However, if the child does not meet eligibility criteria under IDEA Part B, the LEA must complete the non-eligibility MEEGS on or before the child’s third birthday.

## **Early Childhood Transition (Indicator 12):**

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 consideration for special education services under Part B of the IDEA;
2. Developing and implementing an IEP in accordance with State policies and practices for special education; and
3. Assuring that the Part B parent consent and written notice requirements are met, including parents have been provided the Procedural Safeguards (Parents Rights) in Special Education.

If the parent disagrees with the eligibility determination or the proposed IEP services from the LEA, then the parent has Procedural Safeguards (Parents' Rights). More information about Procedural Safeguards can be found in Chapter 9.

### ***B. Late Referral to SoonerStart***

If a child is referred to SoonerStart **less than** 45 calendar days prior to the child's third birthday, SoonerStart **is not required to** conduct an initial evaluation, eligibility, 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.

LEA's may receive requests for a referral from SoonerStart and/or from the parents of a child who is within 45 "calendar" days of their 3rd birthday who have not received early intervention (SoonerStart) services. In these cases, the child would be considered a child under Child Find and the referral process would proceed as usual. The LEA would obtain the parent's consent for an initial evaluation. The evaluation must be completed within 45 school days from the date of the parent's written consent on the Special Education Parent Consent form. The initial evaluation does not have to be completed by the child's third (3rd) birthdate since it is not considered a transition referral from Sooner Start. The LEA must not delay the evaluation until the child turns 3 years old. Instead, the LEA must obtain parent's written consent and complete the initial evaluation within the 45 school day timeline.

### ***C. Late Referral from SoonerStart to LEA***

SoonerStart is required to evaluate referred toddlers if it is 45 calendar days or more to the child's third birthday. In some cases, at the time of referral, the student will already be less than 90 days from the third birthday. This will, in turn, prevent SoonerStart from giving the LEA the required 90-day notice in advance of the third birthday. In this case, the child is considered a late referral to the LEA if the child is determined eligible for SoonerStart services after 33 months of age (or less than 90 calendar days from the child's third birthday). If a child is referred to the LEA less than 90 calendar days before the child's third birthday, SoonerStart is required to:

- Conduct an initial evaluation, eligibility, and if eligible, an initial IFSP meeting for the child;
- If the child is potentially eligible for IDEA Part B services, SoonerStart will provide notification to the LEA with a parent consent as soon as possible;
- Information pertaining to the child, initial evaluation, eligibility and IFSP, will be shared with the receiving LEA or community services with written consent;
- A Transition Planning Conference (TPC) is recommended but is **not** required due to being a late referral.

In this situation where a child is a late referral from SoonerStart to the LEA, no matter the reason, including when a parent might delay scheduling a TPC meeting with the school district less than 90 days, yet more than 45 days, before the child's third (3rd) birthday, then the LEA would still attempt to complete the evaluation in a timely manner to determine eligibility, and if eligible, would develop an IEP along with the parent by child's third (3rd) birthday. A TPC is not required in this case, but still recommended. If the evaluation, eligibility, and if eligible, the IEP are **not** completed by the child's 3rd birthdate, then the LEA would indicate on their End-of-Year Data Report as a late referral from SoonerStart.

## Section 4. Transition Planning Conference (TPC)

### A. Purpose of the TPC

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

### B. Topics to be discussed at the TPC

1. Eligibility and timeline requirements;
2. Similarities and the differences under the IDEA between the SoonerStart program (Part C) and special education programs (Part B);
3. Process for consenting to an IDEA Part B evaluation; and

4. Steps to be completed to determine eligibility for IDEA Part B services.

### **C. *Members of the TPC***

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

## **Section 5. Initial Evaluation Referral of Young Children 3-5**

Request for initial evaluation may come from a variety of sources, not necessarily only SoonerStart Early Intervention Program. These sources may include but are not limited to:

1. Early Childhood Screening
2. SoonerStart Early Intervention
3. Intervention Teams
4. Parent(s)
5. Public Agency
6. Medical Professionals
7. LEA staff

A request for an initial evaluation is made when it is suspected that a student may be a student with a disability who may need special education services. Requests for initial evaluations may be made for a variety of reasons dealing with communication, motor, adaptive, cognitive or pre-readiness skills associated with academics, and/or behavior concerns surrounding social/emotional development. Kindergarten age or an older student should participate in general education intervention(s) prior to the request for an initial evaluation. However, general education interventions cannot delay the initial evaluation for special education services of a student suspected of having a disability. As a result of general education intervention(s), the Local Education Agency (LEA) should have data-based documentation of the need for educational interventions, increased educational interventions, or a special education referral. Additionally, a parent may request an evaluation at any time. The procedural safeguards under the Individuals with Disabilities Education Act (IDEA) apply when the student is referred for a special education evaluation by the parent or

the LEA as defined in Chapter 2, “Child Find”. See Chapter 4 for information about Evaluation and Eligibility.

## Section 6. Least Restrictive Environment (LRE) and Continuum of Alternative Placements.

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

Young children with disabilities in Oklahoma may receive their special education services in a variety of environments. The child’s IEP team will discuss the individual child’s needs and determine the type of services, supports, and setting(s) that are appropriate to meet those needs as stated in Chapter 6 “Least Restrictive Environment”.

Settings for young children ages 3-5 years, include public or private early childhood programs. LEAs that do not operate early childhood programs for young children without disabilities are **not** required to initiate general education programs solely to satisfy LRE requirements, but must provide all appropriate services in the LRE for young children with disabilities ages 3-5 years, which may include, but are not limited to:

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

## Section 7. Early Childhood Environments (ECE)

As part of required district data reporting, districts are required to identify Early Childhood Environments (ECE) for each student reflecting the team decision related to LRE. This ECE data will be reported in the form of a code, as described below, (A1, B2, C3, or D1, etc.). By answering the questions asked in the Early Childhood Education Environment Data tab under the Services tile that is included in the IEP processes, the ECE code will be assigned.

Early Childhood Environments may include the following:

1. Children who attend a regular early childhood program that includes at least 50% of children without disabilities. Regular early childhood programs may include:
  - Head Start

- Kindergarten
  - Private Kindergarten
  - Reverse mainstream or full inclusion classrooms
  - Preschool classes offered to an eligible pre-kindergarten population by the public school system; and
  - Group child developmental center and childcare.
2. Children attending a regular early childhood program at least 10 hours per week and either:
    - (A1) Receive the majority of hours of special education and related services in the regular early childhood program; OR
    - (A2) Receive the majority of hours of special education and related services in some other location.
  3. Children attending a regular early childhood program less than 10 hours per week and either:
    - (B1) receiving the majority of hours of special education and related services in the regular early childhood program; OR
    - (B2) receiving the majority of hours of special education and related services in some other location.

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

1. A program that includes less than 50 percent of children without disabilities. Special education programs include, but are not limited to, special education and related services provided in:
  - regular school buildings
  - childcare facilities
  - hospital facilities on an outpatient basis

- other community-based settings; separate schools; and residential facilities.
    - (C1) Special education class. Children who attend a special education program in a class with less than 50% of children without disabilities.
    - (C2) Separate school. Children who receive education programs in public or private day schools designed specifically for children with disabilities (i.e., Oklahoma School for the Deaf (OSD) or Oklahoma School for the Blind (OSB) or a child placed by the LEA in an accredited day school, which provides special education services).
    - (C3) Residential Facility. Children who received education programs in public or privately operated residential schools or residential medical facilities on an inpatient basis.
2. Children not attending a special education program who receive the majority of special education and related services in the residence of the child's family or caregiver.
- (D1) Home (The child receives some or all of his/her special education services in the primary residence of the child's family or caregivers and does not attend a regular early childhood program or a special education early childhood program (Note: this includes students who receive special education both at home and in a service provider location) The term "caregiver" includes babysitters).
  - (D2) Service Provider Location (This includes a child who does not receive any special education services in the home and does not attend an early childhood program or a special education childhood program. This includes speech instruction provided in private clinicians' offices, clinicians' offices located in school buildings, hospital facilities on an outpatient basis, libraries, and other locations where services are provided on a regular basis).

For more information, review the [ECE decision tree](#) and corresponding codes.

## Section 8. Special Education and Related Services

### A. Special Education Services

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

It shall be the duty of each school district to provide special education and related services for all children with disabilities who reside in that school district in accordance with the Individuals with Disabilities Education Act (IDEA), 20 [U.S.C. §1400](#), et seq. A school district/LEA may fulfill this duty, to provide FAPE, by one of the following:

1. The district directly providing special education and related services for such children;

2. The district joining a cooperative program with another district or districts to provide special education and related services;
3. The district joining in a written agreement with a private or public institution, licensed residential childcare and treatment facility or day treatment facility within the district to provide special education and related services to students with disabilities; or
4. The district entering into a written agreement with another school district whereby the resident district agrees that the receiving school district will provide FAPE to an eligible student with a disability on behalf of the resident district. This agreement is an IEP Service Agreement (70 O.S. §13-103) entered into solely for the purpose of providing special education and related services (FAPE) to an eligible student with a disability. In this case, all funds remain with the resident school district, which agrees to pay tuition to the receiving district. Further, the average daily membership (ADM) of the student is credited to the resident district. See Chapter 12 “Transfers and Move-In Students”, Section 1 for more information on IEP Service Agreements, transfers, and transportation.

### ***B. Transportation as a Related Service***

The provision of transportation as a related service for preschool children with disabilities must be considered on an individual basis by the IEP team. The team must consider transporting a preschool aged child to the site where special education and related services are provided, if that site is different from the site the child receives other preschool services.

For more information, see Chapter 5 “Individualized Education Program (IEP), Section 3: “IEP Development”.

## **Section 9. Early Childhood Outcomes (ECO)**

LEAs are required to report outcome data for children served through IDEA Early Childhood Programs.

The three student outcome areas required to be reported include:

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

### ***A. ECO Ratings***

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

1. An ECO entry rating on all three Early Childhood Outcomes is required to be completed in the spring of the last year the child is enrolled in preschool/pre-kindergarten (PK) and advancing to kindergarten. However, the exception is if the initial IEP was finalized in the spring semester of the child's last preschool year, and the child will advance to kindergarten in the fall, then an entry and exit scores are not required.
2. All students with 6 months or more of IEP services must have an ECO Exit Rating.
3. The ECO Entry Rating date must be completed as of the date of the student's initial IEP.
4. The ECO Exit Ratings will be submitted with all observations at the time the child exits PK with an IEP, or returns to general education, whichever comes first. If a student will repeat PK, the ECO exit rating will be completed the following school year when the student is advancing to kindergarten. The ECO exit will be submitted at the time that the student meets one of the above conditions.

## **B. Child Outcomes Summary Form (COS)**

The child outcome ratings and supporting evidence are documented on the Child Outcome Summary Form (COS). It does not need to be completed in conjunction with an IEP meeting.

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

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

The service provider completing the Entry and Exit COS should explain ECOs to the family and give them an opportunity to participate in the ratings for their child.

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 IEP 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 10. Funding**

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

1. Attendance/membership in that district of residence and legally transferred pupils who turn five (5) years of age on or before September 1 of that school year or are not over twenty-one (21) years of age after September 1 of that school year. Average daily attendance/membership also includes students aged three (3) and older who have an Individualized Education Program (IEP).
2. Provided, all children who are at least four (4) years of age on or before September 1 and who have not attended a public-school kindergarten shall be entitled to attend early childhood programs at any public school in the state where such programs are offered. These students shall be included in the average daily attendance/membership.
3. Children aged three (3) who have an Individualized Education Program (IEP) which indicates that they need to attend an early childhood program in order to obtain a free appropriate public education in the least restrictive environment shall also be entitled to attend such programs and shall also be included in the average daily attendance/membership.

**Note:** LEAs that do not operate programs for nondisabled preschool aged children are not required to initiate or pay for such early childhood programs solely to satisfy the requirements regarding placement in the LRE. However, each LEA is required to provide appropriate placement options to meet the child's specific area of need based on their IEP. The LEA responsible for providing a FAPE to the child is responsible for ensuring that all costs associated with the special education and related services contained in the IEP are at no cost to parents. The LEA is also responsible to ensure that the IEP can be implemented, and the child can make progress appropriate, in light of the child's unique disability-related needs, whether placement is in a program operated by the LEA, another public agency, in a private facility, community- or faith-based preschools or day care centers. A preschool age child on an IEP is not necessarily required to attend an early childhood program to receive the special education and related services. For example, a three-year-old child whose IEP team determined speech therapy as the only area of need would not necessarily need to attend an early childhood program. The LEA would be responsible for providing or paying for the speech therapy in this example.

## ***Legal Citations***

### **Code of Federal Regulations, Title 34: Education**

§300.8 Child with a disability.

§300.304 Evaluation procedures.

### **Oklahoma Administrative Code (OAC)**

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

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

## CHAPTER 4. INITIAL EVALUATION & ELIGIBILITY

Evaluation procedures and determination of eligibility for the purpose of determining if a child has a disability under 34 C.F.R. § 300.8 and the educational needs of the child, must be conducted in accordance with 34 C.F.R. §§ 300.304 through 300.306. This chapter includes information on the components and the process of conducting a comprehensive evaluation to determine eligibility under the Individuals with Disabilities Education Act (IDEA).

### Section 1. Request for Initial Evaluation

Before a child can be determined eligible under the IDEA, an initial evaluation must be conducted. The request for this initial evaluation is known as the referral. Children ages three (3) and up can be considered for eligibility under Part B of the IDEA. The parent of a child, or personnel from a public agency, may initiate a referral for an initial evaluation to determine if a child is a child with a disability. An initial referral for an evaluation for a child under the age of three should be directed to Oklahoma's SoonerStart agency under Part C of the IDEA. This process is discussed in detail in Chapter 3 "Young Children, Ages 3-5."

Referrals for initial evaluations may be made for a variety of reasons. For a preschool age child, 3 to 5, the referral for an initial evaluation may result from a parent request, the LEA screening instrument revealing a deficit, an outside referral source, or transitioning from the SoonerStart Early Intervention program. For a student in grades K-12, the referral for an initial evaluation may result from a parent request, Local Education Agency (LEA) personnel (e.g., a general education teacher, school counselor, administrator, etc.) or an outside referral source (e.g., physician).

The effective implementation of general education intervention(s) prior to the referral for an initial evaluation is an important practice for consideration. A multi-tiered instructional framework, often referred to as Response to Intervention (RTI) or a Multi-Tiered System of Supports (MTSS) framework, is a schoolwide approach that addresses the needs of all students, including struggling learners and students with disabilities, and integrates assessment and intervention within a multi-level instructional and behavioral system to maximize all student achievement and reduce problem behaviors. It is important to note, according to the United States Department of Education, Office of Special Education Programs in an OSEP policy letter dated 1-21-2011, the use of Response to Intervention (RTI) or a Multi-Tiered System of Supports (MTSS) framework cannot be used to deny or delay a timely initial evaluation of children suspected of having a disability.

For students participating in general education intervention(s), the LEA should have data-based documentation of repeated assessments to assist in making data driven decisions. For example, to:

- continue the level of intervention support;
- increase the frequency or dosage of the intervention
  - number of times a day or week the student is exposed to the intervention, the size of the instructional group may need to become smaller, the number of minutes for each session reflecting the number of opportunities the student has to respond and receive corrective feedback);

- change the targeted skill because the skill chosen is too difficult;
- change the intervention to align with the skill deficit; or
- discontinue the intervention because the student is performing at or above the proficient level or the targeted goal.

Targeted evidence-based academic and behavioral interventions help reduce the likelihood of inappropriate referrals for special education evaluation, while strengthening the capacity to intervene effectively in the general education classroom. Data trends that indicate the student is not responding to the interventions over time, even after phase changes (e.g., increasing the frequency of the intervention or changing the targeted skill), indicate or suggest the student should be referred for an initial evaluation to determine if the student has a disability and requires special education and related services. Refer Chapter 10 “Behavior”, Section 1: “Overview” for more information regarding MTSS framework.

A parent may request an initial evaluation at any time. However, a parental request for an evaluation does **not** automatically trigger a requirement to evaluate. The LEA must thoroughly investigate the possible existence of a disability and potential need for services before refusing to evaluate, especially when the student is not making adequate appropriate progress in the general education curriculum with their academic, behavior, and/or functional skills. The LEA must document this investigation through the Review of Existing Data (RED) form. The LEA is required to provide the parent Written Notice, along with a copy of the Parents Rights in Special Education: Notice of Procedural Safeguards, if the determination is made that the student does not need a special education evaluation as requested by the parent.

If the LEA determines that it will proceed with a special education evaluation, the LEA has ten (10) school days from the completion of the RED to obtaining parent’s signature on the Special Education Parent Consent form for the initial evaluation. When the LEA meets with the parent to obtain consent for the evaluation, the parent must be provided a description of each assessment component, including information about the suspected disability or disabilities being evaluated so that the parent has full knowledge in order to provide “informed” consent. After the parent signs consent for the evaluation, the LEA must provide the parent a Written Notice, explaining the proposal to initiate an initial evaluation and identifying the components to be evaluated. The LEA must also provide the parents with a copy of the Parent 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, which is included in the Procedural Safeguards. See Chapter 9 “Procedural Safeguards”, Section 6: “Independent Educational Evaluations (IEE)” for a full discussion of IEEs.

## Section 2. Reevaluation and Continuing Eligibility

An evaluation conducted for a child currently receiving special education and related services with an IEP, is considered a reevaluation. The information gathered as a result of the reevaluation provides valuable information about the student’s current 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. Every

reevaluation should be approached and designed individually based on the specific concerns of the child to be evaluated.

### ***A. Purpose of Reevaluation***

The reevaluation process is required at least once every three years, or more often, if needed but not more than once a year, unless the parent and LEA agree otherwise (20 U.S.C. §1414 (a)(2)(B)(i)(ii)) to determine:

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

### ***B. Purpose of Reevaluation***

A reevaluation, with or without additional assessments, must be conducted every three years. In addition, there may be circumstances in which a reevaluation is necessary before the three (3) year timeline is due.

Circumstances when a reevaluation may be necessary prior to the three-year timeline:

- If a parent has requested additional assessments:
  - The LEA must respond in writing through a Written Notice to the parent and address specific concerns raised by the parent noting if the LEA will or will not conduct the 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.
- If the LEA determines that the educational or related services needs warrant a reevaluation (e.g., if the student has academic, behavioral, or functional skill deficits that are not currently being address through the IEP or the student has made significant progress in an area within the IEP).
- If the LEA has existing data to warrant a reevaluation to determine whether the student is no longer eligible as a student with a disability under IDEA.

Circumstances when a reevaluation is **not** required:

- Before the termination of a child's eligibility due to graduation with a standard diploma; however, Written Notice to the parent and/or adult student is required for the change of placement;
- Due to exceeding the age of eligibility for a FAPE, however, Written Notice is required for the change of placement; or
- When the LEA and parent mutually agree that additional assessments are not needed for the reevaluation.

### Section 3. Review of Existing Data (RED)

As part of the evaluation for both an initial and reevaluation, the LEA must conduct a Review of Existing Data (RED) regarding the student. This data review includes, but is not limited to, existing evaluation results and information provided by parents and school personnel; current classroom-based, local, or State assessments; classroom-based observations, and data used to rule out: a lack of appropriate instruction in reading, including essential components of reading instruction; lack of appropriate instruction in math; or limited English proficiency (34 C.F.R. §300.306(b)(1)(i)(ii)(iii)). The LEA must also consider any outside information or evaluation data provided by the parent.

The following individuals are required to review and sign the RED form:

- Parent(s) (at least one parent)
- Special Education Teacher
- LEA Administrator
- Regular Education Teacher(s) (at least one teacher)
- Qualified Professional(s)

To review and document the existing data on the RED form does not require parent consent prior to this action, (OSEP Letter to Anonymous 8-02-2018). A formal meeting is not required to discuss the information on the RED with the parent thus, signing dates may vary on the RED form. However, the LEA has the option to call a formal meeting with all the members listed above to review the existing data with the parent in order to clarify any questions the parent may have regarding the existing records/information. For a reevaluation, the IEP team may meet to make the determination whether additional data is necessary.

For students who will be evaluated under the suspected disability category of Specific Learning Disability, the LEA must document on the RED form evidence-based interventions attempted and the data supporting the outcome of the student's response to the intervention(s). The LEA must also document on the RED form the frequency and duration of the interventions implemented,

including the treatment integrity data (e.g., using a fidelity checklist indicating the intervention was implemented as prescribed to ensure accuracy). See Chapter 10 “Behavior”, Section 1: “Multi-Tiered System of Supports” 1. “Overview” of MTSS.

When reviewing existing data, the LEA must include relevant academic, behavioral, and functional information from home and school, or age-appropriate settings, to provide a comprehensive perspective of the child’s educational needs. Lack of appropriate instruction in reading, including the essential components of reading instruction, mathematics, or Limited English Proficiency (LEP) or English Learner (EL) status must not be the determining factor.

The LEAs are required to gather the following components for all preschool and school age students with suspected disabilities:

- Vision Screening
- Hearing Screening
- Observation (classroom or age-appropriate setting)
- Background (Cultural and Educational)
- Adaptive Behavior
- Developmental History

The above components are vital in planning and determining a suspected disability. For example, a group of qualified professionals would not want to move forward with evaluating a student without first making certain there is existing information in the student’s educational record regarding vision and hearing screening results. If this information is not available in the student’s educational record nor provided by the parent, then obtain parent consent to have the student’s vision/hearing screened to rule out sensory issues as a primary factor prior to moving forward with the remainder of the evaluation components for a suspected disability.

### ***A. Parent Disagrees with Existing Information***

Each LEA is responsible for informing parents of their rights under the Family Educational Rights and Privacy Act (FERPA) as amended and the IDEA regarding personally identifiable information which is maintained in the child identification process. Parents have a right under FERPA to seek an amendment of their child’s educational record(s) which the parents believe to be inaccurate, misleading, or otherwise in violation of the child’s privacy rights. As the LEA reviews existing data, clarify with the parent the accuracy of the information written within the RED form. Each LEA must have a Board Policy regarding educational records and FERPA notification. The LEA’s policy will contain procedures parents should follow when they wish to amend a record. If the LEA is in agreement with the parent to amend the existing information, then they may make that change to the educational record. If the LEA disagrees with the parent about amending the educational record and believe that the information is not inaccurate or misleading, then the parent has a right to place a statement in the record. The statement from the parent should provide the specific contested information and why they disagree with the LEA’s decision. The LEA must maintain the parent’s written statement with the contested part of the record for as long as the student’s educational record is maintained. Also, the LEA is required to disclose the parent’s statement with the portion

of the record to which the statement relates when releasing confidential information (Refer to Chapter 9 “Procedural Safeguards”, Section 5: “Confidentiality and Access to Records” for more information).

### ***B. No Additional Data Needed***

If the team has collected all the required data, the group may determine that no additional assessments are needed. The LEA must have documented the existing data on the RED that meets all the required components that make up a comprehensive evaluation for the suspected disability(ies) and document the assessment data on the Multidisciplinary Evaluation and Eligibility Group Summary (MEEGS). If the group determines that no additional assessments are needed, 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.

During the reevaluation process, the IEP team may propose to make an eligibility determination based only on existing data. The existing data must meet the requirements for a comprehensive evaluation according to the suspected primary category of disability.

A qualified professional is not a required group member for determining continued eligibility if the existing data being used by the IEP team has previously been interpreted and remains relevant (e.g., student with Other Health Impairment has a medical diagnosis). However, it is appropriate and necessary to include a qualified professional if:

1. An outside evaluation has been presented to the IEP team for consideration;
2. The IEP team is considering changing the disability category of a student;
3. The parent requests interpretation of any existing data provided by a qualified professional; or
4. If interpretation is needed to substantiate a key eligibility indicator.

The IEP team must document on the MEEGS why a qualified professional was not needed to complete the reevaluation.

### ***C. Additional Data Needed***

If the group has determined that additional data are needed, parental consent must be requested for the additional assessment components. For an initial evaluation the LEA may not assess the student without parental consent. However, in the case of a re-evaluation the LEA may move forward with the evaluation if unable to obtain parent participation in the determination. The LEA must document the attempts to contact the parent and the various ways of obtaining the parent’s signed consent for a reevaluation (e.g., offering an option of having a virtual meeting and having the parent sign electronically or participate by phone conference). See Chapter 9 “Procedural Safeguards”, Section 3: “Informed Consent”, D. “Failure to Respond to a Request for Consent” for more information.

## ***D. Timeline if Additional Data is Necessary***

The timeline between the date of the parent’s signature on the “Review of Existing Data” (RED) and the date of the parent’s signature on the “Special Education Parent Consent” form for additional assessments must be within 10 school days for initial evaluations only. Once the parent signs consent for an evaluation then the LEA will provide the parent a Written Notice summarizing the proposal to initiate an initial or a re-evaluation to gather additional data. Refer to Section 7, Written Notice within this chapter for more information regarding the Written Notice after consent, but prior to evaluating the student.

### ***1. Initial***

Oklahoma has established a 45-school day timeline for initial eligibility (20 U.S.C. § 1414(a)(1)(C)(i)(I)). The initial eligibility determination must be completed within 45 school days beginning the date of the parent’s signature on the “Special Education Parent Consent” form (this date must match the parent consent date documented on the RED form titled “Date of consent for evaluation”) and ending on the date of the Multidisciplinary Evaluation and Eligibility Group Summary (MEEGS) form where the group made the determination of eligibility for special education and related services.

The 45-school day timeline for the initial evaluation does not apply to the child’s evaluation **if**: 34 CFR §300.301(d)(e).

- The parent of the child repeatedly fails or refuses to produce the child for the evaluation.
- OR
- A child enrolls in a new district after the evaluation has begun in the previous district yet before the determination of eligibility.

It is important to note that the new or receiving district is required to make sufficient progress to ensure prompt completion of the evaluation. Procedurally, the receiving district will conduct a new RED, selecting “child has entered our school system with an out of date or incomplete evaluation” as the presenting concern. The receiving district must also gain a new signed consent from the parent for evaluation, ensuring the date of consent is documented correctly on the new RED. The LEA and parent must agree on a specific timeline for completion, which may extend the timeline beyond that which was determined by the original sending district. All of this will be followed by a Written Notice documenting these decisions.

The time between the initial eligibility determination (i.e., signature date on the Initial MEEGS form) and the date of the initial Individualized Education Program (IEP) cannot exceed 30 calendar days.

### ***2. Reevaluation***

The 45-school day timeline is only for the initial evaluation and does not apply to the reevaluation of students already identified as a student with a disability receiving services under IDEA. If the LEA

determines that the educational or related service(s) needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or if the child's parents or teacher requests a reevaluation (20 U.S.C. §1414(a)(2)(A)(i)(ii)), then a reevaluation may be conducted more often than once every three (3) years. Conducting the reevaluation in advance of the scheduled three-year timeline will effectively change the three-year anniversary date to reflect the new reevaluation due date.

The IEP team should make the determination of the need for a reevaluation prior to the three-year anniversary due date to provide sufficient time to conduct the needed assessments and complete the reevaluation before the anniversary date. Providing the group of qualified professionals sufficient time to gather the additional information, assessments, or evaluation will ensure the completion of the reevaluation on or before the three-year anniversary (i.e., based on the date signatures were obtained on the previous MEEGS form for eligibility determination).

## Section 4. Consideration of Outside Evaluation Results

When a parent submits an evaluation report from a qualified professional who is **not** an employee of the LEA nor an individual the district contracts with for evaluations on a regular basis, the LEA must consider the outside evaluation data. OSEP Letter to Zirkel (5-02-2019) stated, if the parents obtain an Independent Educational Evaluation (IEE) at their own private expense and share that evaluation result with the LEA, the school must consider the evaluation if it meets the federal, state, and local criteria for determining eligibility. This requirement also applies to a parent who seeks an IEE at private expenses after their child has been found not to be a child with a disability (34 C.F.R. § 300.502(c)).

If the information is from a qualified source, then the LEA must consider the information and document this data on the RED form. If the information is **not** from a qualified source, the LEA will inform the parent in a Written Notice why the information is not included as part of the evaluation. The LEA is not compelled to accept the findings or recommendations in the IEE; however, the multidisciplinary team must review the IEE and discuss it as appropriate. For more information regarding IEEs refer to Chapter 9 "Procedural Safeguards", Section 6: "Independent Educational Evaluations" (IEE).

A medical or mental health diagnosis, provided by an outside source, does not automatically qualify a student for special education services under the IDEA, because each suspected category must have multiple pieces of data collected to make up a comprehensive evaluation. IDEA federal regulations (34 C.F.R. §300.304(b)(1)(2)(3)) state that the LEA must *"(1) use a variety of assessment tools and strategies to gather functional, developmental, and academic information about the child, including information provided by the parent; (2) not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability; and (3) use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors."*

## Section 5. Written Notice/Parental Consent

### A. Informed Consent

When the LEA has data or is aware of facts or circumstances, which would reasonably lead one to believe the student's performance may be due to an education-related disability, then the LEA must notify the parent. The LEA must make reasonable efforts to contact the parent to obtain informed parental consent in writing if proposing to initiate an initial evaluation. The LEA must obtain informed consent from the parent of the student before conducting a comprehensive evaluation, including individualized assessment(s) for an initial evaluation.

Informed consent means:

- The parent has been fully informed of all information relevant to the proposed action for which consent is being sought, in their native language, or other modes of communication (e.g., providing description and/or an explanation of the suspected disability or disabilities for which the evaluation will be conducted, and the specific components that will be assessed or additional information gathered);
- The parent understands and agrees (in writing) to the proposed action for which their consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and
- The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time. However, revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked).

Parental consent for initial evaluation must **not** be construed as consent for the initial placement or provision of special education services through an Individualized Education Program (IEP). This consent is gained at the time the IEP is agreed upon and signed.

### B. Failure to Respond or Provide Consent

#### *Initial Evaluation*

The LEA must **not** conduct the initial evaluation without the parent's signature on the Special Education Parent Consent form. The LEA must make reasonable attempts to obtain written consent from the parents to conduct the initial evaluation. The LEA must document such attempts (detailed records of telephone calls made or attempted and the results, copies of written or electronic correspondence sent to the parents and their response, and visits made to the parents' home or place of employment).

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

Additionally, under the disciplinary safeguards, 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.

## **Reevaluation**

The LEA must make reasonable attempts to obtain consent from the parents to conduct the reevaluation. The LEA must document such attempts (detailed records of telephone calls made or attempted, and the results of each attempt, 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 of those visits). When a parent fails to respond to a consent request for reevaluation, the LEA must provide Written Notice to the parent regarding the action to be taken.

If the parent does not respond to a request to provide consent for a reevaluation after reasonable efforts have been made to obtain such consent, the informed parental consent need not be obtained (34 C.F.R. §300.300(c)(2)).

If the LEA believes, based on a review of existing data (RED) and the completion of the eligibility determination (MEEGS), that the student does not continue to have a disability or does not continue to need special education and related services, the LEA may determine that it will not continue to provide special education and related services to the student. If the LEA determines that it will not continue to provide special education and related services to the student, the LEA must provide the parent with Written Notice of its proposal to discontinue the provision of FAPE to the student, including the specific data used as a basis for the proposal that supported the determination decision due to having comprehensive evaluation information/data hinged on the key eligibility components of the specific category in which the student is served.

### **C. Parental Consent Not Needed**

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

- Review existing evaluation information.
- Screen an individual child to determine appropriate instructional or intervention strategies.
- Administer an evaluation that is given to all students in that grade level.

*“The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services” (34 C.F.R. §300.302). In the OSEP Letter to Torres (2009) it states, “Because screening is not considered an evaluation to determine eligibility for special education services, the IDEA does not require parental consent prior to the screening.”* The LEA can develop and implement policies and/or procedures that permit screening children to determine appropriate instructional strategies or for documentation to help determine if an initial evaluation is necessary. However, screening may not be used to delay or deny an evaluation for special education and related services. Moreover, nothing in the IDEA or its implementing regulations requires or prohibits a State or LEA from developing and implementing policies to temporarily remove a student from their classroom for purposes of administering screening instruments to determine appropriate

instructional or intervention strategies for the student. If a student is screened after a parent request for an evaluation, the screening does not replace the evaluation and does not alleviate the LEA's responsibility to issue a prior Written Notice of the refusal or proposal to initiate the evaluation to determine if the student is eligible for special education and related services.

## Section 6 Parents Rights

Upon the initial referral or parental request for an evaluation, the LEA must provide the parents a copy of the [Parents' Rights in Special Education: Notice of Procedural Safeguards](http://ok.gov/sde/documents-forms) available at <http://ok.gov/sde/documents-forms>. (20 U.S.C §1415(d)(1)(A)(i)). OSEP Letter to Nathan (2019) states, *"Although IDEA permits an LEA to post a copy of the procedural safeguards notice on its web site, the public agency would not meet its obligation to provide a parent the notice of procedural safeguards by simply directing a parent to the web site. Rather, a public agency must still offer parents a printed or electronic copy of the procedural safeguards notice. If, however, a parent declines the offered printed or electronic copy of the notice and indicates a clear preference to obtain the notice electronically on his or her own from the agency's web site, it would be reasonable for the public agency to document that it offered a printed copy of the notice and that the parent declined."*

The parent must be informed of their Parents' Rights in Special Education: Notice of Procedural Safeguards in a language understandable to the general public. With respect to an individual who is limited English proficient or uses sign language or Braille or other mode of communication, the LEA must provide the means for the parents to be informed of their parent rights.

34 C.F.R § 300.503(c) *"Notice in understandable language.*

(1) *The notice required under paragraph (a) of this section must be—*

- (i) *Written in language understandable to the general public; and*
- (ii) *Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.*

(2) *If the native language or other mode of communication of the parent is not a written language, the public agency must take steps to ensure—*

- (i) *That the notice is translated orally or by other means to the parent in his or her native language or other mode of communication.*
- (ii) *That the parent understands the content of the notice; and*
- (iii) *That there is written evidence that the requirements in paragraphs (c)(2)(i) and (ii) of this section have been met."*

## Section 7. Written Notice

The LEA must provide a Written Notice to the parents to document their proposal or refusal after:

- Obtaining parental consent for the initial evaluation or reevaluation, yet prior to conducting the evaluation. **OR**
- Reasonable attempts to contact the parent for their written parental consent for the initial evaluation or reevaluation but received no response. **OR**
- Parent declined to sign consent for the initial evaluation or reevaluation. **OR**
- Refusal to conduct the initial evaluation or reevaluation by the school district.

In these cases, listed above, the Written Notice must be given to the parents a reasonable time before the LEA takes action regarding their proposal or refusal related to the identification, evaluation, educational placement or provision of FAPE. Even if the parents and LEA agree to everything proposed and/or refused, the LEA must provide the parent with prior Written Notice of the proposed or refused action(s). A parent's agreement with the proposal or refusal does not relieve the LEA of its obligation to provide prior Written Notice. The purpose of advanced notice in writing is to provide the parent sufficient time to consider the proposal or refusal prior to implementation. In order for the parent to make their decision, they must be clear on the action being proposed or refused by the LEA. Therefore, OSEP Letter to Atkins-Lieberman, 2010, stated, "OSEP would expect that the Prior Written Notice, in order to fully explain the actions being proposed would include the proposed category of disability...Additionally, if the parent request a change in identification (category of disability or from a child with a disability to a child without a disability) and the public agency refuses the parent's request, Prior Written Notice must be provided and must include a description of the action being refused which, in the case of identification, would include the category of disability being refused and could include, as part of the explanation of reasons for the refusal, the category of disability under which the public agency believes the child remains eligible."

## Section 8. Evaluation

Decisions about a student's eligibility and need for special education services are based on valid and reliable data, which includes information from the parents, collected by a group of qualified professionals and analyzed by the multidisciplinary group. An evaluation is considered comprehensive based on specific components required for the suspected disability described in detail under Section 10 "Disability Categories and Evaluation Components" of this chapter.

The evaluation procedures described in the following pages have three purposes:

1. To improve and maintain the quality of data considered by the student's team;
2. To clarify the specific criteria for disability determination; and
3. To enhance the quality of services recommended to address students' educational needs.

### A. Definitions of Evaluation and Assessment

The terms "evaluation" and "assessment" are often interchanged; however, there are significant differences between the meanings of the two terms. The IDEA evaluation encompasses both evaluation and assessment components.

**Evaluation.** An evaluation is a procedure, or a prescribed method, 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. An evaluation component purpose is summative in order to understand the student's learning or mastery of content in relation to determining eligibility under one of the disability categories of IDEA.

**Assessment.** An assessment component is a measurement that provides information regarding the student's current levels, how the student learns, and the student's negative or positive response to an intervention or teaching strategy (e.g., evidence-based interventions with progress monitoring

data). Assessments may be standardized or non-standardized, criterion-referenced (e.g., curriculum-based measurement-CBM), or norm-referenced, and usually elicit responses from students to situations, questions, or problems to be solved. Assessment data also includes, but is not limited to, observations, interviews, medical reports, and other formal or informal data. An assessment purpose is formative and is the process of collecting, reviewing, and using data gathered over a period of time that provides feedback on the student's deficits and areas of improvement.

Therefore, the LEA must ensure that assessments and evaluations are conducted as part of comprehensive initial or reevaluation covering all components related to the suspected disability or disabilities, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence (or cognitive abilities), adaptive behavior, academic performance, communicative status, and motor abilities (34 C.F.R. §300.304(c)(4)). 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.

**NOTE: 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 (20 U.S.C. § 1414(a)(1)(E)).**

Refer to D. "Evaluation Materials/Instruments" within Section 8 "Evaluation" of this chapter for more information regarding a comprehensive evaluation.

## ***B. Evaluation Considerations***

Information obtained through the completion of an eligibility evaluation should help the team determine the most appropriate disability category for eligibility as well as identifying needs and appropriate supports and services for a student, those that can be provided through the general education program, and those that can only be provided through the application of special education supports and services. It should be understood the assessments/evaluations administered by school personnel will not result in a diagnosis of any particular disorder or impairment. Rather, the purpose of the evaluation is to determine if the student meets key eligibility indicators to be identified as a student with a disability as defined by IDEA and State procedures and standards, as well as whether or not the student is in need of special education services under the IDEA due to the adverse impact the disability has on their education (See Section 12: "Adverse Impact on Educational Performance" of this chapter for more information).

## ***C. Evaluation Procedures – General Considerations***

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

The LEA conducts evaluations to gather data necessary to make an eligibility determination. During the evaluation process, the student is assessed in all areas related to the suspected disability, which may include the following, but not limited to:

## Health/Medical

- The Health/Medical component of the evaluation includes information regarding the child's health/medical history, current health/medical status, or medical diagnoses to determine a medically related disability.
- Medical information from a licensed physician, physician assistant, licensed psychiatrist, licensed psychologist, or advanced registered nurse practitioner (ARNP) can be a vital component in the evaluation for special education services, especially when a mental health, developmental, or medically related disability is suspected.
- The OSDE Medical Report may be completed by outside providers at the request of the multidisciplinary team and with written parent consent using the Consent for Release of Confidential Information Form, to gather additional health/medical information.
- 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 to the LEA.** The parent may provide signed consent for a Release of Confidential Information to allow the school and the medical personnel to exchange written and verbal information about the student.
- A medical or mental health diagnosis does not automatically qualify a student for special education services under IDEA. The multidisciplinary team should consider the diagnosis as a component of the comprehensive evaluation. For example, an outside diagnosis under DSM-5 criteria does not automatically result in qualification under IDEA; however, an outside diagnosis may suggest additional data necessary for a comprehensive school-based evaluation, inform intervention strategies, or identify possible services/supports.
- A student should not be denied a medical evaluation (e.g., an audiological evaluation) if it is needed to clarify a student's educational needs or inform the team of additional components necessary to determine eligibility for special education services. Any available insurance may be used to offset the costs of the evaluation, with parent consent.

## Vision

- Information regarding visual acuity, field of vision, and vision functioning is necessary to determine a vision-related disability. If a student fails a vision screening, that information alone is not sufficient to determine eligibility under a vision-related disability. However, if a student passes a vision screening, that information is sufficient to rule out a vision-related disability.

## Hearing

- Information regarding hearing functioning and the extent of hearing impairment is necessary to determine a hearing-related disability. If a student fails a hearing screening that is not sufficient to document a hearing-related disability (e.g., Hearing

Impairment or Deafness). However, if a student passes a hearing screening that is sufficient in ruling out a hearing-related disability.

## **Motor**

- Motor components include information regarding gross and/or fine motor skills and abilities in relation to educational needs.

## **Communication/Language**

- Communication/Language components include information regarding speech skills (articulation, voice, fluency, and oral motor) and/or receptive and expressive language skills (phonology, morphology, syntax, semantics, and pragmatics).
- 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.

## **Academic Achievement**

- Information regarding academic achievement or developmental progress may include but is not limited to standardized norm-referenced achievement tests, and criterion-referenced tests (e.g., curriculum-based measurements/curriculum-based assessments, benchmarks, or district-wide assessments/common formative assessments).
- Academic performance, achievement (in meaningful contexts), and/or age-appropriate activities will be important information for the team to document and consider. Readiness and developmental activities would be appropriate for children in the early childhood years.

## **Intellectual/Cognitive**

- Intellectual/Cognitive components include information regarding the child's overall mental ability and cognitive functioning.
- Evaluation instrument selection for measuring cognitive abilities should be informed by data collected in other areas (i.e., interview, observations, social interactions, screeners (including screeners used to identify students who are English Learners-EL), speech-language evaluations or screening information, etc.) to eliminate selecting an evaluation tool that is not appropriate or to reduce test bias.
- For children with severely limited abilities and/or impaired functional communication skills, standardized, individually administered cognitive assessments may not adequately capture their strengths and needs even with a nonverbal intelligence test. In such cases, the team should consider additional functional assessment options. Functional

assessments may include formal observations, checklists or portfolios of the student's abilities, milestones, or parent interviews.

- Discrepancies between verbal and non-verbal ability scores should not be used to invalidate the overall IQ. At this time, the overall IQ is considered to be the best estimate of a student's intellectual/cognitive functioning. It is suggested to conduct an additional evaluation in the area of cognitive abilities that is more aligned to the student's strengths (e.g., if the non-verbal score is higher than the verbal score it is suggested to utilize a language-free non-verbal intelligence test) in order to obtain the student's true ability functioning level(s).

## **Perceptual Processing**

- Perceptual processing component includes information regarding the student's ability to perceive or process information through visual, auditory, and sensorimotor means.

## **Developmental**

- Developmental components include information regarding the child's developmental history, skills, and abilities in relationship to age-based expectations.
- When evaluating for Developmental Disability category, procedures must evaluate all five domains of developmental functioning (adaptive, cognitive, communication, social/emotional, and motor).

## **Psychological (Emotional/Mental Health status)**

- Psychological components include information regarding the student's emotional or mental health status, psychological concerns, and severe behaviors (not including intentional or willful behaviors associated with students who are solely identified as socially maladjusted).
- Social-emotional factors must be assessed through multiple modalities and across settings (e.g., home, community, and within the school environment such as the gym, cafeteria, library, hallways, classroom, playground, etc.), using multiple sources (teachers, parents, other individuals involved with the student) to determine a pattern of behavior from multiple raters across environments. This includes but is not limited to, structured interviews, systematic behavioral observations (quantitative methods of observation), behavior checklists, rating scales, personal inventories, and self-report.
- Information gathered must include documentation regarding the student's ability or inability to build or maintain satisfactory interpersonal relationships with peers and teachers over a long period of time and to a marked degree that adversely impacts the relationship due to significant inappropriate types of behavior responses, or extreme feelings/emotional status under normal circumstances.

- Other examples of information that should be gathered should include but is not limited to, whether the student has unusual fears, physical symptoms where no medical reason is confirmed, severe pervasive moods, or severe depression associated with personal or school problems.

## **Social/Emotional**

- Information should include abilities in reciprocal social interactions compared to similar age peers.
- Data collected should include information regarding the student's understanding of social nonverbal behaviors (such as facial expression, body postures, or gestures/social cues to regulate social interaction) and the ability to understand the perspective of others, age-appropriate humor, non-literal language, or how their behavior impacts how others think or feel.
- Important information should be gathered from multiple sources (e.g., parents and teachers) and methods such as standardized assessments, norm-referenced measures, rating scales, observations, interviews, and personal inventories.

## **Background (Cultural and Educational)**

- Consideration of cultural factors including information related to family background, native language, mode of communication, cross cultural communication, and English proficiency.
- Evaluation of culturally and linguistically diverse students should be conducted in the student's dominant spoken language, mode of communication (e.g., sign language), or alternative communication system.
- All student information should be interpreted in the context of school expectations with consideration given to the student's cultural background.
- The use of evaluations printed in the student's native language is preferred and an evaluator fluent in the student's dominant language is more valid and reliable than an interpreter (when possible).
- Consideration of environmental factors includes information related to educational history (including number of different school districts enrolled or intraschool district changes within the same elementary or secondary level, attendance records, historical grades, and repeated grades).

## **Behavior**

- Due to the complex nature of variables associated with behavior assessments, individuals who conduct a Functional Behavioral Assessment (FBA), or for those who conduct a Functional Analysis (FA) should have training on data collection and behavior assessment.

- Information should include explicit and measurable definitions of problem behaviors stated in specific, concrete, observable terms, described in sufficient detail where multiple people can identify the specific behavior.
- Data collected should provide a hypothesis of the function(s) of the problem behavior (for example attention, escape, or avoidance). The team should select age-appropriate targets or replacement behaviors that identify what specifically the student is expected to do and under what conditions.
- Relevant data to collect may include:
  - Triggering antecedents such as settings or events
  - Reinforcing consequences for the problem behavior
- An FBA or FA may be completed independently from a comprehensive evaluation in certain situations to develop a Behavior Intervention Plan (BIP). A BIP may include:
  - Antecedent and consequence strategies (how school personnel will respond to the behavior before and after the behavior occurs)
  - Instructional strategies (alternative skills to be taught)
  - Skill-building/reinforcement strategies
- Behavior does not always have to involve an FBA or FA but may also be assessed through norm-referenced rating scales across multiple sources or systematic observations (quantitative methods such as interval recording to determine the frequency of on-task vs off-task behavior compared to same age/same gender peer group, or a specific repetitive behavior) or interviews.

For additional information, see Appendix H in the Evaluation & Eligibility Handbook Guidance for Assessing Challenging Behaviors.

## **Adaptive Behavior**

- Adaptive Behavior components include information regarding the student's level of functioning and general behavior in school and home settings in comparison to age-appropriate adaptive skill development. This data includes adaptive behavior ratings, behavioral observations, and parent/teacher reports of adaptive functioning across environments.

For additional information, see Appendix G in the Evaluation and Eligibility Handbook Guidance on the Continuum of Adaptive Skill Functioning.

## **Observations (Classroom/Other Environments)**

- The student must be observed in their learning environment related to the identified concern and suspected disability. For example, if a student is suspected of a Specific Learning Disability in the area of basic reading skills, an observation during a P.E. class might not be appropriate. Instead, the observation should occur during the basic reading skills instruction by the general education teacher.

- The observation must be conducted by at least one team member other than the child's regular education teacher (including preschool settings, private schools, the regular classroom setting) to document the student's academic and behavior (for example, engagement) performance in the specific area(s) of difficulty or parental concerns.
- Information from an observation during routine classroom instruction or other settings conducted before the request for an evaluation, may be used as existing data as part of the evaluation which provides sufficient information about the student's behavior or academic performance.
- If new observational information is needed, parent consent must be obtained before conducting the observation that will be included as a component of the evaluation.
- If a child is less than school age or not in school, an observation of the child in an age-appropriate environment is required.

### **Transition/Vocational**

- Vocational component includes transition assessments that gather information regarding the student's interests, aptitudes, and skills. Transition assessments are required annually as part of the IEP for students who are aged 15 and up, or younger, if necessary, and throughout their high school years.

### **Assistive Technology (AT)**

- Assistive technology components include assessments of a student's need for assistive technology support and informs the team which tools may be most effective. This component may be required as a part of the student's special education, related services, supplementary aids, and services on a case-by-case basis.

### **Other**

- Any other factors or information relevant to the suspected disability or disabilities that may assist the group of professionals, including the parent, in utilizing the additional information to determine if the student meets the criteria for eligibility under IDEA.

### **Intervention Documentation**

- Targeted skill intervention documentation should include a descriptive summary of the instructional or behavior change strategies implemented to address the following:
  1. A definition that is explicit involving the targeted skill deficit(s), as well as a specific goal for the expected level of performance that is observable and measurable.
  2. A description of high-quality evidence-based interventions/strategies selected to teach the targeted skill(s).

3. An implementation plan including the number of opportunities the student is exposed to the intervention.
  4. The plan for progress monitoring at regular intervals over the duration of the intervention.
  5. Data-driven decision outcomes of intervention activities that may result in changes to the intensity of the intervention implementation or determine the selected intervention is working.
- Documentation for behavior skills should include a description of antecedent and consequence strategies to shape desired behavior as well as a description of generalization behaviors. The LEA should include a description of when generalization and maintenance of the targeted/expected behaviors should occur. The data collected surrounding these strategies drives intervention decision-making.
    - **Antecedent strategies** are preventions employed to reduce the occurrence of the targeted problem behavior(s).
    - **Consequence strategies** determine what responses or non-responses should be made to the targeted problem behavior once it occurs to minimize negative reinforcement, and ultimately reveal how to respond when the student is exhibiting the desired behaviors by increasing reinforcement to increase the likelihood the desired behavior will occur more frequently.
    - **Generalization of Behaviors** occurs when the student is able to demonstrate a skill or behavior that has been mastered in isolation or in one setting and then apply the new skill mastered to other settings.
    - **Maintenance of Behaviors** occurs when the student is able to demonstrate a mastered skill/behavior over time and across settings.
  - Intervention integrity/fidelity should be addressed through verification that intervention strategies were implemented/delivered by qualified personnel as designed. Intervention integrity documentation should include data produced as part of the intervention (an observation using an intervention plan checklist to determine if the steps of the intervention were carried out as designed; or an interview with the person carrying out the intervention). Document the intervention accuracy, intervention exposure, and student's behavior during the intervention implementation.

#### **D. Evaluation Materials/Instruments**

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

1. Use a variety of materials or evaluation instruments and strategies.

2. Use technically sound evaluation instruments.
3. Materials/evaluation instruments, including 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 instruments/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 modes 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/evaluation or measures are valid and reliable;
  - d) Administered by a trained and knowledgeable professional;
  - e) Administered in accordance with instruction/standardization procedures provided by the producer of the assessments (Note: if an assessment or evaluation is not conducted under standard conditions, a description of the extent to which it varied from standard conditions; for example, the adaptive nonstandard 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 to ensure that if an assessment is administered to a student with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the student's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test intends to measure).

### ***E. Evaluation Comprehensiveness***

The evaluation must be sufficiently comprehensive to determine if a student meets eligibility criteria to be identified as a student with a disability under IDEA in one or more of the 13 categories of disability, in addition to identifying all of the student's unique disability related needs. Ultimately, at the close of an evaluation, the group should have enough information to support whether or not

the student meets the criteria for a disability under IDEA, and the student is in need of special education services.

The assessments and evaluation must be comprehensive enough to answer these questions:

1. Is the student demonstrating key eligibility indicators of an education-related disability as defined in IDEA? AND
2. Does the student meet the Oklahoma eligibility criteria standards for one or more disabilities under the IDEA?; AND
3. Is the nature and severity of the disabling condition adversely impacting the student's educational performance or progress (which includes their ability to actively and effectively participate in classroom-based, group instructional activities?); AND
4. Because of the disability and its adverse impact on the student's education, does the student need specially designed instruction that requires special education and related services?

#### ***F. Group of Qualified Professionals***

There are a variety of individuals who make up a group of qualified professionals and the parent who determine whether the child is a child with a disability under IDEA (34 C.F.R. §300.306). Eligibility determination cannot be determined solely by one single qualified professional. Indeed, it is the responsibility of a multidisciplinary group of qualified professionals who evaluate/assess, or bring information to the team for consideration as the basis for determining eligibility depending on the suspected disability or disabilities or concerns addressed through the RED. Within the context of comprehensive evaluations/assessments for special education services, different professional evaluators may contribute to the evaluation process by assessing the identified areas of concern within their professional competency. See "Professional Assessment Competency Areas" chart below for more information.

Please note that an individual professional may have additional certifications and/or training in an area not listed in this table.

Professional Assessment Competency Areas									
QUALIFIED PROFESSIONAL EVALUATOR**									
EVALUATION COMPONENTS	Hearing Specialist	Vision Specialist	School Nurse	Occupational Therapist	Physical Therapist	School Psychologist	School Psychometrist	Speech Language Pathologist	Special Education Teacher
Health/Medical*	X	X	X	X	X	X	X	X	
Vision		X	X screening						
Hearing	X		X screening					X screening	
Motor				X	X				
Communication/Language						X	X	X	
Academic Achievement						X	X		X
Intellectual/Cognitive						X	X		
Perceptual/Processing				X		X	X	X	
Developmental			X	X	X	X	X	X	X
Psychological (Emotional/Mental Health Status)						X			
Behavior						X	X	X	X
Adaptive Behavior						X	X		
Social/Emotional						X			
Background (Cultural and Educational)						X	X	X	X
Observations Classroom/Other	X		X	X	X	X	X	X	X
Transition/Vocational									X
Assistive Technology	X	X		X	X			X	

\*Health/Medical information should be gathered and interpreted by specialists based on their scope of practice within their medical field.

\*\*Standardized evaluation tools require the qualified professional to have specific credentials designated by the test publishing company.

Assessments and other evaluation materials/instruments must be administered by qualified professionals in conformity with the instructions provided by the test publishers. Evaluators have the proper training to administer tests and interpret results which generally includes adequate graduate coursework combined with supervised experience. A group of qualified professionals including the parent, must synthesize data to determine if the key eligibility indicators in one or more of the thirteen disability categories are met.

## **G. Responsible Reporting of Evaluation Data**

As part of the multidisciplinary evaluation process, the group of qualified professionals, including input from the parent, will complete the Multidisciplinary Evaluation and Eligibility Group Summary (MEEGS) form utilizing the obtained assessment and evaluation data and information gathered as part of the comprehensive process. The MEEGS section titled “Summary of Eligibility Determination” should be used to provide a detailed summary of the current evaluation and demonstrate that the student meets the key eligibility indicators for the identified category(ies) of disability. All qualified professionals who administered an assessment during the evaluation should contribute to the Summary of Eligibility Determination section of the MEEGS document. In the case of a student who does not meet the key eligibility criteria for specially designed instruction, the narrative should include how the student did not meet key eligibility indicators for the suspected disability categories described in the RED along with any educational needs that may be adequately addressed through general education services and accommodations.

If an assessment is given, it should be reported unless the assessment session was deemed to be invalid. In this case, the qualified professional would need to describe why the assessment was not valid. All evaluation data should be used to help determine a student’s strengths and areas of need. Documented student behavior during the assessment that might influence the results (e.g., impulsivity, lack of engagement, noncompliance) should be considered during the assessment process. If a subtest is thought to be invalid because of a construct-irrelevant variance, the administration of a separate test is likely warranted. The narrative should include details about the student's performance in the evaluation relevant to the suspected disability category and how this information could be used to determine specially designed instruction. When an examiner chooses to change administration standardization, the changes must be clearly described in the written report along with a statement of the potential impact the change could have on the assessment results.

Qualified professionals must administer assessments/evaluation tools, including scoring and interpreting results in conformity, with the instructions provided by the publisher. Selected assessment instruments should have validity and reliability that has been established for use with members of the population tested. When such validity or reliability has not been established, qualified examiners should describe the strengths and limitations of test results within the interpretation of results. Qualified professionals should use assessment methods that are appropriate to an individual’s language preference and competence unless the use of an alternative language is relevant to the assessment issues.

## **Section 9. A Child with a Disability**

A child with a disability means a child evaluated in accordance with 34 C.F.R. §§ 300.304 through 300.311 as having a disability under one or more of the following disability categories: autism, deaf-blindness, developmental delay, hearing impairment (including deafness), intellectual disability, emotional disturbance, multiple disabilities, orthopedic impairment, other health impairment, specific learning disability, speech or language impairment, traumatic brain injury, or visual impairment (including blindness), and who, by reason thereof, needs special education and related services.

If it is determined, through an appropriate evaluation under 34 CFR § 300.304-311, that a child has one of the disabilities defined in 34 C.F.R. § 300.8, but only needs a related service and not

special education, the child is not a child with a disability under the IDEA; however, the group should consider an initial evaluation under Section 504.

If the related service required by the child is considered special education rather than a related service under State standards, the child would be determined to be a child with a disability. However, a related service (e.g., occupational therapy, physical therapy, counseling, etc.) alone is not considered a disability under IDEA, unless it meets the key eligibility indicators for one or more categories for a primary disability (e.g., speech language impairment).

## Section 10. Disability Categories and Evaluation Components

*“While States are permitted to establish standards for eligibility for special education and related services and are not required to use the precise definition of a disability term in the IDEA, these State-established standards must **not** narrow the definitions in the IDEA.”* OSEP Letter to State Directors of Special Education 5-22-2017 (OSEP 17-05).

The categories used in the definition of a child with a disability are defined as follows and are aligned with the definitions in the IDEA.

### Autism

#### Definition

34 C.F.R. § 300.8 Child with a disability.

(c)(1)(i) Autism means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three that adversely affects a child’s 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.

(ii) Autism does not apply if a child’s educational performance is adversely affected primarily because the child has an emotional disturbance.

(iii) A child who manifests the characteristics of autism after age three could be identified as having autism if the criteria in paragraph (c)(1)(i) of this section are satisfied.

(Authority: 20 U.S.C. § 1401(3); and § 1401(30))

Evaluations should be conducted within the context of a multidisciplinary group of qualified professionals administering assessments/evaluations within their areas of expertise. In determining the make-up of the multidisciplinary team members who are qualified to gather data or information for the required components that make up a comprehensive evaluation for Autism, refer to the “Professional Assessment Competency Areas” chart under Section 8. “Evaluation”, F. “Group of Qualified Professionals” of this chapter.

Components of a Comprehensive Evaluation		
REQUIRED	RECOMMENDED	AS NEEDED
<ul style="list-style-type: none"> <li>• Communication/Language</li> <li>• Academic Achievement</li> <li>• Developmental</li> <li>• Adaptive Behavior</li> <li>• Social/Emotional</li> <li>• Background (Cultural and Educational)</li> <li>• Behavior</li> <li>• Vision Screening</li> <li>• Hearing Screening</li> <li>• Observation (Classroom / Other Environment)</li> </ul>	<ul style="list-style-type: none"> <li>• Health/Medical</li> <li>• Perceptual Processing</li> <li>• Intervention Documentation</li> </ul>	<ul style="list-style-type: none"> <li>• Psychological</li> <li>• Motor</li> <li>• Intellectual/Cognitive</li> <li>• Vocational</li> <li>• Assistive Technology</li> <li>• Hearing Evaluation (i.e., Audiological Exam)</li> <li>• Vision Evaluation (i.e., Ophthalmic exam or Optometric/Vision exam)</li> </ul>

**Considerations for the Evaluation Components for Autism**

**Communication/Language**

- 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, acquisition of new language, and speech prosody.
- The evaluation should include assessment of both semantic and pragmatic use of language, including skills such as topic management (initiating, maintaining, and terminating relevant, shared topics), understanding non-literal language used in conversation, turn-taking, and providing appropriate amounts of information in conversational contexts. The information may also include descriptions of prosody, emotional affect, pitch, tone, rhythm, or rate.
- Information may also be gathered regarding evidence of repetitive or idiosyncratic language. For example, echolalia (immediately repeating what others said), palilalia (automatic repetition of their own words), repeating dialog from movies, television or other media with no regard to the current topic of conversation.
- In some cases, evaluation of the student’s ability to communicate with others is essential before conducting assessments in other areas. Communication/language assessment results can assist in the determination of appropriate intellectual/cognitive assessments or autism-specific assessments.

## ***Academic Achievement***

- Assessments selected and administered must accurately reflect the student's achievement level rather than reflecting the student's communication, engagement, behavior, and social reciprocity as it relates to the child's suspected disability of Autism.
- Information regarding academic achievement include but is not limited to standardized norm-referenced achievement evaluations, and/or criterion-referenced assessments (e.g., curriculum-based measurements, benchmarks, district-wide assessments/common formative assessments, etc.).
- Readiness and developmental activities would be appropriate for children in the early childhood years.

## ***Developmental***

- A thorough assessment of a student's developmental history, skills, and abilities in relation to expectations for the age group is an important component of determining if a student is displaying characteristics consistent with Autism.

## ***Adaptive Behavior***

- Norm-referenced rating scales in both the home and school setting (or other age-appropriate settings as needed) of adaptive behaviors are important to inform the student's functional performance and unique needs.
- Assessment should include a measure of the student's ability to function independently at home, school, and in the community with daily living skills (self-care, personal grooming skills, toileting, personal health, safety), communication skills, social skills, functional academics, and leisure.

## ***Social/Emotional***

- Assessment should include a measure of the student's social interactions
- Information should be gathered from multiple sources (e.g., parents, teachers, the student) utilizing methods such as norm-referenced measures, rating scales, observations, interviews, etc.
- Information gathered should include reciprocal social interactions that include:
  - Nonverbal social cues (understanding of facial expression, body posture gestures such as a head nod, pointing, waving, or eye gaze to show engagement in conversation)
  - Play skills, maintaining interactions, peer relationships (understanding of and following rules of a game, turn-taking, preference to play with peers or alone)

- o Shared interests (sharing enjoyment, experiences, and achievement)
- o Perspectives (understanding and recognizing the needs and feelings of others, understanding how behavior impacts how others think or feel, recognizing appropriate response when a peer is in distress or hurt)

### ***Background (Cultural and Educational)***

- Consideration of cultural factors related to family background.
- Information gathered should take into consideration the student's educational history (e.g., number of different school enrollments, attendance records, grades repeated, etc.).
- Cultural and linguistic factors should be considered, as they relate to the child's development of social skills.
- All student information should be interpreted in the context of school expectations with consideration given to the student's cultural background.
- The use of evaluations printed in the student's native language is preferred, and an evaluator fluent in the student's dominant language is more valid and reliable than an interpreter (when possible).

### ***Behavior***

- Information gathered by multiple sources through norm-referenced rating scales, systematic observations, and interviews. Data reported should include any restrictive, repetitive, stereotyped patterns of behavior that are extreme and intense in nature compared to age peers. For example:
  - o Inflexible to change when routines/schedules are altered.
  - o Excessive and time-consuming rigid adherence to specific, detailed sequences in daily tasks or ritualistic actions/behaviors (dressing, bathing, eating foods, completing assignments) which severely impact transitions.
  - o Preoccupations with specific items or conversational topics (repetitive interest in objects, parts of objects, topics, or unusual themes beyond developmentally appropriate levels).
  - o Repetitive motor movements or vocal behaviors often called self-stimulatory behaviors (flapping of hands, preoccupation with spinning or twirling objects, pacing, rocking, grinding teeth, chewing, self-injurious behavior, humming, or other vocalizations).
  - o Unusual responses to sensory stimuli (such as under- or overreaction to tastes, touch, pain/heat/cold, sounds, textures, smells, or lights).

- A Functional Behavioral Assessment (FBA) or Functional Analysis (FA) is not required for an Autism evaluation; however, many students with Autism display maladaptive behaviors that will benefit from a Behavior Intervention Plan (BIP) developed to address and reinforce desired behaviors.

### ***Observation in Classroom/Other Environment***

- Assessment must include direct observation of the student in the classroom and one other setting (unstructured, structured, gym, cafeteria, playground, auditorium) covering academic achievement, social, and behavior components listed above. Observations should be systematic/quantitative.
- Document the student's academic and behavior (e.g., engagement) performance in the specific area(s) of difficulty or parent concerns.
- If a child is less than school age or not in school, an observation of the child in an environment appropriate for a child of that age is required.

### ***Health/Medical***

- A medical diagnosis of Autism Spectrum Disorder is not required to determine whether a child is eligible for purposes of special education and related services under the IDEA. However, medical information may be necessary to gather if a student's medical condition may be a factor or a secondary concern.

### ***Intellectual/Cognitive***

- Evaluation instrument selection for measuring cognitive abilities should be informed by data collected in other areas listed above (for example through interview, observations, social interactions, speech-language evaluation) prior to making the decision to evaluate this component.
- Nonverbal instruments should be used for students without language abilities or who have severely limited vocabulary and language skills. The impact of a student's functional communication and basic language skills should be considered.

Also, see Section 8. Evaluation, C. Evaluation Procedures-General Evaluation Considerations for additional information.

### ***Key Eligibility Indicators for Autism***

- Engages in excessive repetitive activities and stereotyped movements, rigid resistance to environmental change or change in daily routines, and abnormal responses to sensory experiences that adversely impact the child's education.
- Impairments in communications, such as semantic and pragmatic use of language, prosody, idiosyncratic language that adversely impact the child's education.

- Reciprocal social interaction weaknesses that adversely impact the child’s education.
- Sensory challenges alone are not sufficient to identify a student with Autism; however, the absence of sensory challenges does not exclude a student from meeting Autism eligibility criteria.
- Autism does not apply if a student’s educational performance is adversely affected primarily because the student has an emotional disturbance. The LEA must include the psychological component if the team suspects the student has mental health issues in order to rule out emotional disturbance as the primary disability.
- Lack of appropriate instruction in reading, including the essential components of reading instruction, mathematics, or limited English proficiency (LEP), must not be the determining factor.

## **Deaf-Blindness**

### **Definition**

34 C.F.R. § 300.7 Child with a disability.

(c)(2) Deaf-blindness means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for children with deafness or children with blindness.

(Authority: 20 U.S.C. § 1401(3)(A)(B); and § 1401(26))

Evaluations should be conducted within the context of a multidisciplinary group of qualified professionals administering assessments/evaluations within their areas of expertise. In determining the make-up of the multidisciplinary team members who are qualified to gather data or information for the required components that make up a comprehensive evaluation for Deaf-Blindness, refer to the “Professional Assessment Competency Areas” chart under Section 8. “Evaluation”, F. “Group of Qualified Professionals” of this chapter.

Components of a Comprehensive Evaluation		
REQUIRED	RECOMMENDED	AS NEEDED
<ul style="list-style-type: none"> <li>• Vision Evaluation (Ophthalmic or Optometric exam)</li> <li>• Hearing Evaluation (Audiological exam)</li> <li>• Health/Medical</li> <li>• Intellectual/Cognitive</li> <li>• Communication/Language</li> <li>• Academic Achievement</li> <li>• Developmental</li> <li>• Adaptive Behavior</li> <li>• Social/Emotional</li> <li>• Background (Cultural/Educational)</li> <li>• Observation in Classroom/Other Environment</li> </ul>	<ul style="list-style-type: none"> <li>• Assistive Technology</li> </ul>	<ul style="list-style-type: none"> <li>• Motor</li> <li>• Perceptual Processing</li> <li>• Psychological</li> <li>• Behavior</li> <li>• Vocational</li> <li>• Intervention Documentation</li> </ul>

***Considerations for the Evaluation Components for Deaf-Blindness***

***Vision***

- An ophthalmologist’s or optometrist’s report stating the diagnosis and description of the visual problems may be included.
- Indication of acuity with correction and field of vision is necessary for determining the special services needed.
- When no response to the visual stimuli can be elicited from the child, a physician’s report or existing medical records could fulfill this requirement.

***Hearing (Audiological Examination)***

- An otologists/otolaryngologist’s (ENT) or audiologist’s report stating the diagnosis and description of the hearing problems may be included.
- An audiogram is required to help determine the special education and related services needed.
- Information may also include medical information from a qualified physician, if determined appropriate, to assess the effect of the child’s hearing impairment on the child’s eligibility and educational needs but cannot be used as the sole criteria.
- When no response to the auditory stimuli can be elicited from the child, a physician’s report or existing medical records could fulfill this requirement.

## ***Health/Medical***

- Information regarding specific syndromes, degenerative diseases/pathologies, and special health problems, the student's hearing and vision, and the long-term medical prognosis for the student should be collected and considered.
- 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.

## ***Communication/Language***

- 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 (spoken or signed), acquisition of new language skills, and speech articulation.

## ***Academic Achievement***

- Assessments selected and administered should accurately reflect the student's achievement level rather than reflecting the student's hearing and vision impairments.
- Evaluation procedures may range from standardized norm-referenced evaluations to a focus on basic developmental levels, or curriculum and functional skill-based criterion referenced assessments. Screening data alone is not sufficient and an attempt to administer a standardized norm-referenced evaluation is warranted.

## ***Developmental***

- Information regarding the age or developmental stage the child was at upon the diagnosis of the student's vision and hearing impairment or underlying medical condition or treatment implemented that may have affected the student's sensory functioning will provide information on what areas of development may have been delayed or interrupted. Undiagnosed sensory conditions will significantly impact the child's developmental progress.
- Early developmental stages involving the child's understanding of their environment and social cues will be valuable information for the team to consider (for example, motor skills impacted by not being able to visually locate and play with toys independently, or to interact with peers in a game).
- Developmental component includes information regarding the child's overall developmental history, skills and abilities in relationship to age-based expectations.

## ***Adaptive Behavior***

- Adaptive behavior information must be assessed in a manner that reflects the ability of the student to compensate for the sensory losses (hearing and vision) in a variety of settings, including auditory and visual functioning.
- Information may be gathered by a hearing and/or vision specialist and should include auditory and visual functioning, as well as the student's mode of communication.
- Structured observations, which include considerations for hearing and vision in the educational setting may be utilized.
- Assessment should include a measure of the student's ability to function independently at home, at school and in the community with daily living skills (e.g., self-care, personal grooming skills, toileting, personal health, safety, etc.), communication skills, social skills, functional academics, and leisure.

## ***Social/Emotional***

- Information should be gathered from multiple sources (parents, teachers, student) utilizing methods such as norm-referenced measures, rating scales, observations, and interviews.
- Information gathered should include the student's awareness of social cues such as gestures, body language, and the use of personal space. Many social skills are learned visually and auditorily, therefore a student with sensory impairments may struggle to understand social expectation and have a difficult time with incidental or group learning experiences.

## ***Background (Cultural and Educational)***

- Information gathered should take into consideration the student's educational history (school enrollments, attendance records, and grades repeated).
- Information regarding the child's cultural background in relationship to the child's linguistic factors should be considered as they relate to the child's development including the child's capacity to learn and use language.
- Consideration of cultural factors related to family background (family members use sign language, Braille or other modes of communication, cross-cultural communication).
- All student information should be interpreted in the context of school expectations with consideration given to the student's cultural background.
- The use of evaluations must take into consideration the student's native language, alternative communication system, or mode of communication, including evaluations printed in the student's native language, or Braille if appropriate. An evaluator fluent

in the student's native language or mode of communication is more valid and reliable than an interpreter (when possible). It is important to note if an interpreter is utilized in the administration of the evaluations to recognize the nature of the standardization procedures and any modifications provided. Evaluation manuals should be reviewed for best practices involving an interpreter.

### ***Observation in Classroom/Other Environment***

- Assessment must include direct observation of the student in the classroom and one other setting (gym, cafeteria, playground, or auditorium).
- Document the student's engagement, motivation, and how they navigate the environment from within the classroom setting, and other settings.
- Classroom observations should include how the student performs in the specific academic area(s) of difficulty or parent concerns.
- If a child is less than school age or not in school, an observation of the child in an environment appropriate for a child of that age is required.

### ***Assistive Technology***

- Depending on the individual student, the team should consider assistive technology, communication, and Braille instruction needs.

Also, see Section 8. Evaluation, C. Evaluation Procedures-General Evaluation Considerations for additional information.

### ***Key Eligibility Indicators for Deaf-Blindness***

To qualify, students must meet one of the following conditions under the Degree of Vision Loss, **AND** one of the conditions listed under Hearing Loss, as listed below.

#### ***Degree of Vision Loss***

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

- Diagnosed Progressive Loss
- Documented Functional Vision Loss

### **Hearing Loss**

- Mild (26-40 dB loss)
- Moderate (41-55 dB loss)
- Moderately Severe (56-70 dB loss)
- Severe (71-90 dB loss)
- Profound (91+ dB loss)
- Diagnosed Progressive Loss
- Documented Functional Hearing Loss
- Cochlear Implants
- Auditory Neuropathy

A combination of concomitant hearing and vision impairments (dual sensory impairment) that causes severe communication and other developmental and learning needs that cannot appropriately be met in special education programs provided solely for students with deafness or blindness. The team should consider how the student's dual sensory impairments adversely impact the student's educational performance applied broadly to all areas (academic, social/emotional, communication, adaptive behavior, and daily living).

The IEP team must consider any medical documentation in the eligibility determination involving a degenerative condition or syndrome (degenerative disease or pathology such as a student who is deaf diagnosed with retinitis pigmentosa).

Weaknesses in visual perception, visual motor integration, or visual memory are not included in the diagnosis of cortical visual impairment which is damage to visual pathways or visual centers of the brain (CVI is not perceptual in nature).

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

## Developmental Delays

Each year, as part of the LEA's assurances, the LEA will select if they will be a developmental delay district or a categorical district. Only districts who select to be a developmental delay district may utilize this category of disability.

### Definition

34 C.F.R. § 300.7 Child with a disability.

(b) Children aged three through nine experiencing developmental delays. The term child with a disability for children aged three through nine (or any subset of that age range, including ages three through five), may, subject to the conditions described in § 300.111 (b), include a child

(1) Who is experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development.

(Authority: 20 U.S.C. § 1401(30))

Evaluations should be conducted within the context of a multidisciplinary group of qualified professionals administering assessments/evaluations within their areas of expertise. In determining the make-up of the multidisciplinary team members who are qualified to gather data or information for the required components that make up a comprehensive evaluation for Developmental Delay, refer to the "Professional Assessment Competency Areas" chart under Section 8. "Evaluation", F. "Group of Qualified Professionals" of this chapter.

Components of a Comprehensive Evaluation		
REQUIRED	RECOMMENDED	AS NEEDED
<ul style="list-style-type: none"> <li>• Motor</li> <li>• Communication/ Language</li> <li>• Intellectual/Cognitive</li> <li>• Social/Emotional</li> <li>• Adaptive Behavior</li> <li>• Developmental</li> <li>• Vision Screening</li> <li>• Hearing Screening</li> <li>• Background (Cultural and Educational)</li> <li>• Observation in Classroom/Other Environment</li> </ul>	<ul style="list-style-type: none"> <li>• Health/Medical</li> <li>• Academic Achievement</li> <li>• Other Intervention Documentation</li> </ul>	<ul style="list-style-type: none"> <li>• Vision Evaluation</li> <li>• Hearing Evaluation</li> <li>• Perceptual Processing</li> <li>• Behavior</li> <li>• Assistive Technology</li> <li>• Psychological</li> </ul>

Children ages 3 through preschool or those who turn 5 after September 1 of that school year, must be assessed using the five (5) domain areas for determining developmental delay which include: 1) motor, 2) communication/language, 3) intellectual/cognitive, 4) social/emotional, 5) adaptive

behavior. A screener for the five domain areas is not considered an evaluation for eligibility for special education and related services.

Students aged 5 through age 9 may be assessed using these five domain component areas or the specific components required for a suspected category of disability or disabilities.

## ***Considerations for the Evaluation Components for Developmental Delay***

### ***General Considerations***

- Developmental delays reflect significant discrepancies in the acquisition of age-appropriate skills (performance levels outside the range of typical development not attributable to cultural/linguistic differences). These delays may or may not be resolved with the provision of special education services during early childhood and early elementary years.
- Sufficient data should be collected at the time of the initial eligibility evaluation to identify suspected disabilities, which will be confirmed or ruled out by comprehensive evaluation before the child turns ten (10) years of age.

### ***Evaluation of Students Ages 3 through Preschool (Age 5 after September 1)***

- Areas of developmental assessment
  - Motor (Physical development) – includes skills involving coordination of both the large and small muscles of the body (e.g., gross, fine, and perceptual-motor skills);
  - Communication/Language development – includes skills involving expressive and receptive communication abilities, both verbal and nonverbal;
  - Intellectual/Cognitive development – includes skills involving perceptual discrimination, memory, reasoning, academic skills, and conceptual development;
  - Social/Emotional (Social or emotional development) – includes skills involving meaningful social interactions with adults and other students, including self-expression and coping skills;
  - Adaptive development – includes daily living skills (e.g., eating, dressing, and toileting) as well as skills involving attention and personal responsibility.
- Source of Information: Information should be obtained from a variety of sources and could include medical records, records from SoonerStart (or early intervention services), records/developmental screenings from childcare programs, parent and provider interviews, developmental inventories, observations in a variety of settings, and norm-referenced rating scales.

## ***Evaluation of Students Ages 5 (On or Before September 1) through 9***

- If the LEA has elected to utilize the category of “Developmental Delay,” the student may be evaluated and found eligible based on the key eligibility indicators from the suspected disability category. However, their category of eligibility will still be “Developmental Delay” with the suspected category listed.
- The evaluation components will be the same as those of the suspected disability category.
- Do **not** use the label Developmental Delay if the student is eligible for services under the category of a sensory disability such as deaf-blindness, hearing impairment including deafness, or visual impairment including blindness.
- If a student is initially identified as meeting eligibility for Intellectual Disability before the age of 7, a re-evaluation with a formal assessment of cognitive and adaptive functioning should be conducted at the child’s first subsequent reevaluation.

Also, see Section 8. Evaluation, C. Evaluation Procedures-General Evaluation Considerations for additional information.

## ***Key Eligibility Indicators for Developmental Delay***

### ***Evaluation of Students Ages 3 through Preschool (Age 5 after September 1)***

- Functioning one and a half (1.5) standard deviations below the mean in two developmental domains; OR,
- Functioning two (2) standard deviations below the mean in one developmental domain.
- At least two independent procedures/sources must be used to substantiate the delay and document the current levels of performance. One procedure must be a norm-referenced measure.
- In extraordinary cases, when a standardized score cannot be determined through a norm-referenced assessment that was attempted, a child may be determined to have a Developmental Delay based on functional assessments, existing data, observations, and the informed judgment of the multidisciplinary team.
  - The eligibility documents must include an explanation of the inability to obtain evaluation data from standardized, norm-referenced measures, and at least two independent sources of diagnostic information must be utilized to substantiate the delay.
- Lack of appropriate instruction in reading, including the essential components of reading instruction, mathematics, or limited English proficiency (LEP), must not be the determining factor.

All domains should be considered, and the evaluation must yield information needed to rule out any exclusionary criteria when making eligibility decisions. In addition to meeting the key eligibility indicators under developmental delay, teams must also have sufficient evidence to identify the suspected disability using data. If the data from the two independent procedures/sources are contradictory; and therefore, make it difficult to make a determination, it is suggested to administer a third procedure/source for that specific domain. The team must ensure that each evaluation procedure is sufficiently comprehensive to identify all of the child's possible special education and related services, if any.

### ***Evaluation of Students Ages 5 (On or before September 1) through 9.***

- May use five domain criteria above, OR
- Meet the key eligibility indicators for any specific disability category using the evaluation components required for a comprehensive evaluation.

### **OSEP Guidance on Developmental Delay and Specific Learning Disability**

IDEA does not require an LEA to use an RTI approach before a referral for evaluation or as part of determining whether a 3-, 4-, or 5-year-old is eligible for special education and related services. The category of specific learning disability is generally not applicable to preschool children with disabilities. The IDEA and the Part B regulations do not address the use of an RTI model for children suspected of having other disabilities.

It is up to the State to develop criteria for determining whether a child qualifies as a child with a disability, under 34 C.F.R. § 300.8, provided those criteria include a variety of assessment tools and strategies and do not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability, or for determining an appropriate educational program for the child. 34 C.F.R. § 300.304(0)(1)-(2).

## Emotional Disturbance

### Definition

34 C.F.R. § 300.7 Child with a disability.

(C)(4)(i) Emotional disturbance means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance:

(A) An inability to learn that cannot be explained by intellectual, sensory, or health factors.

(B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.

(C) Inappropriate types of behavior or feelings under normal circumstances.

(D) A general pervasive mood of unhappiness or depression.

(E) A tendency to develop physical symptoms or fears associated with personal or school problems.

(ii) Emotional disturbance includes schizophrenia. The term does not apply to children who are socially maladjusted unless it is determined that they have an emotional disturbance under paragraph (c)(4)(i) of this section.

(Authority: 20 U.S.C. § 1401(3)); and § 1401(30))

Evaluations should be conducted within the context of a multidisciplinary group of qualified professionals administering assessments/evaluations within their areas of expertise. In determining the make-up of the multidisciplinary team members who are qualified to gather data or information for the required components that make up a comprehensive evaluation for Emotional Disturbance, refer to the "Professional Assessment Competency Areas" chart under Section 8. "Evaluation", F. "Group of Qualified Professionals" of this chapter.

Components of a Comprehensive Evaluation		
REQUIRED	RECOMMENDED	AS NEEDED
<ul style="list-style-type: none"> <li>• Health/Medical</li> <li>• Academic Achievement</li> <li>• Developmental</li> <li>• Psychological</li> <li>• Intellectual/Cognitive</li> <li>• Social/Emotional</li> <li>• Behavior</li> <li>• Adaptive Behavior</li> <li>• Background (Cultural and Educational)</li> <li>• Observation in Classroom/Other Environment</li> <li>• Hearing Screening</li> <li>• Vision Screening</li> </ul>	<ul style="list-style-type: none"> <li>• Other Intervention Documentation</li> </ul>	<ul style="list-style-type: none"> <li>• Vision Evaluation</li> <li>• Hearing Evaluation</li> <li>• Motor</li> <li>• Communication/Language</li> <li>• Perceptual/Processing</li> <li>• Vocational</li> <li>• Assistive Technology</li> </ul>

## ***Pre-Referral Considerations for Emotional Disturbance***

Although interventions are not required for the identification of emotional disturbance, data from interventions will help the team demonstrate that difficulties have occurred over an extended period of time and have been resistant to change.

Documentation of interventions should include:

- Target Behaviors and Goals
  - An operational definition of the students' current behavioral problems.
  - An operational definition of goals for replacement behaviors and reductions in maladaptive behavior.
- Functional Behavioral Assessment Results
  - Intervention strategies
    - Antecedent strategies to prevent the behavior from occurring.
    - Instructional strategies for alternative skills to be taught.
    - Skill-building/reinforcement strategies to encourage socially appropriate behaviors.
    - Corrective consequences, including reductive strategies appropriately matched to the function of the student's behavior.
- Implementation documentation, including fidelity of implementation.
- Documentation of plan reviews and revisions with recommendations for changes to the intervention strategies as needed.

Maladaptive behaviors can be difficult to address in the classroom; however, interventions should be implemented with fidelity and of sufficient duration to determine their effectiveness. It takes time for students to learn appropriate replacement behaviors and to generalize them across settings.

## ***Considerations for the Evaluation Components for Emotional Disturbance***

### ***Health/Medical***

- Health/Medical information should include a review of existing medical conditions that may cause atypical behavioral indicators that could be misunderstood as an emotional disturbance.
- The presence of a medical condition does not necessarily preclude placement under the category of Emotional Disturbance, but when present, the team should have sufficient documentation to rule out the condition as the primary cause of the student's emotional or behavioral difficulties.
- The team should gather current information about medications/treatments, which can have side effects that could be erroneously interpreted as an emotional disturbance.

- Students struggling with emotional issues may experience physical symptoms (e.g., headaches, stomach problems, shortness of breath, elevated heart rate). The manifestation of these symptoms should not be considered physically limiting factors that prevent qualification under IDEA.

### ***Academic Achievement***

- The team must document a demonstrable, causal relationship between the student's emotional condition and adverse effects on educational performance. The student may perform in the proficient range on standardized assessments revealing no academic deficits, yet the student's significant difficulties with behavior, and mental health needs may be significantly impacting the student's performance in the classroom.
- Information regarding academic achievement include but is not limited to standardized norm-referenced achievement evaluations, and/or criterion-referenced assessments (e.g., curriculum-based measurements, benchmarks, district-wide assessments/common formative assessments, etc.).

### ***Developmental***

- Developmental history information should include a review of a student's development over time to determine how any early childhood experiences (adverse or otherwise) may have impacted social/emotional development and functioning.

### ***Psychological (Emotional/Mental Health Status)***

- Norm-referenced rating scales in both the home and school setting (or other age-appropriate settings as needed) of psychological behaviors should include evaluation procedures to appropriately measure the nature and severity of problem behaviors as well as the functional impact of a student's behavior on their participation and performance in the classroom, school, and community setting. It is recommended, when applicable, a self-rating be administered with the student regarding the student's perspective.
- Information should be obtained from multiple raters across a variety of settings.
- Evaluation/Assessment data should provide an accurate picture of the nature, severity, and prevalence of problem behaviors as well as the adverse effects on educational performance and progress.

### ***Intellectual/Cognitive***

- Evaluation instrument selection for measuring cognitive abilities should be informed by data collected in other areas (i.e., interview, observations, social interactions, screeners, including screeners used to identify students who are English Learners-EL, speech-language evaluations or screening information, etc.) to eliminate selecting a cognitive evaluation tool that is not appropriate or to reduce test bias.

- Review and compare cognitive evaluations from outpatient/inpatient settings with school setting evaluations. Cognitive abilities may fluctuate depending on the student's emotional status and possible traumatic events.

### ***Social/Emotional***

- Norm referenced rating scales in both the home and school setting (or other age-appropriate settings as needed) of social-emotional skills should include evaluation procedures to appropriately measure the nature and severity of resulting behaviors as well as the functional impact of a student's behavior on their participation and performance in the classroom, school, and community setting. It is recommended, when applicable, a self-rating be administered with the student regarding the student's perspective of their social-emotional status.
- Assessment data should provide an accurate picture of the nature, severity, and prevalence of problem behaviors as well as the adverse effects on educational performance and progress.
- Information regarding the student's previous experience being in social settings.
- Structured interviews should include, when applicable, the student, parent, and educators involved with the student. Play-based assessments may be conducted in lieu of a formal child interview.
- Gather and document information regarding the student's social history which may affect their likelihood of having an emotional disturbance. Key factors to consider are:
  - Social history and previous experience being in social group settings.

### ***Behavior***

- Norm referenced rating scales to determine a pattern of behavior in the home and school environments. When applicable, it is recommended that self-ratings be administered with the student in order to obtain the student's perspective of their own behavior.
- Consideration of conducting a Functional Behavior Assessment (FBA). The process of conducting an FBA will include collecting data and analyzing the associated variables of the behaviors to develop a behavior intervention plan. A comprehensive Functional Behavioral Assessment will result in the following information:
  - Defined dimensions of the behavior:
    - Specific, observable, and measurable definitions of problem behaviors impacting participation, performance, and educational progress.
    - Setting events and antecedents for problem behavior.
    - Maintaining consequences for the problem behavior.
  - The hypothesized function of the behavior.
  - Age-appropriate and operationally defined behavioral goals.
  - Previously implemented strategies for changing the behavior.

- Recommendations for a positive behavioral intervention plan that includes antecedent strategies, instructional strategies (alternative skills to be taught), skill-building/reinforcement strategies, and corrective consequences strategies, if needed.

### ***Adaptive Behavior***

- Information from multiple sources (describing functioning at home and school) to examine the impact of problem behaviors on emotional adjustment, social interactions, and personal independence.

### ***Background (Cultural and Educational)***

- Gather and document information regarding if or how the student's family history may affect their likelihood of having an emotional disturbance. Key factors to consider are:
  - Exposure to adverse childhood experiences (abuse, neglect,) elevating the risk for emotional and behavioral issues.
- Cultural factors should be considered as they relate to the student's development of social skills, emotional expression and responsivity, and age-appropriate social-emotional reciprocity.
- Consideration regarding the student's native language and proficiency in the English language, including differing social norms from the student's dominant culture as factors to developing and maintaining social relationships.
- Consideration should be given to administer the test in the student's native language or the use of an interpreter, when appropriate.
- Review educational background (e.g., number of different school enrollments, number of discipline office referrals and suspensions, type of behavioral incidents, etc.) to determine if a pattern of behavior or emotional functioning has existed over a long period of time.
- Attendance and the number of removals from classroom to determine the student's exposure to the core curriculum instruction.

### ***Observation in Classroom/Other Environment***

- Assessment should include direct observation of the student's behavioral functioning (emotional adjustment, social interactions, and personal independence), preferably in multiple settings (i.e., unstructured, structured, in the classroom).
  - Interactions with peers and adults.
  - Response to instruction, direction, correction, and praise.
  - Response to classroom activities and events.

- Observation information should include comparison of the emotional characteristics of the student's peer group (i.e., same age, gender, cultural group, etc.) noting if the behavior and emotions of the student are more intense/severe and/or more frequent than typical peers.
- Information about behaviors that impact educational performance, such as classroom engagement/participation, motivation to complete tasks, study skills, etc.

Also, see Section 8. Evaluation, C. Evaluation Procedures-General Evaluation Considerations for additional information.

### ***Key Eligibility Indicators for Emotional Disturbance***

Student displays at least one or more of the following characteristics over a long period of time and to a marked degree that adversely affects the child's educational performance:

- An inability to learn that cannot be explained by intellectual, sensory, or health factors.
  - This means the student is displaying an unsatisfactory rate of educational progress because of thoughts, feelings, and behaviors (e.g., anxiety, pervasive depression, or reality distortion) when other causes (such as learning disabilities, intellectual disabilities, and lack of motivation) have been considered and eliminated as the primary cause.
  - This inability to learn should not be confused with an unwillingness or disinterest in learning.
- An inability to build or maintain satisfactory interpersonal relationships with peers and teachers. Examples of this include:
  - Inability to demonstrate age-appropriate sympathy, affection, empathy.
  - Inability to initiate and maintain a variety of social interactions, friendships at school, at home, and in the community.
  - Social isolation (e.g., anxiety-based or fear-driven avoidance of school-based interactions), immature attention-seeking behaviors; seeking negative attention from others, and/or lack of social awareness - violating social boundaries (e.g., overly affectionate).
  - Inability to be appropriately assertive, cooperative, and compromising in conflict situations.
  - Resistant to/non-accepting of adult instruction, direction, and correction.
- Inappropriate types of behavior or feelings under normal circumstances.
- Inappropriate behavior can be withdrawn, or extremely different or atypical in comparison to others in the same situation (considering developmental norms and peer comparisons), for example:
  - Flat, blunted, distorted or excessive affect.
  - Extreme changes or shifts in mood or feelings.

- Rage reactions or violent temper tantrums out of proportion to the triggering event.
  - Extreme social withdrawal from typical activities with peers at school.
  - Pre-occupations, limited interests, perfectionistic expectations of self.
  - Aggressive response for unclear or unjustified reasons.
- A general pervasive mood of unhappiness or depression. Specific behaviors associated with depression include:
    - Flat, blunted, distorted, or negative affect; listlessness, apathy, fatigue.
    - Pessimistic, critical statements and self-perceptions (e.g., overly internalizing locus of control); expressing feelings of worthlessness, hopelessness.
    - Irritable mood; easily angered by activities of peers.
    - Loss of interest in age-appropriate activities.
    - Diminished ability to think, concentrate, or make decisions.
    - The manifestation of unhappiness that is pervasive, chronic, and observable in the school setting lasting beyond the time usually expected for reactions to a specific traumatic event or situation.
- A tendency to develop physical symptoms or fears associated with personal or school problems.
- Fears may range from incapacitating feelings of anxiety to specific and severe fear reactions and panic attacks to the degree that the student engages in consistent avoidance behaviors. Examples of this include:
    - Excessive and chronic physical symptoms that appear to have no known medical cause.
    - Physical reactions (increased heart rate, sweating, tremors) that appear to be linked to stressful events or conflict.
    - Worrying about learning or school performance to the degree that physical complaints are evident or result in the inability to function/participate.

The characteristic(s) must be displayed over a long period of time. This indicator requires the student to exhibit one or more of the behavioral characteristics long enough for concerns to be considered chronic. Chronic means behaviors may be demonstrated over a long period of time (e.g., six months), displayed very frequently over a short period of time, or through multiple acute episodes. A generally accepted definition of “a long period of time” is a range of two to nine months considering the chronological age of the student or intensity of the problem.

Shorter time periods might be appropriate for acute problems indicating a need for immediate intervention and support. However, this excludes short-term responses to situational stressors (e.g., death in the family, divorce, illness, birth of a sibling, family move) that are transitory and expected to subside over time under normal circumstances. When collecting data on the time period, the team should consider if problem behaviors have changed or improved after multiple interventions implemented in the school setting prior to referral.

The problem must be occurring to a marked degree. The team should consider the pervasiveness of behaviors across most settings (school, home, community), as well as the pattern of behaviors compared to others from the same age, gender, or cultural group. The severity/intensity of behavior must be clearly apparent to school personnel familiar with the student and not solely documented in psychological assessments or clinical settings.

Finally, the characteristics must adversely affect the child's educational performance. Manifestations of emotional problems must result in impairment of the student's ability to learn and/or perform academic or daily living tasks required in their educational program. Considerations for education performance may include:

- Inability to pass from grade to grade;
- Work samples that show atypical thought processes or an inability to complete tasks;
- A demonstrably slower rate of skill acquisition/academic progress than that of typically progressing peers;
- Inability to attend, concentrate, follow directions, participate appropriately in classroom instructional activities that result from distorted thought processes or out-of-control emotions;
- Serious, recurring disciplinary problems that are related to key eligibility indicators and result in frequent removal from the educational setting;
- Must rule out other conditions as the primary cause of poor educational performance.

The term Emotional Disturbance includes students who are diagnosed with schizophrenia.

The term Emotional Disturbance does not include students whose primary cause of behavior is determined to be social maladjustment. Students with Emotional Disturbance and students with social maladjustment can display many similar characteristics. IDEA stipulates that a student who is solely socially maladjusted is not eligible for special education services as a student with a disability. However, a student who has a serious emotional disability along with social maladjustment could be identified as a student with a disability under the category of Emotional Disturbance, assuming all key eligibility indicators are satisfied.

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

## Social Maladjustment Considerations

Multidisciplinary teams should assess for the presence of an Emotional Disturbance and then consider the degree to which social maladjustment is evident and impacting the student's behavior and educational progress. This process is supported by information from a functional behavioral assessment and data reflecting the student's response to positive behavior support strategies.

Social maladjustment is not specifically defined in federal guidelines. However, it is generally used to refer to a persistent pattern of violating social norms, persistent struggles with authority, poor motivation for schoolwork, and intentional/controlled, self-serving, or manipulative behaviors to avoid compliance with school/community expectations for student behavior.

Examples of socially-maladjusted behaviors may include, but are not limited to:

- Student understands but does not accept general behavioral standards;
- Student misses school by choice; achievement/educational progress influenced by truancy and/or a negative attitude towards school;
- Inappropriate behaviors may be goal-directed - student has an incentive to continue inappropriate behaviors to reach goals;
- Student may appear to have adequate self-esteem and self-concept; however, inappropriate behaviors may reflect an inflated self-concept, underdeveloped conscience (sense of empathy), feelings of inadequacy, or an external locus of control (blaming others for inappropriate behaviors);
- Student is frequently vigilant and intentional in efforts to avoid detection of misbehavior;
- Limited emotion attached to behavior; not disturbed by the violation of social norms;
- Accountability for inappropriate behavior may trigger explosive anger or rage in efforts to avoid consequences;
- May have family, peer, or neighborhood support for problem behaviors.

**Hearing Impairment, Including Deafness**

**Definition**

34 C.F.R. § 300.8 Child with a disability.

(c)(3) Deafness means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, that adversely affects a child’s educational performance.

34 CFR § 300.8 Child with a disability.

(c)(5) Hearing impairment means an impairment in hearing, whether permanent or fluctuating, that adversely affects a child’s educational performance, but that is not included under the definition of deafness in this section.

(Authority: 20 U.S.C. §§ 1401(3); 1401(30))

Evaluations should be conducted within the context of a multidisciplinary group of qualified professionals administering assessments/evaluations within their areas of expertise. In determining the make-up of the multidisciplinary team members who are qualified to gather data or information for the required components that make up a comprehensive evaluation for Hearing Impairment, Including Deafness, refer to the “Professional Assessment Competency Areas” chart under Section 8. “Evaluation”, F. “Group of Qualified Professionals” of this chapter.

Components of a Comprehensive Evaluation		
REQUIRED	RECOMMENDED	AS NEEDED
<ul style="list-style-type: none"> <li>• Health/Medical</li> <li>• Hearing Evaluation</li> <li>• Communication/Language</li> <li>• Academic Achievement</li> <li>• Developmental</li> <li>• Adaptive Behavior</li> <li>• Background (Cultural and Educational)</li> <li>• Vision Screening</li> <li>• Observation in Classroom/Other Environment</li> </ul>	<ul style="list-style-type: none"> <li>• Assistive Technology</li> </ul>	<ul style="list-style-type: none"> <li>• Vision Evaluation</li> <li>• Motor</li> <li>• Intellectual/Cognitive</li> <li>• Perceptual/Processing</li> <li>• Psychological</li> <li>• Social/ Emotional</li> <li>• Behavior</li> <li>• Vocational</li> </ul>

**Considerations for the Evaluation Components for Hearing Impairment, Including Deafness**

**Health/Medical**

- Information regarding specific syndromes and special health problems pertaining to the student’s hearing and the long-term medical prognosis for the student should be collected and considered.

- Medical/Health history risk factors (e.g., ear infections, pre- and post-natal history, or other infections associated with risk factors involving a hearing loss such as rubella, meningitis or other neurological conditions resulting in vestibular damage.
- If the medical/health history of a student reveals profound hearing loss from birth that may have affected the child's equilibrium, body awareness, and visual-motor functioning, the team may consider including the motor component as part of the evaluation.
- Hearing (Audiological Examination)
- An otolaryngologist's (ENT) or audiologist's report stating the diagnosis and description of the hearing problems may be included.
- An audiogram is required to help determine the special education and related services needed.
- When no response to the hearing stimuli can be elicited from the child, a physician's report or existing medical records could fulfill this requirement.

### **Communication/Language**

- Information gathered should include the student's language use, exposure, and preference.
- Evaluations of language should include areas of pragmatics, semantics, and syntax both receptively and expressively.
- Evaluations should include articulation and speech production.
- Information may also include descriptions of prosodic features such as stress, pitch, intonation, rhythm, or rate.
- Information should include speech intelligibility, and voice quality, including nasality.
- Assessments surrounding the student's spoken abilities to communicate will support determinations for possible assistive listening technologies, sign language, or a combination of supports. If the determination is assistive listening technologies, then the team may determine a need to add the Assistive Technology component to the evaluation.

### **Academic Achievement**

- Assessments selected and administered must accurately reflect the student's achievement level rather than reflecting the student's hearing impairment.
- For preschool age children or not school aged, developmental readiness skills or pre-academic skills should be assessed to determine the baseline of foundational skills to build upon for instruction.

- Information regarding academic achievement includes but is not limited to standardized norm-referenced achievement tests and/or criterion-referenced tests (e.g., curriculum-based measurements, benchmarks, district-wide assessments/common formative assessments, etc.).

### ***Developmental***

- Undiagnosed hearing loss will significantly impact the child's developmental progress in language, social skills, motor balance, and possible other areas such as cognitive development. Information regarding the age or developmental stage the child was at upon the diagnosis of or the determination of a hearing loss or the identification of the underlying medical condition/treatment implemented that may have affected the student's hearing abilities will provide information on what areas of development may have been severely impacted or delayed or interrupted.
- Early developmental stages involving the child's understanding of their auditory environment or auditory social cues will be valuable information for the team to consider.
- Developmental component includes information regarding the child's overall developmental history, skills, and abilities in relationship to age-based expectations.

### ***Adaptive Behavior***

- Norm-referenced rating scales for both home and school may be utilized to collect data in areas such as self-help skills, daily living skills, independent functioning, and communication and social skills.
- Relevant adaptive behavior should be assessed in a manner that reflects the ability of the student to compensate for the loss of hearing.

### ***Background (Cultural and Educational)***

- Information should include cultural factors and family history including the hearing status of family members and their use of sign language if the student's mode of communication is sign.
- Evaluations and assessments must be administered in the student's native language or mode of communication, including sign language. It is important to note if an interpreter is utilized in the administration of the evaluations to recognize the nature of the standardization procedures and any modifications provided. Evaluation manuals should be reviewed for best practices involving an interpreter for the student who utilizes sign language.
- If the group of professionals involved in the evaluation determine to include the intellectual/cognitive component, the team may determine to use a nonverbal IQ test with a student who is deaf or hard-of-hearing instead of attempting to modify or break from standardization procedures in utilizing an interpreter.

## ***Observation in Classroom/Other Environment***

- Structured observations, which include considerations for hearing in the educational setting and the distance and positioning of the student from sound sources, may be utilized.
- Classroom observations should include how the student performs in the specific academic area(s) of difficulty or parent concerns, including the degree of engagement/participation (e.g., number of times off task or provides no response when spoken to in class) and how the student's hearing loss is impacting their learning (e.g., holds head at an angle to place ear toward the person speaking or seems unable to locate the source of a sound or person speaking, etc.).
- Observations should include how the student accesses visual supports such as Closed Caption, deaf interpreter, cued speech, as well as if they have access to assistive listening devices (e.g., FM systems) for students with hearing aids or cochlear implants.
- If a child is less than school age or not in school, an observation of the child in an environment appropriate for a child of that age is required.

## ***Assistive Technology/ Other Considerations***

- Assistive technology and communication needs, depending on the individual student, are additional special factors that should be considered in the evaluation process.

Also, see Section 8. Evaluation, C. Evaluation Procedures-General Evaluation Considerations for additional information.

## ***Key Eligibility Indicators for Hearing Impairment, Including Deafness***

The audiological examination documents a student meets one or more of the following indicators, which adversely affect educational performance:

- Hearing loss measured within the range:
  - Slight (16-25 dB loss),
  - Mild (26-40 dB loss),
  - Moderate (41-55 dB loss),
  - Moderately Severe (56-70 dB loss),
  - Severe (71-90 dB loss),
  - Profound (91+ dB loss),
- Diagnosed Progressive Loss,
- Documented Functional Hearing Loss,
- Cochlear Implants,

- Auditory Neuropathy
- The IEP team must consider any medical documentation in an eligibility determination.
- Lack of appropriate instruction in reading, including the essential components of reading instruction, mathematics, or limited English proficiency (LEP), must not be the determining factor.

For students who have a hearing impairment which does not adversely affect educational performance, teams should consider an initial evaluation under Section 504.

## Intellectual Disabilities

### Definition

34 C.F.R. § 300.8 Child with a disability.

(c)(6) Intellectual Disability means significantly sub-average general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period that adversely affects a child’s educational performance.

(Authority: 20 U.S.C. § 1401(3); and § 1401(30))

Evaluations should be conducted within the context of a multidisciplinary group of qualified professionals administering assessments/evaluations within their areas of expertise. In determining the make-up of the multidisciplinary team members who are qualified to gather data or information for the required components that make up a comprehensive evaluation for Intellectual Disabilities, refer to the “Professional Assessment Competency Areas” chart under Section 8. “Evaluation”, F. “Group of Qualified Professionals” of this chapter.

Components of a Comprehensive Evaluation		
REQUIRED	RECOMMENDED	AS NEEDED
<ul style="list-style-type: none"> <li>• Communication/Language</li> <li>• Academic Achievement</li> <li>• Intellectual/Cognitive</li> <li>• Developmental</li> <li>• Adaptive Behavior</li> <li>• Background (Cultural and Educational)</li> <li>• Observation in Classroom/Other Environment</li> <li>• Vision Screening</li> <li>• Hearing Screening</li> </ul>	<ul style="list-style-type: none"> <li>• Health/Medical</li> </ul>	<ul style="list-style-type: none"> <li>• Vision Evaluation</li> <li>• Hearing Evaluation</li> <li>• Motor</li> <li>• Perceptual/Processing</li> <li>• Psychological</li> <li>• Social/Emotional</li> <li>• Behavior</li> <li>• Vocational</li> <li>• Assistive Technology</li> </ul>

## ***Considerations for the Evaluation Components for Intellectual Disabilities***

### ***Communication/Language***

- The team may want to address language deficits or concerns in conjunction with cognitive abilities to rule out whether communication language is the primary factor.
- If standardized norm-referenced tests do not yield valid results, consider evaluating communication competencies of receptive and expressive language and acquisition of new language skills, including the possible assessments of non-verbal communication, and use of assistive technology, as appropriate.
- Consideration of evaluating articulation skills both standardized and other sampling procedures to determine production of sounds (e.g., deletions, omissions, substitutions, etc.), sounds in various word positions (e.g., initial, middle and final) and connected speech (production of sounds in conversation).

### ***Academic Achievement***

- Present levels of performance in the general curriculum, achievement (in meaningful contexts), and age-appropriate activities will be important information for the team to document and consider. Readiness and developmental activities would be appropriate for children in the early childhood years.
- Measures of academic achievement indicate significant delays across subject areas, with consideration given to cultural or linguistic differences.
- Measures of educational performance include standardized norm-referenced achievement assessments and criterion-referenced assessments (e.g., benchmark and progress monitoring assessments-CBMs), curricular progress, records, interviews, and/or observations indicating the student's level of educational performance has been significantly below age or state-approved grade-level standards.

### ***Intellectual/Cognitive***

- Intellectual Functioning includes reasoning, problem-solving, planning, abstract thinking, judgment, learning from instruction and experience, and practical understanding.
- Intellectual functioning should be measured with individual, standardized, norm-referenced assessments. However, the abilities of students who possess severely limited abilities and/or functional communication skills may not be adequately captured with standardized assessments. In such cases, the team should consider other functional assessment options, such as existing records, previous assessments, current observations, and current performance levels.

- Consideration should be made to administer a non-verbal IQ evaluation instrument prior to determining other functional assessment options or gathering of information involving the child's intellectual functioning as mentioned above.
- The use of rating scales, or developmental inventories cannot be used as a sole indicator for eligibility under this category.
- An IQ evaluation may not result in a score that falls two or more standard deviations below the mean; and therefore, consideration of poor performance on the verbal, comprehension knowledge type of measures may be attributed to underdeveloped language skills/acquisitions or lack of vocabulary exposure. Consideration of a non-verbal IQ evaluation tool may be more appropriate.
- Part scores (i.e., scores representing subareas of cognitive ability) should not be used to determine intellectual disability.
- The student should be evaluated in their primary native language or mode of communication.
- If cognitive measures are significantly discrepant or inconsistent with adaptive behavior or educational functioning, 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.
- Evaluators should minimize the impact of practice effects (i.e., inflated scores due to re-administration of the same or similar assessment) and the "Flynn effect" (i.e., overly high scores due to outdated test norms).
- Use a full-battery assessment designed to produce a comprehensive estimate of overall IQ. Brief intelligence screening tests or group tests are prone to error and not appropriate for identifying an Intellectual Disability.
- If a student is initially identified as meeting eligibility for Intellectual Disability before the age of 7, a re-evaluation with a formal assessment of cognitive and adaptive functioning should be conducted at the student's first subsequent reevaluation.

### ***Developmental***

- A thorough assessment of a child's developmental history, skills, and abilities in relation to expectations for the age group is an important component in determining if a student is displaying characteristics consistent with Intellectual Disabilities.

### ***Adaptive Behavior***

- Adaptive behavior includes the ability of the individual to perform daily activities independently required for personal and social sufficiency (e.g., eating, dressing,

toileting, grooming, forming relationships, communication, safety, use of community resources, aware of other's feelings/interpersonal skills).

- Norm-referenced rating scales should evaluate adaptive behaviors of both the home and school setting (or other age-appropriate settings as needed).

### ***Background (Cultural and Educational)***

- To ensure appropriate identification of an individual with an Intellectual Disability, non-biased assessment procedures should be used. Various cultures may hold unique views regarding the level of functioning and skills expected of students at certain ages. Therefore, school teams must be culturally responsive in identifying a student with an Intellectual Disability. Non-biased assessment is not a particular test or instrument but rather a process of gathering information about an individual through a problem-solving approach that considers the influence of culture and language.
- Consideration should be given to the use of an interpreter, nonverbal assessments, and/or assessment in the student's native language or mode of communication. It is important to note if an interpreter is utilized in the administration of the evaluations to recognize the nature of the standardization procedures and document any modifications provided. Evaluation manuals should be reviewed for best practices involving an interpreter.
- Consideration of cultural factors related to family background, as well as the impact of the student's culture on their adaptive functioning skills.
- Information gathered should take into consideration the student's educational history (e.g., number of different school enrollments, attendance records, grades repeated, etc.).
- Observation in Classroom/Other Environment.
- Observations should include independent levels for practical skills (e.g., self-care, daily living skills, following routines or schedules, navigate a school building by themselves, etc.), social skills (e.g., interpersonal skills, social problem solving, ability to understand social safety dangers, etc.), and conceptual skills (e.g., decision making, understanding academic concepts, etc.) in relationship to same age peers.
- Observations must include the classroom setting and one other setting (e.g., playground, cafeteria, etc.) to determine differences in the student's adaptive domain areas (practical, social, and conceptual) across environments.
- If a child is less than school age or not in school, an observation of the child in an environment appropriate for a child of that age is required.

## ***Health/Medical***

- Health/medical information may inform the extent that medical needs impact health, stamina, and engagement in learning tasks.
- For students who experienced head trauma/injuries, that were not related to birth trauma, nor are degenerative, nor present from birth, which may appear to be an intellectual disability, the LEA may instead want to consider the evaluation components for a suspected disability of Traumatic Brain Injury.
- Information regarding specific syndromes and special health problems pertaining to the student's cognitive and adaptive behavior functioning that pertain to the long-term medical prognosis for the student should be collected and considered, including any degenerative diseases/pathologies.

## ***Key Eligibility Indicators for Intellectual Disabilities***

- Intellectual disability is a disorder that includes both intellectual AND adaptive functioning deficits that adversely affects the child's education performance. Eligibility criteria for Intellectual Disability include:
  - An intellectual disability is characterized as a significant delay in cognitive functioning and adaptive behavior.
  - Deficits in intellectual functioning, as measured by a standardized norm-referenced cognitive assessment. Specifically, the student achieves a standard score of two or more standard deviations below the mean on a measure of general IQ. (See Evaluation and Eligibility Handbook for information regarding standard error of measurement).
  - Limitations in adaptive behavior, in which at least one of the three domains (conceptual, social, and practical) is significantly impaired to the degree that ongoing support is needed for the person to perform adequately in one or more life settings (school, work, home, or in the community).
  - The overall adaptive behavior score must fall at least two or more standard deviations below the mean on a norm-referenced measure.
  - If there are discrepancies in the rating scale results from home and school, the team should consider including an observation by a qualified professional to provide additional information about the student's independent adaptive functioning within the school and community environments. Also, the team should take into consideration the global scores of the other components measured (e.g., cognitive, academic achievement, etc.) as a systematic approach to determining if one of the rating results is an outlier of the overall evaluation results.
- The student may exhibit some or all of these:
  - Difficulty with efficient and effective communication.
  - Difficulty with decision-making, behavior, social interactions, and participation in multiple learning environments.
  - A need for alternate methods to demonstrate their abilities and knowledge.

- Uneven learning patterns in cognition, communication, socialization, and self-help domains.
  - Medical needs that impact health, stamina, and engagement in learning tasks.
  - Difficulty learning and maintaining new skills and generalizing skills to new environments.
  - Difficulty demonstrating problem-solving skills when new skills or information is presented in a traditional academic curriculum.
  - A need for individualized methods of accessing information and demonstrating knowledge in alternative ways (tactile, visual, auditory, and multi-sensory).
- Lack of appropriate instruction in reading, including the essential components of reading instruction, mathematics, or limited English proficiency (LEP), must not be the determining factor.

Note: When there is a significant impact requiring special education programming to address more than one impairment, including intellectual disability, a Multiple Disabilities category may be considered.

## ***Multiple Disabilities***

### **Definition**

34 C.F.R. § 300.8 Child with a disability.

(c)(7) Multiple disabilities means concomitant impairments (such as an intellectual disability and blindness, intellectual disability and orthopedic impairment, etc.), the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. Multiple disabilities category does **not** include deaf-blindness.

(Authority: 20 U.S.C. § 1401(3); and § 1401(30))

Evaluations should be conducted within the context of a multidisciplinary group of qualified professionals administering assessments/evaluations within their areas of expertise. In determining the make-up of the multidisciplinary team members who are qualified to gather data or information for the required components that make up a comprehensive evaluation for **Multiple Disabilities**, refer to the “Professional Assessment Competency Areas” chart under Section 8. “Evaluation”, F. “Group of Qualified Professionals” of this chapter.

Components of a Comprehensive Evaluation		
REQUIRED	RECOMMENDED	AS NEEDED
<ul style="list-style-type: none"> <li>• Health/Medical</li> <li>• Motor</li> <li>• Communication/Language</li> <li>• Academic Achievement</li> <li>• Cognitive/Intellectual</li> <li>• Developmental</li> <li>• Adaptive Behavior</li> <li>• Background (Cultural and Educational)</li> <li>• Observation in Classroom/Other Environment</li> <li>• Vision Screening</li> <li>• Hearing Screening</li> </ul>	<ul style="list-style-type: none"> <li>• Assistive Technology</li> </ul>	<ul style="list-style-type: none"> <li>• Vision Evaluation</li> <li>• Hearing Evaluation</li> <li>• Perceptual Processing</li> <li>• Behavior</li> <li>• Vocational</li> <li>• Psychological</li> <li>• Social/Emotional</li> </ul>

***Considerations for the Evaluation Components for Multiple Disabilities***

***Health/Medical***

- Multiple disabling conditions may occur, including intellectual disability, physical or orthopedic impairments, and sensory impairments/challenges.
- Health/medical information may inform the extent that medical needs impact health, stamina, and engagement in learning tasks.
- Additional information should be gathered if the child has epilepsy/seizures, trach, ventilator, feeding tube, etc.
- Any conditions diagnosed pre- and/or post-natal that may pertain to the long-term medical prognosis for the student should be collected and considered, including any degenerative diseases/pathologies.

***Motor***

- Consideration of gross motor evaluation involving motor movement and the ability or limitations of accessing the educational environment (e.g., accessing playground equipment, climbing stairs, etc.), including the ability to participate fully in physical education (P.E.) or a need for adapted P.E.
- Consideration of fine motor evaluation involving performing daily living activities (e.g., eating, dressing-buttons/zippers, toileting, etc.), and manipulate materials required in the learning environment (e.g., picking up items, cutting with scissors, using technology, etc.).

- Information should include the student's range of motion, balance, strength, flexibility, coordination, muscle tone, muscle stamina, etc.
- Consideration of adaptive equipment for motor movement would require the expertise of qualified professionals in the fields of physical therapy and occupational therapy.

### ***Communication/Language***

- It is important to plan the evaluation and gather information that may impact the evaluation tool selection process. Knowledge of the student's vision and hearing abilities is significant to the selection process since communication relies heavily on these sensory factors. However, additional information from the family or existing evaluations may disclose that student's vision abilities may allow them to receptively understand sign language, yet their fine motor skill deficits limit their ability to expressively produce the sign. In some cases, a student may be able to turn their head or elicit an eye gaze as a form of expressive communication.
- Consideration of evaluating communication competencies of receptive and expressive language and acquisition of new language skills, including the use of assessments of non-verbal communication, and the use of augmentative and alternative communication systems (AAC), as appropriate.
- Consideration of evaluating articulation skills, both standardized and other sampling procedures, to determine production of babbling, and possible sounds (e.g., deletions, omissions, substitutions, etc.), sounds in various word positions (e.g., initial, middle and final) and connected speech (production of sounds in conversation).
- When a standardized norm-reference evaluation does not produce valid results, it is recommended to utilize an interdisciplinary team approach to obtain as much functional communication information as possible for educational planning.

### ***Academic Achievement***

- Measures of educational performance include standardized achievement assessment, benchmark and progress monitoring assessments, curricular progress, records, interviews, and/or observations that indicate severe educational needs requiring highly specialized programming.

### ***Intellectual/Cognitive***

- The abilities of children who possess severely limited abilities and/or functional communication skills may not be adequately captured with standardized, individually administered cognitive assessments. In such cases, the team should consider other assessment options, such as existing records, previous assessments, current observations, and current performance levels.

- Caution should be used in only reviewing existing records or previous assessments or utilizing rating scales, developmental inventories, and assessments as a sole indicator for measuring intellectual/cognitive component.
- Consideration should be made to administer a non-verbal IQ evaluation instrument prior to determining other functional assessment options or gathering of information involving the child's intellectual functioning.
- When a standardized norm-reference evaluation does not produce a valid result, it is recommended to utilize an interdisciplinary team approach to obtain the necessary information regarding the student's cognitive functioning.

### ***Developmental***

- Information regarding the child's developmental history in physical (gross and fine motor), cognitive, adaptive, communication, and social/emotional areas should be used to determine the child's strengths and planning the evaluation, including educational needs.

### ***Adaptive Behavior***

- Norm-referenced rating scales of adaptive behaviors in both the home and school setting (or other age-appropriate settings as needed).
- A student with Multiple Disabilities generally demonstrates significant limitations in all three domains of adaptive behavior (practical, social and conceptual).

### ***Background (Cultural and Educational)***

- Cultural and linguistic factors should be considered as they relate to the student's development, including use of native language, sign language, augmentative devices, or other modes of communication used by the family with the child in the home and community environment.
- Evaluation manuals should be reviewed for best practices involving an interpreter, modifications to the administration utilizing augmentative devices, etc.
- Collect information from the family regarding the student's special diets, or use of a food processor, etc.
- Educational history, including number of absences due to health-related conditions and/or number of hospitalizations that impacted the student's education, number of different school district enrollments, etc.

### ***Observation in Classroom/Other Environment***

- Observations should include the child interacting with familiar people in familiar environments and unfamiliar individuals in unfamiliar settings to determine what factors

stimulate communicative behavior regarding their vocal/verbal responses to actions and reactions, participation in the social interaction, etc.

- Consider setting up structured observations to elicit specific behaviors without adult support to determine the child's independent levels for practical, social, and conceptual adaptive functioning.
- If a child is less than school age or not in school, an observation of the child in an environment appropriate for a child of that age is required.

### ***Key Eligibility Indicators for Multiple Disabilities***

- Multiple Disabilities are two or more concomitant severe impairments, one of which must include intellectual disability, such as intellectual disability and blindness, intellectual disability, and orthopedic impairment, etc.
- The combination of impairments together with a cognitive delay is evidenced through a multiplicity of severe educational needs.
- "Required" and "as needed" evaluation components will be determined by each suspected concomitant disability.
- An individual disability category paired only with Speech Language Impairment (e.g., Specific Learning Disability and Speech Language Impairment; Other Health Impairment and Speech Language Impairment) does not constitute eligibility under the category of Multiple Disabilities.
- Teams may only select multiple disabilities as a primary disability, and therefore, cannot list multiple disabilities as a secondary disability. However, one of the concomitant disabilities may be selected as a secondary disability, as appropriate.
- Lack of appropriate instruction in reading, including the essential components of reading instruction, mathematics, or limited English proficiency (LEP), must not be the determining factor.

### ***Orthopedic Impairments***

#### **Definition**

34 C.F.R. § 300.8 Child with a disability.

(c)(8) Orthopedic impairment means a severe orthopedic impairment that adversely affects a child's educational performance. The term includes impairments caused by congenital anomaly (e.g., clubfoot, absence of some member, etc.), impairments caused by disease (e.g., poliomyelitis, bone tuberculosis, etc.), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures).

(Authority: 20 U.S.C. § 1401(3); and § 1401(30))

Evaluations should be conducted within the context of a multidisciplinary group of qualified professionals administering assessments/evaluations within their areas of expertise. In determining the make-up of the multidisciplinary team members who are qualified to gather data or information for the required components that make up a comprehensive evaluation for **Orthopedic Impairments**, refer to the “Professional Assessment Competency Areas” chart under Section 8. “Evaluation”, F. “Group of Qualified Professionals” of this chapter.

Components of a Comprehensive Evaluation		
REQUIRED	RECOMMENDED	AS NEEDED
<ul style="list-style-type: none"> <li>• Health/Medical</li> <li>• Motor</li> <li>• Academic Achievement</li> <li>• Developmental</li> <li>• Adaptive Behavior</li> <li>• Background (Cultural and Educational)</li> <li>• Vision Screening</li> <li>• Hearing Screening</li> <li>• Observation in Classroom/Other Environment</li> </ul>	<ul style="list-style-type: none"> <li>• Assistive Technology</li> </ul>	<ul style="list-style-type: none"> <li>• Vision Evaluation</li> <li>• Hearing Evaluation</li> <li>• Communication/Language</li> <li>• Intellectual/Cognitive</li> <li>• Perceptual Processing</li> <li>• Psychological</li> <li>• Social/Emotional</li> <li>• Behavior</li> <li>• Vocational</li> </ul>

### *Considerations for the Evaluation Components for Orthopedic Impairments*

#### *Health/Medical*

- Medical information from a licensed physician, physician assistant (PA), 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 child's educational program is required.
- Information gathered should include, if any, genetic disorders or degenerative diseases that severely impacts motor movement (e.g., muscular dystrophy), neuromotor impairments (e.g., spina bifida, cerebral palsy, injuries to the nervous system, spinal cord or brain), or musculoskeletal disorders (e.g., congenital condition such as clubfoot).
- Information regarding if the student is missing all or part of a limb due to a birth defect/disorder, disease, or a trauma induced event (e.g., amputation, accident, or burn causing severe damage to muscle, nerve, and bone).

## **Motor**

- Evaluation of motor functioning by a licensed physical therapist (PT) in the area of gross motor and/or occupational therapist (OT) in the area of fine motor, appropriate to the needs of the student, must be included.
- Information should include the student's visual motor skills, fine- and gross-motor coordination, body function or body structure (e.g., crossing the mid-line, grasping objects, using utensils, writing, buttoning, zipping, catching a ball with both hands, balance, posture, walking, climbing stairs, etc.) to assist in educational planning and supporting self-care, including play skills.
- Information should include the student's range of motion, balance, strength, flexibility, eye-hand coordination, muscle tone, muscle stamina, etc.
- Consideration of assistive technology and/or adaptive equipment for motor movement would require the expertise of qualified professionals in the fields of physical therapy and occupational therapy.
- Academic Achievement
- The effect the student's orthopedic impairment has on their present levels of performance in the general education curriculum, academic performance, achievement, or age-appropriate activities will be important information for the team to document and consider. Readiness and developmental activities would be appropriate for children in the early childhood years.
- Information regarding academic achievement include but is not limited to standardized norm-referenced achievement evaluations, and/or criterion-referenced assessments (e.g., curriculum-based measurements, benchmarks, district-wide assessments/common formative assessments, etc.).

## **Developmental**

- Developmental history as it relates to the student's pre- and post-natal diagnosis of a neuromotor impairment, musculoskeletal disorder, genetic disorder, etc. and its impact on motor (head control, sitting up independently, crawling, walking), but also how the motor delay impacted other areas of development (speaking/communication language, adaptive behavior, social/emotional, and cognitive).
- Information as related to the age in which the motor condition occurred and the impact on the student's development at that stage in their life.

## **Adaptive Behavior**

- Norm-referenced rating scales of adaptive behaviors (conceptual, social, and practical) in both the home and school setting (or other age-appropriate settings as needed).

- Information collected should include the student's independence levels compared to age peers in the areas of community use, occupation/transition skills, self-care, health safety, leisure/play, social, communication, etc.

### ***Background (Cultural and Educational)***

- Cultural and linguistic factors should be considered as they relate to the student's development. If these factors exist, then consider administering the evaluations in the student's native language or the use of an interpreter, or the use of nonverbal evaluations. Evaluation manuals should be reviewed for best practices involving an interpreter.
- Cultural background related to adult assistance or independence levels for daily living skills (e.g., feeding with utensils or using hands), and ways the family motivates the child to engage in motor activities.
- Educational history (e.g., difficulty completing assignments in a timely manner, absenteeism due to doctor visits/treatments or illness/chronic pain, number of different school district enrollments, etc.).

### ***Observation in Classroom/Other Environment***

- Observations should be conducted in the general education classroom to determine how the student's motor condition adversely impacts their education (e.g., completing tasks within a specified timeframe, participating with other students using classroom manipulatives, engagement, motivation, etc.).
- Observations in other settings should be included to determine the student's access to all school environments (even with accommodations or modifications in various settings such as the cafeteria, playground, and gym), including activities that might cause fatigue, attention/concentration, alertness (e.g., awkward balance or posture, forceful exertion, compensation with other limbs, repetitive motion, stiff or abnormal movements, etc.) that adversely impacts their ability to participate fully or their ability to learn.
- If a child is less than school age or not in school, an observation of the child in an environment appropriate for a child of that age is required.

### ***Assistive Technology***

- Assistive technology based on physical needs, depending on the individual student, are additional special factors that should be considered in the evaluation process.

## **Other**

- Consider gathering information as to the type of accommodations or equipment necessary under emergency evacuations, daily living, field trips, etc. (e.g., student utilizes a wheelchair or walker and attends classes on the second floor, then what type of equipment is necessary to transport the student in case of an emergency evacuation).

## **Key Eligibility Indicators for Orthopedic Impairments**

- The term includes impairments caused by congenital anomaly (e.g., clubfoot, absence of some member, etc.), impairments caused by disease (e.g., poliomyelitis, bone tuberculosis, etc.), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures).
- The student has a severe orthopedic impairment caused by congenital anomaly, disease, or other causes, which adversely affects educational performance (e.g., motor condition that causes severe fatigue or endurance limitations that adversely impacts the student's ability to learn).
- Lack of appropriate instruction in reading, including the essential components of reading instruction, mathematics, or LEP, must not be the determining factor.

The need and subsequent eligibility for related services of physical therapy and occupational therapy do not automatically constitute eligibility under the Orthopedically Impaired category. Teams must determine through a comprehensive evaluation that a student meets the key eligibility indicators in order to be identified as a student with an orthopedic impairment which adversely impacts the student's educational performance. If the student is not eligible under IDEA, then the LEA may consider referring the student for an evaluation under Section 504.

It is possible for a student to need and receive physical and/or occupational therapy as a related service on the IEP, and not meet eligibility criteria under orthopedically impaired as a primary or secondary disability. In this scenario, districts will receive secondary weighted funding based on the related service of PT/OT.

## Other Health Impairments

### Definition

34 C.F.R. § 300.8 Child with a disability.

(c)(9) Other health impairment means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli that results in limited alertness with respect to the educational environment, that—

- (i) Is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette syndrome; and
- (ii) Adversely affects a child's educational performance.

(Authority: 20 U.S.C. § 1401(3); and § 1401(30))

Evaluations should be conducted within the context of a multidisciplinary group of qualified professionals administering assessments/evaluations within their areas of expertise. In determining the make-up of the multidisciplinary team members who are qualified to gather data or information for the required components that make up a comprehensive evaluation for **Other Health Impairments**, refer to the “Professional Assessment Competency Areas” chart under Section 8. “Evaluation”, F. “Group of Qualified Professionals” of this chapter.

### Components of a Comprehensive Evaluation

REQUIRED	RECOMMENDED	AS NEEDED
<ul style="list-style-type: none"> <li>• Health/Medical</li> <li>• Academic Achievement</li> <li>• Developmental</li> <li>• Background (Cultural and Educational)</li> <li>• Observation in Classroom/ Other Environment</li> <li>• Hearing Screening</li> <li>• Vision Screening</li> <li>• Adaptive Behavior</li> </ul>	<ul style="list-style-type: none"> <li>• Psychological</li> <li>• Social/Emotional</li> <li>• Other Intervention Documentation</li> </ul>	<ul style="list-style-type: none"> <li>• Vision Evaluation</li> <li>• Hearing Evaluation</li> <li>• Motor</li> <li>• Communication/ Language</li> <li>• Intellectual/Cognitive</li> <li>• Perceptual Processing</li> <li>• Behavior</li> <li>• Vocational</li> <li>• Assistive Technology</li> </ul>

### Considerations for the Evaluation Components for Other Health Impairments

#### Health/Medical

- Health problems may include **but are not limited to** asthma, 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's Syndrome, and stroke to such a degree that it adversely affects the student's educational performance. (Note, Tourette's syndrome is a neurological disorder, not an emotional disorder).

- When physical health information is obtained, it should be from a licensed physician, physician assistant, or an Advanced Registered Nurse Practitioner (ARNP). Medical information should include relevant medical findings and diagnoses, health problems, medications, and other information needed to determine eligibility and plan for the student's educational program.
- Health information from the school nurse may also be useful to determine current functioning and student needs.
- Health history should include the degree and severity of the medical or health condition, including degenerative diseases.

### ***Academic Achievement***

- Current academic assessments should include reading, math, and written expression.
- Information regarding academic achievement includes but is not limited to standardized norm-referenced achievement evaluations, and/or criterion-referenced assessments (e.g., curriculum-based measurements, benchmarks, district-wide assessments/common formative assessments, etc.).

### ***Developmental***

- Developmental history should include pre- and post-natal birth medical or health conditions and the impact on all developmental domains (communication, cognitive, adaptive behavior, social/emotional, and motor).
- Information should also include how medications, if any, and/or health conditions affected the development of executive functioning, attention, memory, or the ability to process information.

### ***Background (Cultural and Educational)***

- Family history of similar health conditions or type of genetic disorders.
- Cultural and linguistic factors should be considered as they relate to the student's development. If these factors exist, then the consideration of administering the evaluations in the student's native language or the use of an interpreter, or the use of nonverbal evaluations. Evaluation manuals should be reviewed for best practices involving an interpreter.
- Educational history (e.g., chronic absences due to doctor visits, special health care treatments, hospitalizations, surgeries, etc. impacting exposure to the core curriculum; low grades due to late or missing assignments; grades repeated; number of different school enrollments, etc.).

### ***Observation in Classroom or Other Environment***

- Observations should be conducted in the general education classroom to determine how the student's health condition adversely impacts their education (e.g., concentration, engagement, starting tasks, attention to task, completing tasks, ability to follow multiple directions, memory, impulsivity, etc.).
- Observations in other settings should be included such as the cafeteria, playground, gym, etc., which may involve activities that cause fatigue, limited physical strength, alertness/distractibility, or vitality or stamina to sustain effort throughout the task.
- Information should include systematic observations/quantitative methods (e.g., interval recording to determine the frequency of a specific behavior such as time on-task vs off-task behavior compared to same age/same gender peer).
- If a child is less than school age or not in school, an observation of the child in an environment appropriate for a child of that age is required.

### ***Adaptive Behavior***

- Norm-referenced rating scales of adaptive behaviors (conceptual, social, and practical) in both the home and school setting (or other age-appropriate settings as needed).

### ***Special considerations for evaluation of services for ADHD***

- A medical diagnosis of ADHD is not necessarily required to determine whether a student is eligible for purposes of special education and related services under IDEA. Evaluations for ADHD, under the category of Other Health Impairment for IDEA purposes, should be comprehensive and include both psychological, and social/emotional components utilizing norm-referenced rating scales for both home and school settings, including structured interviews and quantitative methods of observation.

### ***Key Eligibility Indicators for Other Health Impairment***

- A medical diagnosis as the sole source of information is not sufficient to determine eligibility under IDEA. A comprehensive evaluation involving the required components is necessary to determine if there is an adverse impact on the child's educational performance. If there is not an adverse impact on the child's education, the LEA may consider referring the student for a Section 504 evaluation.
- The documented chronic or acute health impairment(s) must reveal an adverse impact on the student such as limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, resulting in limited alertness with respect to the educational environment.
- Health Impairment(s) are due to a chronic (i.e., for a long period of time or incurable or constantly recurring), or an acute health condition (i.e., sudden onset or short duration yet to a marked degree of intensity or severity). Examples of chronic or acute health conditions include asthma, attention deficit disorder or attention deficit hyperactivity disorder, central auditory processing disorder, near drowning, diabetes, epilepsy, a

heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette syndrome.

- While students with health/medical conditions may demonstrate skill ability in the average range on standardized achievement tests, significantly problematic behaviors resulting from the health condition may contribute to inconsistent performance of these skills in the classroom and may validate the presence of an educational need.
- An addiction or chemical dependency does not fall under a disability under IDEA solely by itself. However, if the use of the drug(s) creates a chronic or acute health condition that adversely impacts the student's education performance then the LEA must consider this independent health condition.
- Lack of appropriate instruction in reading, including the essential components of reading instruction, mathematics, or limited English proficiency (LEP), must not be the determining factor

## **Specific Learning Disability**

The OSDE has established options for determining a Specific Learning Disability (34 CFR § 300.307). At the beginning of each school year, as part of the district assurances, each LEA designates if they are using a **Scientific-Research Based model** (Option 1 which is a Response to Intervention Processes) or **Traditional Discrepancy Model** (Option 2) for evaluating Specific Learning Disabilities. The LEA will use the selected option for all evaluations throughout the school year.

### **Definition**

34 C.F.R. § 300.8 Child with a disability.

(c)(10) Specific learning disability—

(i) **General.** Specific learning disability means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

(ii) **Disorders not included.** Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of intellectual disability, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

(Authority: 20 U.S.C. § 1401(3); and § 1401(30))

Evaluations should be conducted within the context of a multidisciplinary group of qualified professionals administering assessments/evaluations within their areas of expertise. In determining the make-up of the multidisciplinary team members who are qualified to gather data or information for the required components that make up a comprehensive evaluation for **Specific Learning Disability** refer to the “Professional Assessment Competency Areas” chart under Section 8. “Evaluation”, F. “Group of Qualified Professionals” of this chapter.

<b>Components of a Comprehensive Evaluation</b>		
<b>REQUIRED</b>	<b>RECOMMENDED</b>	<b>AS NEEDED</b>
<ul style="list-style-type: none"> <li>• Academic Achievement</li> <li>• Intellectual/Cognitive</li> <li>• Developmental</li> <li>• Adaptive Behavior</li> <li>• Background (Cultural and Educational)</li> <li>• Observation in Classroom/ Other Environment</li> <li>• Other Intervention Documentation</li> <li>• Vision Screening</li> <li>• Hearing Screening</li> </ul>	<ul style="list-style-type: none"> <li>• Health/Medical</li> </ul>	<ul style="list-style-type: none"> <li>• Motor</li> <li>• Communication/Language</li> <li>• Perceptual Processing</li> <li>• Psychological</li> <li>• Social/Emotional</li> <li>• Behavior</li> <li>• Vocational</li> <li>• Assistive Technology</li> <li>• Vision Evaluation</li> <li>• Hearing Evaluation</li> </ul>

### ***Pre-Referral Considerations for Specific Learning Disability***

As part of the pre-referral considerations, the school should consider the results of available academic universal screening data to identify students at risk for not achieving grade-level skills. Screening data should be used to identify remediation and intervention supports appropriate to address areas of concern. Outcomes of general education interventions help inform decisions about whether or not it is appropriate to suspect a learning-related disability.

To ensure adherence to the IDEA, interventions must be evidence-based. The term evidence-based means that a strategy or intervention demonstrates a statistically significant effect on improving student outcomes (Elementary and Secondary Education Act, § 8101(21)(A)). Implementing evidence-based interventions includes documentation of the intervention and monitoring the student’s progress toward their goal.

The intervention documentation must:

- demonstrate that the student was provided an intervention matched to the student’s instructional needs in the general education setting,
- indicate the intervention was delivered by qualified personnel, and

- include a description of scientific evidence-based intervention.

To determine if an intervention is evidence-based, the team should ask the following questions:

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

Progress monitoring is a process of evaluating growth on skills over time and is used to determine if the student is progressing adequately. This process is done using alternate forms of screening assessments and conducted regularly with students, who are performing below the benchmark and receiving intervention instruction. More information regarding the intervention and progress monitoring process may be found in the OTISS Implementation Guide at [www.otiss.net](http://www.otiss.net).

As part of the Review of Existing Data (RED) process, the school **must** have documentation regarding these evidence-based intervention attempts at remediating academic deficits in the form of targeted interventions delivered in addition to the general education core curriculum. See Appendix A. "RED/MEEGS Intervention Documentation" in the Evaluation & Eligibility Handbook.

## ***Considerations for the Evaluation Components for Specific Learning Disability***

### ***Academic Achievement***

- Source of data for academic achievement may include:
  - Universal screening. Benchmark testing of all students, typically administered three times per year, focusing on foundational skills and aligned with state standards.
  - Formative and progress-monitoring assessments aligned with grade-level state standards. The assessments are used to monitor what students are expected to learn when provided with robust instruction within the general education setting.
  - Performance on state assessments. These are the state's general assessments aligned to state academic content standards for the student's enrolled grade.
  - Norm-referenced evaluations of academic achievement.
- See Key Eligibility Indicators below for more information on how this data will be utilized to determine eligibility based on the selected method of eligibility determination.

## ***Intellectual/Cognitive***

- 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
  - Multiple indicators of age-appropriate adaptive and/or cognitive skills may be used to rule out intellectual disability as the primary cause of learning difficulties.

## ***Developmental***

- Information regarding the child's developmental history, skills, and abilities in relation to expectation for the age group.
- Information provided by the student's parents regarding the student's developmental/educational history of progress on age- or grade-level state standards, developmental history questionnaires, or other information.
- If developmental delays have been present in cognitive, adaptive behavior, motor, communication/language and/or social milestones, the LEA may consider including additional components as part of the comprehensive evaluation and discussing with the parent possible suspected disabilities other than Specific Learning Disability.

## ***Adaptive Behavior***

- Norm-referenced rating scales of adaptive behaviors (conceptual, social, and practical in both the home and school setting, or other age-appropriate settings as needed).

## ***Background (Cultural and Educational)***

- Consider the family history of learning issues.
- Limited English proficiency must be ruled out as a primary factor for a Specific Learning Disability. If another language is primarily spoken in the home, then the LEA must take into consideration the student's cultural and linguistic factors as they relate to the student's development. Consideration should be given to administering the evaluations/assessments in the student's native language or mode of communication. It is important to note if an interpreter is utilized in the administration of the evaluations to recognize the nature of the standardization procedures and any modifications provided. Evaluation manuals should be reviewed for best practices involving an interpreter.
- Educational history regarding the number of absences or number of different school enrollments (inter and intra- enrollments), which may have adversely impacted the student's exposure to the core instruction and interrupted the scope/sequence of the learning process or produced significant learning gaps.
- Office discipline referrals or suspension information may need to be reviewed to determine a pattern of behavior related to academic tasks.

## ***Observation in Classroom/Other Environment***

- Systematic observation (quantitative methods) should be used during the general education curriculum instruction and during intensive, scientific research-based/evidence-based interventions provided to the student that is in addition to the core instruction regarding the student's engagement behaviors.
- Classroom observations should include the subject of one or more area(s) of concern involving basic reading skills, reading fluency, reading comprehension, written expression, math calculation, math problem solving, oral expression and listening comprehension.
- Additional information should be gathered regarding skill deficit(s) (i.e., acquisition/accuracy), fragile skill(s) (i.e., student has the necessary skill but lacks automaticity/fluency), or performance deficit (i.e., student has the necessary skills and fluency but lacks motivation).

## ***Key Eligibility Indicators for Specific Learning Disability***

### ***Indicators for ALL SLD Evaluations***

The following three criteria must be met and documented for all SLD evaluations.

#### **1. Significantly below-average academic achievement.**

- Documentation that the student does not achieve adequately for the student's age or 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 in one of the following areas:
  - **Oral Expression:** relates to a student's ability to express ideas, explain thinking, retell stories, categorize, compare and contrast concepts or ideas, make references, and problem-solve verbally.
  - **Listening Comprehension:** relates to the understanding of the implications and explicit meanings of words and sentences of spoken language. This includes following directions, comprehending questions, and listening and comprehending in order to learn (e.g., auditory attention, auditory memory, and auditory perception). Listening comprehension also includes the ability to make connections to previous learning.
  - **Written Expression:** involves processes related to the transcription of ideas and thoughts into a written product. Required skills include using oral language, thought, grammar, text fluency, sentence construction, and planning to produce a written product.
  - **Basic Reading Skills:** includes sight word recognition, phonics, and word analysis. Essential skills include identification of individual sounds and the ability to manipulate them, identification of printed letters and sounds associated with letters, and decoding of written language.
  - **Reading Fluency Skills:** relates to the ability to read words and text accurately, using age-appropriate chunking strategies and a repertoire of sight words, and with

appropriate rate, phrasing, and expression (prosody). Reading fluency facilitates reading comprehension.

- **Reading Comprehension:** relates to the ability to understand and make meaning of written text and includes a multifaceted set of skills. Reading comprehension is influenced by oral language development, including new vocabulary acquisition, listening comprehension, working memory, application of comprehension-monitoring strategies, and understanding of text structure, including titles, paragraphing, illustrations, and other details.
  - **Mathematics Calculation:** relates to the knowledge and retrieval of mathematical facts and the application of procedural knowledge in computation.
  - **Mathematics Problem Solving:** relates to the ability to apply mathematical concepts and understandings to real-world situations, often through word problems. It is the functional combination of computation and application knowledge and involves the use of mathematical computation skills and fluency, language, reasoning, reading, and visual-spatial skills in solving problems.
- Academic achievement data should be collected for all areas of a suspected disability.
  - To determine the extent of student underachievement, the use of multiple measures for assessing student achievement is recommended. These measures may include assessments that are used to drill down into a student's academic skill deficiencies, reading and math diagnostic tests using multiple measures, including, criterion-referenced tests, norm-referenced tests and/or curriculum-based measurements.
2. **Documentation that underachievement is not due to a lack of appropriate instruction in identified areas of concern. Include both:**
- Data that demonstrates before, or as part of, the referral process, the student was provided appropriate instruction in regular education settings, delivered by qualified personnel.
  - Data-based documentation of repeated assessments of achievement at reasonable intervals that reflect student progress during instruction. This refers specifically to the use of local or national progress monitoring systems (e.g., district CBMs, AIMSweb, DIBELS, etc.).

3. **Observation in Classroom/Other Environment**

- 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 team may decide to use observational data obtained prior to the referral or to conduct an observation 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.)

### **Indicators for Option 1: Additional Eligibility Indicators for Scientific-Research Based Model**

The evaluation group must decide using a convergence of multiple sources of data demonstrating **a lack of sufficient progress in response to scientific, evidence-based interventions in one or more of the academic areas listed above.**

Documentation of the intervention process should be accomplished through an intervention plan and progress monitoring data generated from the intervention process. The documented components should include:

- The scientific evidence-based interventions used,
- Dates, frequency, and duration of the intervention(s),
- The targeted skill(s), including the present levels of performance and a measurable goal,
- Data on the integrity of implementation of intervention as planned (e.g., percent of integrity/fidelity with which the intervention was delivered),
- The results of intervention, including the student's overall performance and rate of improvement compared to the overall goal and rate of improvement,
- If the student's progress is sufficient to meet overall goals by the end of the specified period.

The eligibility group will use the above data to determine if the student meets the following criteria:

1. **Criterion 1:** The student's level of performance in the area of academic concern is significantly below what is expected for their grade and educational setting.
2. **Criterion 2:** 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.

### **Indicators for Optional 2: Additional Eligibility Indicators for Traditional Discrepancy Model**

The evaluation group must document, using assessments and procedures, **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 one or more of the **eight areas**

listed under evaluation considerations for SLD. The team must not use age equivalents, grade equivalents, or relative proficiency index (RPI) to determine a severe discrepancy.

### **Summary of Key Eligibility Indicators for Specific Learning Disability**

Regardless of the chosen method for SLD eligibility determination, the team must:

- Document the procedures utilized to determine the presence of a specific learning disability and the adverse effects on educational performance. For additional information, see the Specific Learning Disability Evaluation Questions section of Appendix B, Frequently Asked Questions in the Evaluation & Eligibility Handbook.
- Establish criteria and a process for such determinations and make this information available to the group, including the parent(s), as needed.
- The group may not identify a student as having a specific learning disability if the student's performance is primarily the result of a visual, hearing, or motor disability; intellectual disability; emotional disturbance; cultural factors; environmental or economic disadvantage, or LEP.
- Lack of appropriate instruction in reading, including the essential components of reading instruction, mathematics, or limited English proficiency (LEP), must **not** be the determining factor.

#### **Dyslexia as a Specific Learning Disability**

Dyslexia is a term frequently used to refer to a spectrum of reading skills deficits. Dyslexia can result in relatively mild delays in learning to read or can result in a severe, persistent, pervasive pattern of reading skill deficits indicative of a specific learning disability. It is characterized by difficulties with accurate and/or fluent word recognition and by poor spelling and decoding abilities. These difficulties typically result from a deficit in the phonological component of language that is often unexpected in relation to other cognitive abilities and the provision of effective classroom instruction. Secondary consequences may include problems in reading comprehension and reduced reading experience that can impede the growth of vocabulary and background knowledge.

**Oklahoma recognizes dyslexia as a disability under the Individuals with Disabilities Education Act (IDEA) and Section 504 of the Rehabilitation Act.** In October 2015, the United States Department of Education issued a Dear Colleague guidance letter to ensure a high-quality education for children with Specific Learning Disabilities (SLD). The purpose of the letter was to "Clarify that there is nothing in the IDEA, which would prohibit the use of the terms dyslexia, dyscalculia, and dysgraphia in IDEA evaluation, eligibility determinations, or IEP documents."

##### Differential Identification Questions for Dyslexia

1. Does the student demonstrate one or more of the primary reading characteristics of dyslexia in addition to a spelling deficit?
2. Is there a deficit in phonological processing/phonemic awareness (Underlying causes of dyslexia)?
3. Are the reading, spelling, and phonological deficits unexpected? Does the student demonstrate cognitive ability to support age-level academic learning?
4. Are there secondary characteristics of dyslexia evident in reading comprehension and written expression?
5. What are the student's strengths that could be assets?

6. Is there a family history of a learning disability or dyslexia?
7. Are there indicators of coexisting disorders (e.g., ADHD, dysgraphia, dyspraxia, anxiety) that may complicate the response to intervention and may deserve further assessment for identification?

When a request has been made for an initial evaluation, a multidisciplinary team of qualified professionals (for example, certified school psychologists, school psychometrists, speech-language pathologists, and regular and special education teachers) and the parent must conduct a review of existing data.

To be eligible for special education and related services, the student must have a disability under the IDEA (which includes Dyslexia as a Specific Learning Disability in Reading). The disability must have an adverse impact on their education, and their unique, disability-related needs must require specially designed instruction in order to access the general education curriculum. It is important to note that the definition of Specific Learning Disability is slightly different in the IDEA compared to that of the DSM-5 medical diagnosis of Specific Learning Disorder. Outside evaluations may not have all of the evaluation components required to determine eligibility for special education services, and the student's team may request parent consent to complete additional assessments as necessary. Similarly, a diagnosis of dyslexia, does not automatically determine eligibility under the IDEA as additional assessments may be necessary by the LEA.

If the student is not found eligible for special education services under the IDEA, the results of the evaluations conducted should still be used to provide feedback on the educational needs of the student. When a student is not eligible for a disability category under the IDEA, a referral for an evaluation under Section 504 of the Rehabilitation Act should be considered. A Section 504 plan can provide accommodations or other supports for the student. Additionally, the team should consider how any identified educational needs may be addressed through evidence-based interventions with available school resources.

## ***Speech or Language Impairment***

### **Definition**

34 C.F.R. § 300.8 Child with a disability.

(c)(11) Speech or language impairment means a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment that adversely affects a child's educational performance.

(Authority: 20 U.S.C. § 1401(3)(A)(B); and § 1401(26))

Evaluations should be conducted within the context of a multidisciplinary group of qualified professionals administering assessments/evaluations within their areas of expertise. In determining the make-up of the multidisciplinary team members who are qualified to gather data or information for the required components that make up a comprehensive evaluation for **Speech or Language Impairment**, refer to the "Professional Assessment Competency Areas" chart under Section 8. "Evaluation", F. "Group of Qualified Professionals" of this chapter.

## Components of a Comprehensive Evaluation

REQUIRED	RECOMMENDED	AS NEEDED
<ul style="list-style-type: none"> <li>• Communication/Speech/ Language/Voice/Fluency</li> <li>• Developmental in 5 domains (for DD only)</li> <li>• Background (Cultural and Educational)</li> <li>• Adaptive Behavior</li> <li>• Observation in Classroom/Other Environment</li> <li>• Vision Screening</li> <li>• Hearing Screening</li> </ul>	<ul style="list-style-type: none"> <li>• Health/Medical</li> <li>• Assistive Technology</li> <li>• Academic Achievement</li> </ul>	<ul style="list-style-type: none"> <li>• Motor</li> <li>• Intellectual/Cognitive</li> <li>• Perceptual Processing</li> <li>• Psychological</li> <li>• Social/Emotional</li> <li>• Behavior</li> <li>• Vocational</li> <li>• Vision Evaluation</li> <li>• Hearing Evaluation</li> </ul>

### *Considerations for the Evaluation Components for Speech or Language Impairment*

#### **Communication/Language**

- More than one evaluation measure must be used to determine the existence of a speech and/or language impairment.
- At least one assessment tool must be a standardized measure. Other measures may be informal or functional, such as observations, checklists, and/or language samples.
- Any informal or functional evaluation measure must be documented in the evaluation summary, whether speech/language is the primary disability, secondary 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.
- A speech or language impairment may be congenital or acquired.
- Children with voice/resonance impairment must have a medical evaluation to rule out physical structure etiology by a medical specialist either prior to a comprehensive evaluation or as part of a comprehensive evaluation. The presence of a medical condition (e.g., vocal nodules, polyps) does not necessitate the provision of voice therapy as special education or related service nor does a prescription for voice therapy from a medical doctor. A written order from a medical practitioner is a medical opinion regarding the medical evaluation or treatment that a patient should receive. When directed to a school, these medical orders should be considered by the team as a part

of the eligibility process. The team, not a medical practitioner, determines the need for an evaluation for special education services based on documented adverse effect of the voice impairment on the child's educational performance.

### ***Developmental (Required for Developmental Delay Category)***

- A thorough assessment of a student's developmental history, skills, and abilities in relation to expectations for the age group is an important component of determining if a student is displaying characteristics consistent with a speech or language impairment.
- When evaluating for Developmental Disability category, procedures must evaluate all five domains of developmental functioning (adaptive, cognitive, communication, social/emotional, and physical).

### ***Background (Cultural and Educational)***

- Cultural and linguistic factors should be considered as they relate to the child's development of social and language skills.

### ***Adaptive Behavior***

- Norm-referenced rating scales of adaptive behaviors in the home and school setting (or other age-appropriate settings as needed) is important to inform the student's functional performance and unique needs.

### ***Observation in Classroom/Other Environment***

- Assessment should include observation of students' communication skills in the educational setting.
- Appropriate social behaviors to observe may include nonverbal behaviors (eye contact/gaze, facial expressions, gestures, physical proximity, joint attention), peer relationships (frequency and quality of peer interaction), and social reciprocity (approaching others, sharing about interests, taking turns in conversation, tolerating changes in topic or interests of others, showing awareness of others).

### ***Hearing Screening***

- A hearing screening should be conducted to rule out possible hearing loss as a contributing factor to speech or language impairment.

### ***Academic Achievement***

- Information regarding academic achievement may include but is not limited to standardized norm-referenced achievement tests, criterion-referenced tests (e.g., curriculum-based measurements/curriculum-based assessments, benchmarks, or district-wide assessments/common formative assessments).
- Academic performance, achievement (in meaningful contexts), and/or age-appropriate activities will be important information for the team to document and consider. Readiness and developmental activities would be appropriate for children in the early childhood years.

### ***Intellectual/Cognitive***

- The impact of a student's functional communication and basic language skills on score validity should be considered.
- Nonverbal instruments should be used for students who are nonverbal or have severely limited vocabulary and language skills.

### ***Social/Emotional***

- Norm-referenced rating scales of social-emotional behaviors in the home and school setting (or other age-appropriate settings as needed) are important to inform the student's functional performance and unique needs.
- Assessment may include a measure of the student's social interactions.

Also, see Section 8. Evaluation, C. Evaluation Procedures-General Evaluation Considerations for additional information.

### ***Key Eligibility Indicators for Speech or Language Impairment***

- When interpreting assessment data for a disability in the area of speech language impairment, it is recommended that 1.5 standard deviations (SD) below the population mean (approximately the 7th percentile, a Standard Score of 77 or below) be used as the threshold level for establishing the presence of a disability. This cutoff should be applied to composite scores of receptive and/or expressive measures, or to overall test scores, rather than individual subtests. Eligibility should not be determined, however, solely by comparing a composite or overall score to this cutoff level. Evidence that the difference has an adverse effect on educational performance must be gathered and considered along with background information before a determination of eligibility can be made. The measurement error should be taken into account for the individual situation. When evaluating a student in the areas of articulation and phonology, SLPs should consider how the student performs in the school setting in order to determine their educational need for specially designed instruction.

- Language Impairment is characterized by impaired comprehension and/or use of spoken language which may also impair written and/or other symbol systems and is negatively impacting the child's ability to participate in the classroom environment. The impairment may involve, in any combination, the form of language (phonology, morphology, and syntax), the content of language (semantics) and/or the use of language in communication (pragmatics) that is adversely affecting the child's educational performance.
- The term "language impairment" does not include:
  - Children who are in the normal stages of second language acquisition/learning and whose communication problems result from English being a secondary language unless it is also determined that they have a speech language impairment in their native/primary language.
  - Children who have regional, dialectic, and/or cultural differences.
  - Children who have auditory processing disorders not accompanied by language impairment.
  - Children who have anxiety disorders (e.g., selective mutism) unless it is also determined that they have a speech language impairment. There must be a documented speech-language impairment that adversely affects the educational performance for these children to qualify for special education services.
- The age and cognitive levels of the student, including the professional judgment of the SLP and eligibility team should be considered.
- Fluency Impairment is the interruption in the flow of speech characterized by an atypical rate, or rhythm, and/or repetitions in sounds, syllables, words and phrases that significantly reduces the speaker's ability to participate within the learning environment. Excessive tension, struggling behaviors and secondary characteristics may accompany fluency impairments. Secondary characteristics are defined as ritualistic behaviors or movements that accompany dysfluencies. Ritualistic behaviors may include avoidance of specific sounds in words. Fluency impairment includes disorders such as stuttering and cluttering. It does not include dysfluencies evident in only one setting or reported by one observer.
- Voice/Resonance Impairment is the interruption in one or more processes of pitch, quality, intensity, or resonance that significantly reduces the speaker's ability to communicate effectively. Voice/Resonance impairment includes aphonia or the abnormal production of vocal quality, pitch, loudness, resonance, and/or duration, which is inappropriate for an individual's age and/or gender. The term voice/resonance impairment does not refer to:
  - Anxiety disorders (e.g., selective mutism).
  - Differences that are the direct result of regional, dialectic, and/or cultural differences.

- Differences related to medical issues not directly related to the vocal mechanism (e.g., laryngitis, allergies, asthma, laryngopharyngeal reflux (e.g., acid reflux of the throat, colds, abnormal tonsils or adenoids, short-term vocal abuse or misuse, neurological pathology).
- Vocal impairments that are found to be the direct result of or symptom of a medical condition unless the impairment impacts the child's performance in the educational environment and is amenable to improvement with therapeutic intervention.
- An articulation/phonological disorder exists when:
  - The disorder is exhibited by omissions, distortions, substitutions, or additions.
  - The articulation interferes with communication and calls attention to itself.
  - The disorder adversely affects educational or developmental performance.
- An articulation/phonological disorder does not exist when:
  - Physical structures (e.g., missing teeth, unrepaired cleft lip and/or palate) are the primary cause of the speech sound impairment.
  - Children who exhibit tongue thrust behavior without an associated speech sound impairment.
  - Differences are due to culture, bilingualism, or dialect, or from being non-English speaking.
  - 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.
- Lack of appropriate instruction in reading, including the essential components of reading instruction, mathematics, or limited English proficiency (LEP), must not be the determining factor.
- Caution is necessary 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.

## Traumatic Brain Injury

### Definition

34 C.F.R. § 300.8 Child with a disability.

(c)(12) Traumatic brain injury means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both that adversely affects a child's educational performance. Traumatic brain injury 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. Traumatic brain injury does not apply to brain injuries that are congenital, degenerative or to brain injuries induced by birth trauma.

(Authority: 20 U.S.C. § 1401(3); and § 1401(30))

Evaluations should be conducted within the context of a multidisciplinary group of qualified professionals administering assessments/evaluations within their areas of expertise. In determining the make-up of the multidisciplinary team members who are qualified to gather data or information for the required components that make up a comprehensive evaluation for **Traumatic Brain Injury**, refer to the "Professional Assessment Competency Areas" chart under Section 8. "Evaluation", F. "Group of Qualified Professionals" of this chapter.

### Components of a Comprehensive Evaluation

REQUIRED	RECOMMENDED	AS NEEDED
<ul style="list-style-type: none"> <li>• Health/Medical</li> <li>• Academic Achievement</li> <li>• Intellectual/Cognitive</li> <li>• Developmental</li> <li>• Adaptive Behavior</li> <li>• Communication/Language</li> <li>• Background (Cultural and Educational)</li> <li>• Observation in Classroom/ Other Environment</li> <li>• Vision Screening</li> <li>• Hearing Screening</li> </ul>	<ul style="list-style-type: none"> <li>• Motor</li> <li>• Perceptual/Processing</li> <li>• Psychological</li> <li>• Social/Emotional</li> </ul>	<ul style="list-style-type: none"> <li>• Behavior</li> <li>• Vocational</li> <li>• Assistive Technology</li> <li>• Hearing Evaluation</li> <li>• Vision Evaluation</li> </ul>

## *Considerations for the Evaluation Components for Traumatic Brain Injury*

### *Health/Medical*

- Medical information from a licensed physician, physician's assistant 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 rehabilitative services that were/are being provided which might be pertinent to planning the student's educational program.
- Medical information is necessary to establish that the student has an acquired brain injury that occurred after birth and was caused by an external force.

### *Academic Achievement*

- Present levels of performance in the general curriculum, academic performance, achievement (in meaningful contexts), or age-appropriate activities will be important information for the team to document and consider. Readiness and developmental activities would be appropriate for children in the early childhood years.

### *Intellectual/Cognitive*

- Formal norm-referenced evaluation of cognitive/intellectual should also be supported by the functional and ecological/executive functioning assessment of the student's ability to generalize and apply skills in various settings.

### *Developmental*

- Developmental history **before** the TBI occurred in all areas: cognitive, motor, communication/language, adaptive behavior, and social/emotional development.
- Parent interview regarding the development of skills **after** the TBI occurred in all areas: cognitive, motor, communication/language, adaptive behavior, and social/emotional development.

### *Adaptive Behavior*

- Information should include the functional assessment of the student's skills and behaviors in various settings.
- If the student has not yet returned to school, adaptive behavior norm-referenced rating scales may need to be assessed in response to tasks that are similar to the school setting or other age-appropriate settings as possible.

### ***Communication/Language***

- Traumatic Brain Injuries may impact a variety of neuropsychological factors, including communication and language. The student's current functioning for communication and language should be evaluated.
- Consideration of additional information regarding how the student's reciprocal social communication may have been affected by the TBI.

### ***Background (Cultural and Educational)***

- Cultural and linguistic factors should be considered as they relate to the student's development. If another language is primarily spoken in the home, then the LEA must take into consideration administering the evaluations in the student's native language or other mode of communication. Evaluation manuals should be reviewed for best practices involving an interpreter.
- Educational history **prior** to the Traumatic Brain Injury (e.g., grades, assignment completion, office discipline referrals, exams, state-wide assessments, attendance, etc.) compared to the student's performance and behaviors **after** the TBI occurred also provides important information for educational planning and expectations for prognosis.

### ***Observation in the Classroom or Other Environment***

- Observation in the classroom and at least one other setting (e.g., cafeteria, playground, etc.) should include information about the student's executive functioning/abilities related to memory/processing speed (e.g., word retrieval, follow multiple step directions, response time to questions asked of student) sensory stimuli (e.g., dismissal tones/bell, noises within the classroom), motor abilities (e.g., balance, coordination, cutting with scissors, transferring objects between hands), communication involving attention/concentration (e.g., maintain conversation, transition to new topic of conversation) and behavior (e.g., organized with materials, transitions from one task to another, impulsivity, motivation).
- Information should include systematic observations/quantitative methods (e.g., interval recording to determine the frequency of a specific behavior such as time on-task vs off-task behavior compared to same age/same gender peer).

### ***Perceptual/Processing***

- The abilities of the student to effectively perceive, process, integrate, recall, respond to information, and communicate are important considerations.

## ***Social/Emotional***

- Information should include the functional assessment of the student’s social skills and behaviors in various settings.

## ***Key Eligibility Indicators for Traumatic Brain Injury***

- An acquired brain injury caused by an **external physical force** that occurred after birth must be medically documented.
- The evaluation information must establish that total or partial functional disability or psychosocial impairment, or both, are due to the injury.
- Traumatic brain injury applies to open (penetration of the skull) 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.
- Traumatic brain injury does **not** apply to brain injuries that are congenital, degenerative or to brain injuries induced by birth trauma.
- The resulting impairment(s) adversely affects educational performance.
- Lack of appropriate instruction in reading, including the essential components of reading instruction, mathematics, or limited English proficiency (LEP), must **not** be the determining factor.

## ***Visual Impairment Including Blindness***

### **Definition**

34 C.F.R. § 300.-8 Child with a disability.

(c)(13) Visual impairment including blindness, means an impairment in vision that, even with correction, adversely affects a child’s educational performance. The term includes both partial sight and blindness.

(Authority: 20 U.S.C. § 1401(3); and § 1401(30))

Evaluations should be conducted within the context of a multidisciplinary group of qualified professionals administering assessments/evaluations within their areas of expertise. In determining the make-up of the multidisciplinary team members who are qualified to gather data or information for the required components that make up a comprehensive evaluation for Visual Impairment Including Blindness, refer to the “Professional Assessment Competency Areas” chart under Section 8. “Evaluation”, F. “Group of Qualified Professionals” of this chapter.

## Components of a Comprehensive Evaluation

REQUIRED	RECOMMENDED	AS NEEDED
<ul style="list-style-type: none"> <li>• Vision Evaluation</li> <li>• Academic Achievement</li> <li>• Developmental</li> <li>• Background (Cultural and Educational)</li> <li>• Adaptive Behavior</li> <li>• Observation in Classroom/Other Environment</li> <li>• Hearing Screening</li> </ul>	<ul style="list-style-type: none"> <li>• Health/Medical</li> </ul>	<ul style="list-style-type: none"> <li>• Motor</li> <li>• Communication</li> <li>• Intellectual/Cognitive</li> <li>• Perceptual Processing</li> <li>• Psychological</li> <li>• Social/Emotional</li> <li>• Behavior</li> <li>• Vocational</li> <li>• Assistive Technology</li> <li>• Hearing Evaluation</li> </ul>

### *Considerations for the Evaluation Components for Visual Impairment Including Blindness*

#### ***Vision***

- This information could include medical information from a licensed physician, if determined appropriate, to assess the effect of the child’s visual impairment on the child’s eligibility and educational needs but cannot be used as the sole criteria.
- An ophthalmologist’s or optometrist’s report stating the diagnosis and description of the visual problems may be included.
- Indication of acuity with correction and field of vision is necessary for determining the special services needed.
- When no response to the visual stimuli can be elicited from the child, a physician’s report or existing medical records could fulfill this requirement.

#### ***Academic Achievement***

- Assessments selected and administered must accurately reflect the student’s achievement level rather than reflecting the student’s vision impairment.

#### ***Developmental***

- Developmental component includes information regarding the child’s overall developmental history, skills and abilities in relationship to age-based expectations.
- Information regarding the age or developmental stage the child was at upon the diagnosis of the student’s vision impairment or underlying medical condition.

- Treatment implemented that may have affected the student's field of vision functioning will provide information on what areas of development may have been delayed or interrupted. Undiagnosed visual impairment will significantly impact the child's developmental progress.
- Early developmental stages involving the child's understanding of their environment and social cues will be valuable information for the team to consider (for example, motor skills impacted by not being able to visually locate and play with toys independently, or to interact with peers in a game).

### ***Background (Cultural and Educational)***

- Cultural and linguistic factors should be considered as they relate to the student's development. If another language is primarily spoken in the home, then the LEA must take into consideration administering the evaluations in the student's native language or other mode of communication. Evaluation manuals should be reviewed for best practices involving an interpreter.
- Family history of any specific syndromes, degenerative diseases or pathologies that lead to vision impairment or blindness.
- Family members use of large print books or Braille or adaptive equipment in the home setting with their child.
- Educational history regarding the number of absences or number of different school enrollments, which may have adversely impacted the student's exposure to the core instruction and producing significant learning gaps.

### ***Adaptive Behavior***

- Norm-referenced rating scales of adaptive behaviors in the home and school setting (or other age-appropriate settings as needed) are important to inform the student's functional performance and unique needs.
- Adaptive behavior information may be assessed by a vision specialist using a functional vision assessment in a manner that will reflect the ability of the student to compensate for the loss of vision or visual condition.
- Structured interviews with the parent regarding their child's independence level with adaptive behavior skills (including safety, community access, etc.).

### ***Observation in the Classroom or Other Environment***

- Observations should be conducted in the classroom environment as well as in a variety of other school settings (auditorium, hallway, cafeteria, library), activities

(whole group instruction involving manipulatives, gym/recess accessing equipment, field trips accessing new environments, etc.).

- Observations should also include both near and far vision requirements to complete tasks.
- Structured observations, which include considerations for lighting, the size of the print, or material to be identified visually, and the distance and positioning of the student from objects to be viewed, may be utilized.

### ***Health/Medical***

- Information regarding specific syndromes, degenerative diseases/pathologies, and special health problems regarding the student's vision and the long-term medical prognosis for the student should be collected and considered.

### ***Assistive Technology/Other Considerations***

- Assistive technology, communication, and Braille instruction needs depending on the individual student are additional special factors, which should be considered in the evaluation process.

### ***Key Eligibility Indicators for Visual Impairments Including Blindness***

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

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

The IEP team must consider any medical documentation in an eligibility determination.

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

## Section 11. Multidisciplinary Evaluation and Eligibility Group Summary (MEEGS)

### A. Draft Provided to Parents Prior to Eligibility Meeting

Upon completing the review of existing data (RED) and collecting additional data as necessary, all test results and information gathered will be entered on the MEEGS form in a draft format. If the LEA has requested and received parental consent for additional assessments during the initial or reevaluation process, the LEA must provide the parent with summaries of the evaluation results at least **two (2) school days** prior to the eligibility MEEGS meeting. Providing the draft version of the evaluation summary results to the parent in advance of the eligibility meeting allows the parent time to review the test results and other information gathered to formulate questions and/or comments ensuring their full participation with the eligibility determination.

The LEA is not required to create a new separate summary document of the evaluation results. To serve as the summaries of the evaluation results, the LEA may choose to send a draft copy of the MEEGS document with descriptive language, along with the scores, that parents would understand (e.g., average range), or the LEA may choose instead to send the written evaluation summary reports by the qualified professionals which provide interpretation language, or the LEA may choose to provide both the draft MEEGS form and the draft written evaluation summary reports.

**IF** the LEA chooses to send the draft MEEGS form, then the LEA must only indicate the evaluation results and **not** the eligibility determination. This determination must remain a function of the MEEGS team, which includes a group of qualified professionals and the parent, during the eligibility meeting. It is recommended not to select the primary and/or secondary category of eligibility nor complete the written summary of eligibility until the eligibility meeting with the parent. However, the LEA and parent may agree to include the district's draft proposal regarding a selected primary and/or secondary disability on the draft MEEGS when providing the draft copy to the parent prior to the eligibility meeting.

If the LEA chooses to use electronic mail to provide IEPs and other related documents to the parents refer to [OSEP Guidance Letter \(2014\)](#).

### B. Group Members Required to Attend Eligibility Meeting

A group of qualified professionals and the parent of the child determines whether the child is a child with a disability, as defined in 34 C.F.R. § 300.8., and whether the child requires special education and related services. Depending on the needs of the child, the group must include the parent (at least one) and the following qualified professionals:

- At least one certified general education teacher of the student.
  - If the child is less than school age, an individual qualified by the OSDE to teach children without disabilities of that age must serve on this group.
  - If this is a reevaluation and the student with a disability does not have a general education teacher for a core content area, yet attends elective courses (e.g., music, PE, art, etc.), then the elective course teacher must serve on this group.
  - If the child is placed in a residential facility or a self-contained program with no interaction with students who are non-disabled, a certified general education

teacher who is qualified by the OSDE to teach students without disabilities of the same age or grade level range must serve on this group.

- At least one certified special education teacher.
- A representative of the LEA who
  - Is qualified to provide or supervise the provision of special education services (provide or supervise the provisions of specially designed instruction to meet the unique needs of children with disabilities).
  - Has knowledge about the availability of resources of the LEA.
  - Has knowledge about the general education curriculum.
- At least one qualified professional to conduct individual diagnostic examinations of children and interpret the instructional implications of evaluation results, such as a certified school psychologist, certified school psychometrist, speech-language pathologist, or remedial reading teacher.

If a speech-language pathologist (SLP) conducts an individual diagnostic evaluation for a child suspected of a Speech Language Impairment, then the SLP will sign the MEEGS form in two places as the qualified professional and as the special education teacher.

There are times when a certified school psychologist or certified school psychometrist may not necessarily need to attend an eligibility meeting. For example, a student identified as having a Specific Learning Disability needs to have a reevaluation. The certified school psychologist or certified school psychometrist signs the RED form to indicate they have reviewed the existing data and determined that a cognitive/intellectual component is not necessary as part of the reevaluation. The team requests additional components in the area of academic achievement for reading fluency and reading comprehension. A remedial reading teacher is qualified to conduct these reading assessments and interpret the results to the group who will determine if this area is also an area of educational need for the student. If the child's primary disability of Specific Learning Disability is not in question, and the team does not suspect any other categories of disabilities, the team may proceed without a certified school psychologist or certified school psychometrist.

Refer to Appendix B. "Team Members Needed to Participate in Special Education Decision-Making" chart for more information.

## **Section 12. Adverse Impact on Educational Performance**

While an adverse impact that a disability has on an educational performance may imply a marked difference between the student's academic performance and reasonable (not optimal) expectations of performance, the definition of education performance cannot be limited to academics. This position is clarified by the Office of Special Education Programs (OSEP) in a March 8, 2007, Letter to Clark, 48 IDELR 77 where "educational performance" as used in the IDEA and its implementing regulations is defined as not limited to academic performance. Furthermore, based upon the IDEA definitions of a child with a disability in 34 C.F.R. § 300.8(a)(1) and specifically the definition of a child with an emotional disturbance, along with the definition of special education found in 34 C.F.R. § 300.39, it is clear that special education or specially designed instruction encompasses more than only academic instruction. Adverse effects on educational performance cannot, therefore, be based solely on discrepancies in age or grade level performance in academic subject areas. An adverse

effect can be manifested through, for example, behavior, and social/emotional status. The adverse impact must be determined on a case-by-case basis and is dependent on the unique needs of the particular child. IDEA states (34 C.F.R. § 300.101(c)) that *“FAPE is available to any individual child with a disability who needs special education and related services, even though the child has not failed or been retained in a course or grade and is advancing from grade to grade. The determination must be made on an individual basis by the group responsible within the child’s LEA for making eligibility determinations.”* This guidance from the 2007 OSEP letter was validated when the U.S. District Court, Eastern District of California (Rocklin Unified Sch. Dist. v. J.H., et al., No. 2:20-cv-01053-KJM-KJN (E.D. Cal. Feb. 15, 2022)) upheld an administrative decision in favor of the parent when the district determined the student was ineligible because the student’s academic performance showed no deficits and ignored the student’s significant difficulties with social, behavior, and mental health needs.

Indicators of educational performance can include present and past grades, report cards and reports of progress (social-emotional and/or academic), achievement test scores, and measures of ongoing classroom performance such as curriculum-based assessment (formative and summative assessments), work samples, and data relative to responses to tiered and targeted interventions. Various types of standards must be applied when making judgments about student progress to determine what constitutes an adverse impact on the student’s educational performance. The student’s overall performance should demonstrate a marked difference between actual and expected school performance. While determining a student’s cognitive abilities and level of academic achievement may be useful, the focus should be placed on the student’s overall performance in school and their response to interventions as illustrated in the data resulting from progress monitoring activities. Some students attain adequate achievement test scores but do not demonstrate appropriate academic progress. For example, when a severe and chronic pattern of failing to persevere with tasks and/or complete classroom assignments, which leads to an academic decline or failure in subject matter courses, a district may not deny an initial evaluation, based solely on a history of academic achievement success (R.B., et al. v. North East ISD, SA-28-CV-01441-JKP (W.D.Tex. February 16, 2022)).

The documentation of how the disability adversely impacts the student’s educational performance must also substantiate that the educational deficiencies persist over time in spite of specific alternative strategies or the implementation of high-quality evidence-based interventions, which have been provided within the general education setting. The eligibility team should have evidence that tiered interventions and supports have been implemented with fidelity.

## Section 13. Eligibility Determination

Based on evaluation data and consideration of eligibility indicators, the group determining eligibility for special education and related services must also answer yes or no to the following considerations:

1. The team considered the following effect: environmental; cultural; or economic factors, as well as visual, hearing, intellectual, motor, or emotional disability; or limited English proficiency, and has determined they are not the primary reason for the suspected disability. (Must be considered and ruled out only for the category of Specific Learning Disability-SLD; and therefore, may be marked as N/A if not applicable); and

2. Evaluation conducted in primary language or the student's other mode of communication; and
3. The student meets the criteria for one or more disabilities under the IDEA; and
4. The disability adversely impacts the student's education (Refer to Section 12 “Adverse Impact on Educational Performance” of this chapter); and
5. Because of the disability and its adverse impact on the student's education, the student requires special education services; and
6. The student's educational performance is not based primarily on a lack of appropriate instruction in (A) reading (including the essential components: phonemic awareness, phonics, vocabulary development, reading fluency, including oral reading skills, and reading comprehension strategies), (B) math, or (C) limited English proficiency.

The answers to these questions determine eligibility and any subsequent provision of special education services to a student. To be eligible for special education and related services, the answer to all of these questions must be “Yes.” However, sometimes the answer to one or more of the questions is “No.” Based on evaluation data, the team may determine the student is not eligible for special education services.

- When all the required information is compiled, reviewed, and analyzed, a multidisciplinary team may find that the student is **not** demonstrating the key eligibility indicators to be identified as a student with a disability.
- It is also possible that the student may be demonstrating the key eligibility indicators of an education-related disability but **not** be experiencing adverse impact on the student's education.
- The multidisciplinary team may determine that a student does **not** need specially designed instruction and that their educational needs may be adequately addressed through general education accommodations and resources.

When a student is found **not** eligible for the specially designed instructional services available through special education, the multidisciplinary team will, as part of the MEEGS:

- Create a Summary of Eligibility Determination. This summary should include information, based on evaluation data, and key eligibility indicators for each disability category that was considered for eligibility by the team but determined **not** eligible.
- Identify the student's educational needs, based on evaluation data.
- Make recommendations to address the student's educational needs. These needs should be addressed through the general education program. Options to be considered include, but are not limited to:

- Consideration of a referral to determine the eligibility/need for a Section 504 accommodation plan.
- Continue general education intervention services that may include:
  - Targeted academic skill(s) aligned with high quality evidence-based interventions and progress monitor to determine if the student continues to master grade-level skills at a proficient range and makes progress in the general education curriculum.
  - Targeted specific behavior intervention supports to teach the student how to acquire more effective classroom strategies that improve active engagement in classroom instruction.
  - Implementation of differentiated instructional opportunities available through classroom instruction.

When a student is found eligible for the specially designed instructional services available through special education, the multidisciplinary team will, as part of the MEEGS:

- Identify the primary and secondary, if any, disability category.
- Create a Summary of Eligibility Determination. This summary should include information, based on evaluation data, regarding key eligibility indicators for each eligible category of disability. It should also include any information regarding key indicators for disability categories that were considered for eligibility by the team but determined not eligible.
- Identify the student's educational strengths, based on evaluation data.
- Identify the student's educational needs, based on evaluation data.

For students who have been determined eligible and in need of special education, the educational strengths and needs will translate into the present levels of academic achievement and functional performance, providing the foundation for the development of the IEP, including goals and services.

Once the MEEGS is completed and signed by the group members, it is recommended to upload the original document with signatures into the online special education system provided by OSDE.

## Section 14. Parent Participation in the MEEGS Meeting

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 LEA must provide the parent a copy of the signed initial MEEGS that documents eligibility or non-eligibility, evaluation reports or other documents used to make the determination, a Written Notice to Parents, along with Special Education Parents Rights: Notice of Procedural Safeguards.

LEAs may conduct the initial IEP meeting upon the conclusion of the initial MEEGS meeting or the team has up to 30 days to reconvene to conduct the initial IEP meeting and implement the initial IEP. The initial provision of special education services requires signed parental consent and will be documented on the initial IEP. A student shall **not** be placed into a special education program for an initial IEP without parent consent.

If the parent(s) cannot attend scheduled evaluation group (MEEGS) meetings, other methods may be used to ensure parent participation, including conference telephone calls or virtual meeting options. Parent consent is required for the initial evaluation and for the initial placement providing special education and related services on an IEP. However, the initial eligibility may be conducted **without** a parent in attendance if the LEA has made reasonable attempts to schedule a MEEGS meeting with no response from the parent. See Section B. Failure to Respond below for more information.

### ***C. When Parents Fail to Respond to Attend the Eligibility Meeting***

The LEA must take steps to ensure that parent(s) are present at the eligibility (MEEGS) meeting. The meeting must be scheduled at a mutually agreed upon time and place between the parents and the LEA. The Invitation of Meeting must indicate the purpose, time, location, and who will be in attendance. If neither parent can attend, the LEA must use other methods to ensure parent participation by offering other methods than an in-person meeting (e.g., virtual meeting, phone conference).

A meeting may be conducted without the involvement of the parent, **IF** the LEA is unable to convince the parents that they should attend, or the parent fails to respond when the LEA attempts to contact the parent. In this scenario, the LEA must have a record of its attempt to ensure the parent's involvement and the results. This documentation must include at least two (2) of the following methods of contact, one of the two must be the Invitation of Meeting form:

1. Detailed records of email, phone calls made, text, virtual platform, home visit, etc. offering the parents multiple options for the date/time of the meeting. **AND**
2. Sending the parents an “*Invitation of Meeting*” form with sufficient notice in advance of the meeting.

If the parent does not respond to the LEA after all the attempts to contact the parent, then the LEA must meet to determine the initial eligibility without the parent. All LEA team members, including any other qualified professionals involved in the evaluation, will need to sign the initial MEEGS and indicate if they agree or disagree with the initial eligibility determination. The LEA must send the parent a copy of the signed initial MEEGS that documents eligibility or non-eligibility, including evaluation reports or other documents used to make the determination, a Written Notice to Parents (See Section 15 “Written Notice After the MEEGS Meeting” below for more information), along with Procedural Safeguards (Parents’ Rights). The LEA should document in the Written Notice their willingness to meet again to go over the evaluation results with the parents and discuss the determination of the child's eligibility. If the student is eligible, then the LEA must notify the parent through the Written Notice that the team has 30 calendar days to reconvene for the parent to review and either accept or refuse the special education and related services proposed that is outlined in the draft initial IEP. Otherwise, if the parent does not respond by the 30 calendar days,

the failure to respond will be interpreted as the parent declining services and the child will be considered non-disabled. See additional procedural requirements below.

### **The LEA must not implement special education services without signed parental consent on the IEP.**

If the parent does **not** respond within the 30 calendar days, then the LEA must create a second Initial MEEGS using the current existing information and change the determination on the MEEGS to the *“student is eligible for special education because the student meets the eligibility criteria; however, the parent/legal guardian is declining services.”* Document on the MEEGS the various attempts to meet with the parent to obtain parental consent yet received no response from the parent. Make certain that all school personnel sign and date the second initial MEEGS form. The second MEEGS date must not go beyond the 30-calendar day timeline from the first initial MEEGS date. Send the parent a copy of the second initial MEEGS, along with a Written Notice. The LEA will propose a change to the eligibility determination on the Written Notice due to the fact the parent had not responded to the LEA’s request to obtain parental consent for the initial special education and related services outline on the draft initial IEP proposal. Include in the Written Notice that the child is now considered non-disabled, but the LEA is willing to reconvene a meeting to discuss the proposal to initiate a new initial evaluation upon request. Please note additional actions school personnel could take in Section 5: Written Notice/Parental Consent, B. “Failure to Respond or Provide Consent” of this chapter.

If the student is **not** eligible, then the LEA must document on the MEEGS the student is not eligible and send the parent a copy of the signed MEEGS, evaluation documents used as the basis of the determination, and the Written Notice indicating the LEA is refusing to initiate placement of the student for special education and related services. The explanation on the Written Notice for the refusal would explain in detail the LEA’s reasons as to why the student did not meet the eligibility criteria for a disability under IDEA. Also, document on the Written Notice that the LEA may consider an initial evaluation under Section 504 of the Rehabilitation Act to determine whether the student may or may not meet the eligibility criteria for a 504 Accommodation Plan. However, if further collection of information or data is necessary to make a 504-eligibility determination, then the LEA must notify the parent using a 504 Written Notice as to why the LEA is seeking parental consent for an initial 504 evaluation.

## **Section 15. Written Notice After the MEEGS Meeting**

The Written Notice to Parents must be used to inform the parents of any group decision and reasons for that decision. This action must follow each time a new meeting is held, or new decisions are made.

Even though the LEA provided a Written Notice to Parents after obtaining the parental consent for the evaluation, the LEA must also provide a Written Notice to Parents **after** the eligibility (MEEGS) meeting. The Written Notice to Parents is a summary of the discussion surrounding the documented MEEGS eligibility determination. The Written Notice to Parents must provide a detailed explanation as to why the child is or is not eligible for special education and related services. This same Written Notice must also include documented options surrounding actions the team could have initiated but were rejected or determined not appropriate. The Written Notice provides a list of

information or data that was used as the basis for making the eligibility determination, including information or outside evaluation provided by the parent. Other factors document additional discussions, concerns, or issues surrounding the eligibility determination. If the child is eligible, the LEA would also document on the Written Notice the services proposed or if not eligible documenting the educational needs of the child in the general education setting or other supports that might be necessary and/or actions proposed (i.e., requesting an initial evaluation under Section 504).

## Section 16. Determining Continued Eligibility

Upon completion of the reevaluation, the group should compile all data to make the continued eligibility determination. It is important that all the information allows the team, including the parent, to understand the student's strengths and needs and how the student is progressing in the general curriculum in addition to information about the student's disability and needs for special education.

If the IEP team utilized existing data to determine continued eligibility, then a qualified professional is **not** required to attend the MEEGS meeting. However, the LEA has the option to require the attendance of the qualified professional(s) at all eligibility meetings. See Appendix B "Team Members Needed to Participate in Special Education Decision-Making" for more information about required team members for the eligibility MEEGS meeting.

When making the determination of whether the student continues to be a student with a disability and whether the student continues to need special education and related services, the team must take into account whether the student has made progress since the time the student 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 Section 13 in this chapter for a complete discussion of the eligibility considerations.

### ***A. Reevaluation Before Termination of Eligibility***

The LEA must conduct a comprehensive reevaluation of a child with a disability before determining that the child is no longer a child with a disability who requires special education services. However, reevaluation is not needed:

- When the child graduates from high school with a standard education diploma, **or**
- When the child has exceeded the age of eligibility for a FAPE. Refer to the Chapter 1 FAPE of this manual for additional information.

The LEA must, however, provide the child with a summary of academic and functional performance that includes recommendations for meeting postsecondary goals when the child is graduating with a standard diploma or aging out of school. The Summary of Performance (SOP) must include their academic achievement and functional performance along with recommendations concerning how to assist the student in meeting postsecondary goals. The student must have the opportunity to be an

active participant in the development of the Summary of Performance (SOP). The document should contain the most updated information on the performance of the student and include both the student's abilities and aspirations.

### ***B. Speech Language Impairment Reevaluation Considerations***

If a student has a Speech Language Impairment listed on the MEEGS as a Secondary Disability, then the LEA must conduct a reevaluation prior to removing the Secondary Disability from the MEEGS form, which in this scenario would also include removing the related service of speech therapy from the IEP. Therefore, the LEA would complete the RED and at an IEP meeting discuss the options of either using existing current data that was comprehensive to make an eligibility determination regarding the secondary disability or obtain parent consent to conduct the reevaluation. Upon receiving the results of the reevaluation or upon determining the existing data was current and comprehensive enough to make a determination of eligibility or non-eligibility, then the IEP team would document these results on the MEEGS form. If in this case, the student was no longer eligible for a Secondary Disability of Speech Language Impairment and no longer in need of speech therapy, the IEP team would conduct a reevaluation MEEGS meeting to remove the Secondary Disability on the MEEGS form, as well as provide the parent with a final progress report for the goals/objectives specifically for speech/language. The IEP team would amend the IEP to remove goals and the related service of speech therapy on the IEP.

NOTE: Any time a reevaluation occurs, and the student continues to be eligible for special education services, then the date of the MEEGS reevaluation becomes the new three-year timeline for the next reevaluation.

If a student did **not** have a Secondary Disability of Speech Language Impairment on the MEEGS, the LEA would not need to conduct a reevaluation. The IEP team would meet, and the parent would be provided a final progress report for the goals/objectives specifically for speech/language, as well as amend the IEP to remove the goals and related service of speech therapy on the IEP. If the parent is in disagreement with removing speech therapy as a related service based on existing data, it is suggested to obtain parent consent to conduct a reevaluation in the area of communication/language in order to gather additional data. After the reevaluation, the IEP team will have current assessment/evaluation data to help drive the decision as to whether the student no longer needs speech/language as a related service.

### ***C. Evaluation for a Student Previously Exited from Special Education***

Once a child has been exited from special education services either from taking the Lindsey Nicole Henry (LNH) Scholarship; or when the parents revoked all special education services; or when a reevaluation occurred for a student with a disability who was on an IEP and the team determined the student was no longer eligible for special education services, in all of these cases the student is considered "non-disabled" and no longer considered a student with a disability under IDEA. If in this scenario, the student begins to show a lack of progress; and therefore, is referred for a special education evaluation, the LEA must conduct an **initial** evaluation.

If a student never exited special education and related services under IDEA; however, moved-in with an out-of-date or out-of-compliance IEP or eligibility, then the student is still considered a student with a disability. The team would want to conduct a comprehensive reevaluation.

## Legal Citations

### Code of Federal Regulations, Title 34: Education

Code of Federal Regulations, Title 34: Education

§300.8 Child with a disability.

§300.9 Consent.

§300.15 Evaluation.

§300.300 Parental consent.

§300.301 Initial evaluations.

§300.304 Evaluation procedures.

§300.303 Reevaluations.

§300.305 Additional requirements for evaluations and reevaluations.

§300.306 Determination of eligibility.

§300.308 Additional group members.

§300.310 Observation.

§300.311 Specific documentation for the eligibility determination.

§300.500 Responsibility of SEA and other public agencies.

§300.502 Independent educational evaluation.

§300.503 Prior notice by the public agency; content of notice.

§300.504 Procedural safeguards notice.

# CHAPTER 5. INDIVIDUALIZED EDUCATION PROGRAM (IEP)

## Section 1. Special Education and IEPs

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

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

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

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

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

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

### **A. Purpose of Meeting**

The primary purpose of an IEP team meeting is to develop an IEP that meets the unique needs of a student with a disability. The IEP must be reasonably calculated to enable a child to make appropriate progress in light of the student's circumstances (*Endrew F. v. Douglas County School District, 2017*) 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 their 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 their disability. Service and placement decisions should be based on the individual evaluation data collected and resulting needs, not on the category of disability. Placement decisions are considered after the special education IEP services are determined. Placement cannot be the determining factor in developing the IEP content.

### ***B. Team Decision Making***

The IEP meeting serves as a communication vehicle for the parent, LEA personnel, and other IEP team members, 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 the student receives a FAPE. Consensus means that all members are in general agreement regarding what is written.

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

If consensus cannot be reached, the LEA is responsible for offering the student a FAPE through an IEP developed within the timelines. Ultimately, 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. The LEA must provide the parent with a Written Notice explaining the reasons for the proposal or refusal to initiate or change, options considered and determined not appropriate, basis for making the final determination and other factors that surrounded the decision process. See Chapter 9 "Procedural Safeguards" for more information regarding Parents' Rights.

### ***C. Definition of IEP Team Members and Roles***

The IEP team is composed of a group of individuals who are responsible for developing, reviewing, and revising an IEP for a student with a disability. Each required member plays an important role; and therefore, cannot serve in more than one role at a given IEP meeting, unless the individual is interpreting the instructional implications of the assessment or evaluation results.

<b>IEP Team Member</b>	<b>Definition and Role of Team Member</b>
<p><b>Student's Parents or Adult Student</b> if Rights Have Transferred  (Required Member)</p>	<ul style="list-style-type: none"> <li>• Biological or adoptive parent(s).</li> <li>• Judicially decreed guardian (does not include State agency personnel if the student is a ward of the state).</li> <li>• Surrogate parent appointed by the LEA.</li> <li>• 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).</li> </ul>

<p><i>Special circumstances must be considered for children in foster care</i></p> <p><i>(Refer to Chapter 9, Section 2 for definition of a parent, and Chapter 8, Part 3, Section 2 for more information about foster parents)</i></p>	<ul style="list-style-type: none"> <li>• 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.</li> <li>• 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.</li> <li>• Adult student- student with a disability who is 18 years of age or older whose special education rights have transferred under the Individuals with Disabilities Education Act (IDEA). (The parent may attend the IEP meeting at the invitation of the adult student or the LEA. The LEA must notify the adult student prior to the meeting).</li> <li>• Has knowledge and expertise about the student and the student’s disability to assist in the development of the IEP.</li> <li>• Provides input for enhancing the child’s education.</li> </ul>
<p><b>Child/Student under age 15</b> (When Appropriate)</p> <hr/> <p><b>Student must be invited</b> <b>On or before Age 15</b> <b>Or</b> <b>Before 9th Grade Year</b> (Required to be invited)</p>	<ul style="list-style-type: none"> <li>• Included as a member of the IEP team beginning with the first IEP that includes a transition plan.</li> <li>• The student must be invited <b>before</b> the beginning of the ninth-grade year, or on or before the age 15, whichever comes first. Conducting the IEP during the 8<sup>th</sup> grade year will ensure that transition services are in effect before the beginning of the student’s ninth-grade year, or on or before the student’s 15<sup>th</sup> birthday, whichever comes first. If the student does not attend, the team must take steps to ensure that the student’s preferences and interests are considered.</li> <li>• Has knowledge and insight of self-interests and motivations to assist in IEP development.</li> <li>• Provides input regarding postsecondary goals and transition services needed to assist in reaching those goals.</li> </ul>
<p><b>Special Education Teacher/Provider</b> (Required Member)</p>	<ul style="list-style-type: none"> <li>• Holds appropriate certification based on the student’s primary disability or functioning level (i.e., Special Education Comprehensive, Mild/Moderate, Severe/ Profound, Speech/Language Impairment, Deaf/ Hard-of-Hearing, or Blind/Visual Impairment).</li> <li>• Leads the team in the development and writing of the IEP.</li> <li>• Has knowledge and special expertise about the student and the student’s disability to assist in development of the IEP.</li> <li>• Responsible for overseeing the implementation of the IEP.</li> </ul>

<p><b>Regular Education Teacher of the Student</b> (Required Member)</p>	<ul style="list-style-type: none"> <li>• Holds appropriate certification for teaching a core content area (e.g., Early Childhood, Elementary Education, Middle Level Mathematics, English, Music, Art, etc.).</li> <li>• Must serve as a member of the student's IEP team, if the student is, or may be, participating in the general education environment.</li> <li>• 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.</li> <li>• 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.</li> <li>• Has knowledge and expertise in the general education curriculum to assist in the IEP development.</li> <li>• Responsible for implementing a portion of the IEP (e.g., accommodations) if the student is, or may be, participating in the general education environment.</li> </ul>
<p><b>Administrator or Administrative Representative of the LEA</b> (Required Member)</p>	<ul style="list-style-type: none"> <li>• Qualified to provide or supervise the provision of special education services (provide or supervise the provisions of specially designed instruction to meet the unique needs of children with disabilities).</li> <li>• Has knowledge about the availability of resources of the LEA. Has the authority to allocate resources in the LEA as outlined in the IEP.</li> <li>• Has knowledge about the general education curriculum.</li> <li>• In most cases, this does not include school counselors, unless they also meet the criteria above and are given express authority by the LEA.</li> </ul>
<p><b>Related Service Provider</b> (When Appropriate)</p>	<ul style="list-style-type: none"> <li>• Holds appropriate certification or state license (e.g., Occupational Therapist, Physical Therapist, etc.).</li> <li>• Speech-Language Pathologist must hold an Oklahoma Teacher Certificate in order to develop and/or sign the IEP.</li> <li>• For a student whose primary disability is speech or language impairment, the Speech-Language Pathologist must serve as the special education teacher/provider and as a required member.</li> <li>• May be invited to participate in the development of the IEP if the related services they provide are being discussed.</li> </ul>

	<ul style="list-style-type: none"> <li>• Has knowledge and special expertise about the student’s disability in relationship to their professional field which may assist in the IEP development.</li> <li>• Responsible for implementing the related service outlined within the IEP.</li> </ul>
<p><b>Qualified Professionals who can interpret the instructional implications of evaluation results</b> (When Appropriate)</p>	<ul style="list-style-type: none"> <li>• Qualifications of such member(s) of the team will depend on the types of assessment(s) being administered.</li> <li>• Responsible for interpreting the results of the evaluation, as well as providing the instructional implications of evaluation data to assist in IEP development.</li> </ul>
<p><b>Representative of Transition Agency(ies)</b> (When Appropriate)</p>	<ul style="list-style-type: none"> <li>• A representative from a transition agency either public or private may include, but is not limited to: Department of Rehabilitation Services, Department of Human Services, Independent Living Centers, Technology Centers, Oklahoma Works, etc.</li> <li>• Requires parent consent or adult student.</li> <li>• Steps should be taken to obtain participation from the agency in transition planning even if a representative does not attend.</li> <li>• Has knowledge and expertise on available secondary transition opportunities to assist in IEP development.</li> <li>• Responsible for providing or paying for transition services.</li> </ul>
<p><b>Part C Coordinator (SoonerStart Representative)</b> (When Appropriate)</p>	<ul style="list-style-type: none"> <li>• Part C – SoonerStart provides services for infants and toddlers birth to 3. The Part C coordinator facilitates the transition to Part B - LEA services or other programs (e.g., Headstart).</li> <li>• Must have written parent consent to refer a student to the LEA and share SoonerStart records with the LEA.</li> <li>• Has knowledge and special expertise regarding the student and the student’s developmental history to assist in IEP development.</li> <li>• Responsible for coordinating, scheduling, and facilitating a Transition Planning Conference (TPC) with the family and the LEA to review existing data. May participate in the development of the IEP at the request of the parent.</li> </ul>
<p><b>Other Representatives</b> (When Appropriate)</p>	<ul style="list-style-type: none"> <li>• Other individuals who have knowledge or special expertise regarding the student to assist in the IEP development.</li> <li>• 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.</li> </ul>

## **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 IEP (i.e., initial, subsequent or interim) must be drafted and provided to the parents at least two (2) school days prior to the IEP team meeting. Giving the parents an advance copy of the draft IEP will provide them time to formulate ideas and questions to participate fully in the development of the IEP. If there are areas of the IEP that the LEA is not sure if there is a consensus for the proposal, then the LEA may leave those areas blank on the draft IEP to discuss further with the parent in the IEP meeting.

The LEA must take steps to ensure that one or both of the student's parents are present at each IEP meeting. Meetings must be held at a mutually agreed upon time and place. LEAs may schedule IEP meetings only during regular school hours or regular business hours to ensure the availability of LEA staff. However, there may be circumstances where a parent cannot attend an IEP meeting that is scheduled during the day because their employment situation restricts their availability during school hours or business hours. In such a circumstance, LEAs should be flexible in scheduling IEP meetings to accommodate reasonable requests from parents. Where LEAs and parents cannot schedule meetings to accommodate their respective scheduling needs, LEAs must take reasonable steps to ensure parent participation, consistent with [34 CFR § 300.322\(c\)](#). These include individual or conference telephone calls or videoconferencing, consistent with [34 CFR § 300.328](#) (related to alternative means of meeting participation) ([Letter to Thomas 2008](#)).

### **i. When Parents Fail to Respond**

A subsequent IEP (or if necessary, an amendment to the IEP) meeting may be conducted without the involvement of the parent, **IF** the LEA is unable to convince the parents that they should attend, or the parent fails to respond when the LEA attempts to contact the parent. In this scenario, the LEA must have a record of its attempt to ensure the parent's involvement and the results. This documentation must include at least two (2) of the following methods of contact, one of the two must be the Invitation of Meeting form:

1. Detailed records of email, phone calls made, text, virtual platform, home visit, etc. offering the parents multiple options for the date/time of the meeting. **AND**
2. Sending the parents an "Invitation of Meeting" form with sufficient notice in advance of the meeting.

If the parent does not respond to the LEA after all the attempts to contact the parent, the LEA must hold a formal meeting with school personnel, and others as necessary, to develop the subsequent IEP without the parent; or, if necessary, amend the IEP. All LEA members, including any other members necessary to develop the IEP, will need to sign the IEP after the completion of the meeting and indicate if they agree or disagree with the IEP development. The LEA must send the parent a copy of the signed IEP that documents the special education and related services, including progress reports or other documents used to determine present levels of performance, a Written Notice to Parents detailing the proposal to initiate the services in the subsequent or amended IEP with the date it will go into effect, along with Procedural Safeguards (Parents' Rights). The LEA should document in the Written Notice the willingness to meet again to go over the IEP services with the parents and the LEA's desire to work together to include the parent's input regarding changes to the IEP.

## ***IEP Meeting: Planning and Considerations***

### **Notification of Invitation of Meeting**

- The parent(s) must receive sufficient prior notice of IEP meetings. The notice is considered “prior” if enough time is allowed to make arrangements for participation of parent(s) and additional team members the parents wish to include.
- Parents should be provided with an Invitation for Meeting form outlining the date, time, and location of the meeting as well as documenting other invitees.
- The Invitation of Meeting notice must include purpose, time, location of the meeting, and who will be in attendance by role, as well as documenting other invitees.
- If postsecondary transition will be discussed, the notice must include consideration of postsecondary goals and transition services.
- Obtain parent consent or adult student to invite members of outside agency(ies) to attend IEP meetings, who are paying for or providing secondary transition services.
- Provide the parent a draft IEP proposal (i.e., initial, subsequent or interim) at least two (2) school days prior to the IEP meeting.

### **Mutually Agreed Upon Time and Place**

- Time and place indicated are reasonably convenient to the parent(s), student, LEA personnel, and others involved.
- LEA must make a good faith effort to reach an agreement with the parent(s) of a student with a disability regarding the scheduling of IEP meetings.
- Attempts to arrange parent participation are maintained on the Contact Log.
- A mutually agreed upon place could include at the school site, in a virtual conference, etc.
- 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.

## **E. Excusal from the Meeting**

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

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

## **F. Recording Guidelines**

Parents or other members of the IEP team may find it useful to record an IEP meeting. The IDEA does not speak to the recording of IEP meetings. OSEP Letter dated June 4, 2003, states IDEA, *"Part B does not address the use of audio or video recording devices at IEP meetings, and no other Federal statute neither authorizes nor prohibits the recording of an IEP meeting by either a parent or a school official."*

Under Oklahoma law, an individual who is a party to an in-person, or a telephone call, or electronic conversation, or who has the consent of one of the parties to such conversation, may lawfully record it or disclose its contents unless they are doing so for the purpose of committing a criminal or tortious act. 13 O.S. §§ 176.2, 176.4. Therefore, LEAs should not attempt to bar parents from recording IEP meetings if the parent needs to record the conversation in order to understand the IEP process. Recording must not be grounds for canceling a meeting with the parent.

LEAs may enact policies regarding recording of IEP meetings. Such a policy may inform parents that either they or the LEA may record a meeting, but that such recording should not interfere with the completion of the meeting. It should also include a statement that if the LEA chooses to record an IEP meeting, then a copy of that recording will be placed in the student's file and maintained in accordance with the requirements of the Family Educational Rights and Privacy Act (FERPA) and the IDEA as an education record. As such, parents have access to the recording under these laws.

## Section 2. IEP Timelines

IEP Type	Timeline
<b>Initial</b>	30 calendar days from the date of initial eligibility determination (i.e., Date on Initial MEEGS signature page).
<b>Subsequent</b>	No less than annually from the development of the initial or previous subsequent IEP.
<b>Amendment</b>	As needed; does not change the annual due date.
<b>In-State Transfer for Move-In Students</b>  if no changes  <b>or</b>  Subsequent if changes are made	An IEP must be in effect and finalized for move-in students within <b>10 school days</b> . <ul style="list-style-type: none"> <li>• If the parent(s) and LEA are satisfied with the existing IEP from the previous school district, the existing IEP may be implemented as written, without a formal meeting. The LEA must document this discussion in parent contact logs and send the parent a Written Notice regarding the decision to implement the existing IEP as written. The LEA must save and continue while reviewing each page of the online IEP system, then update the service provider, as well as change the start date of the services to the date the LEA and parent agreed to accept the previous district's IEP as written. The LEA must finalize the IEP as an <b>In-State Transfer</b> in the special education online system for the meeting purpose.</li> <li>• Any changes to the existing IEP will require the development of a new Subsequent IEP and will not be considered an amendment;</li> <li>• According to Oklahoma law (<a href="#">70 O.S. § 24-101.4</a>) 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.</li> </ul>
<b>Interim</b>	Must not exceed 30 calendar days.
<b>Out-of-State Transfer Move-In Students on an IEP</b>	Upon the student's first day of attendance, provide comparable services written on the out-of-state IEP from the previous school district until such action below can take place:  <b>No Additional Assessments/Evaluations Needed:</b> <ul style="list-style-type: none"> <li>• <b>Within 10 school days</b> the LEA must complete the following:               <ol style="list-style-type: none"> <li>1. Complete the Review of Existing Data (RED) and determine if sufficient evaluation components from the previous district were conducted within one calendar year and met the required components for the suspect disability category.</li> <li>2. Schedule an Initial MEEGS and IEP meeting.</li> </ol> </li> </ul>

3. Complete the "Initial" MEEGS using existing data to determine eligibility under the Oklahoma criteria. All components required for the suspected disability category must be documented on the MEEGS to be considered a comprehensive evaluation.
4. If eligible, develop an "Initial" IEP.
5. Provide the parent a Written Notice explaining the initial evaluation was based on existing data from out-of-state meeting Oklahoma criteria and the proposal to initiate an "Initial" IEP.

OR

**Additional Assessments/Evaluations Are Needed:**

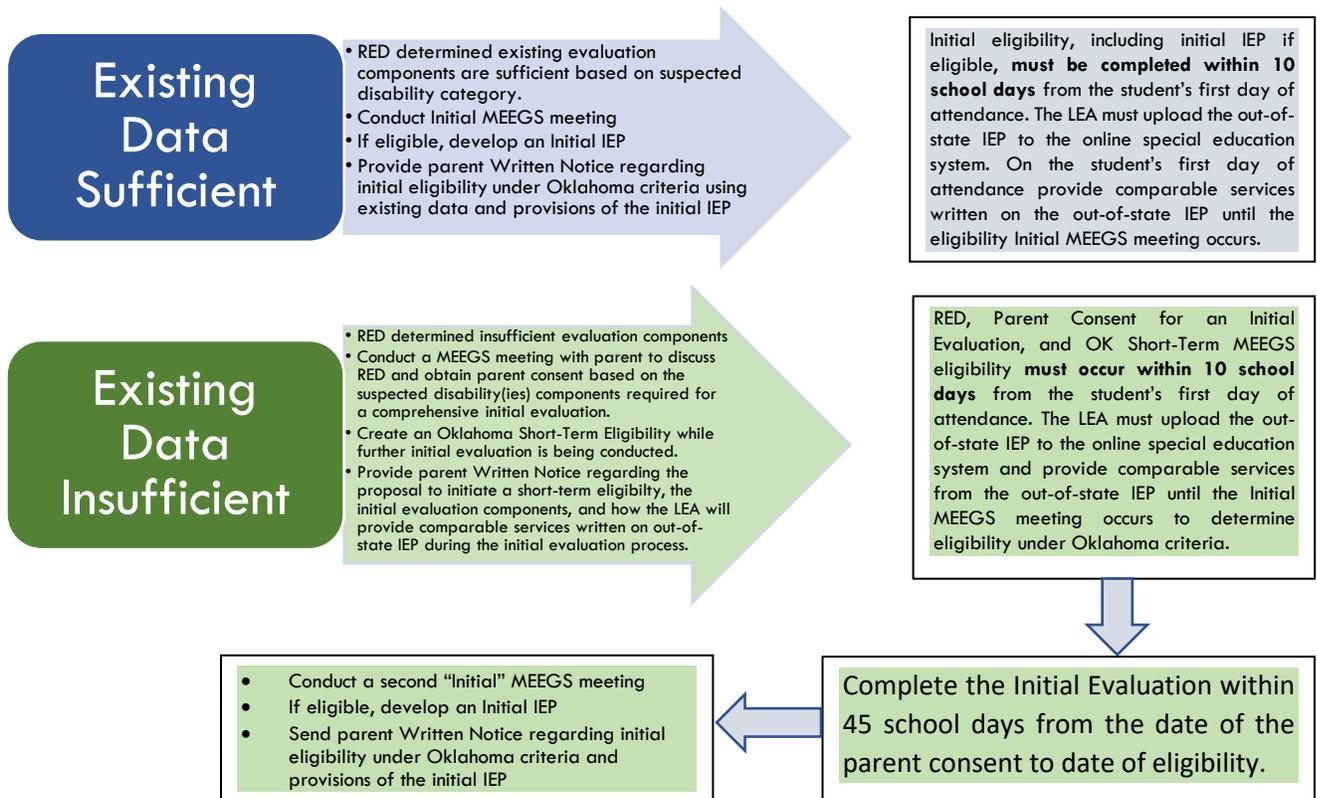
- **Within 10 school days** the LEA must complete the following:
  1. Complete the Review of Existing Data (RED) to determine which evaluation components meet the requirements of a comprehensive initial evaluation and which Oklahoma required components are missing or insufficient to meet the required components for the suspect disability category.
  2. Obtain parent consent for the specific components needed based on the suspected category of disability(ies) required for a comprehensive initial evaluation.
  3. Complete the Initial MEEGS as an Oklahoma (OK) Short-Term Eligibility indicating the student is considered eligible so that services can be provided while further initial evaluation is conducted to determine eligibility under Oklahoma Eligibility Standards.
  4. Provide parent with a Written Notice explaining the initial evaluation components needed to meet Oklahoma criteria, as well as how the LEA will provide comparable services written on the out-of-state IEP during the initial evaluation process.
  5. Upload the out-of-state IEP into the online special education system and provide comparable services written on the out-of-state IEP until the initial evaluation process is completed.

Complete the initial evaluation within 45 school days.

1. Schedule a second "Initial" MEEGS to determine eligibility.
2. If eligible, then develop an "Initial" IEP.
3. Provide the parent a Written Notice explaining the initial evaluation results and the proposal to initiate an "Initial" IEP.

See Chapter 12 "Transfers and Move-In Students", Section 2(B) for more information regarding students who move-in from out-of-state on an IEP.

## Out-of-State Transfer Process



## Section 3. IEP Development

### A. Present Levels of Academic Achievement and Functional Performance

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

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

- The results of the initial or most recent evaluations of the student, including any state or LEA assessments;
- **Current assessments** are defined as **one year old or less** for all areas of educational needs, including transition assessments, which are used as the baseline data/information to describe the specific present levels of performance in the development of the goals, accommodations, modifications, related and supplementary services. Historical

information that is relevant (e.g., developmental history or medical conditions, etc.) may also be added to the present levels of performance.

- A specific description of academic, developmental, and/or functional strengths and needs that provides information about the student that is relevant to the development of measurable annual goals:
  - Academic (e.g., math, language arts, sciences, etc.)
  - Developmental (e.g., communication, motor, cognitive, social/emotional, etc.)
  - Functional (e.g., self-care, social skills, daily living, communication, social/emotional, etc.)
- Impact of the disability on involvement and progress in the general education curriculum; and
- For preschool children, the impact of the disability on participation in age-appropriate activities.

### ***A. Consideration of Special Factors***

Consideration of special factors must be documented in the IEP to ensure the student receives a FAPE. These factors include limited English proficiency, blindness or visual impairment needs, communication needs, deaf or hard of hearing, assistive technology, and student behavior that interferes with their learning or the learning of others. 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.

- **Limited English Proficiency** (also known as English Learners-EL): The language needs of the student as they relate to the child's IEP must be addressed within the IEP in writing. The child's inability to speak or understand English may also require alternative language services in addition to the special education services.
- **Visually Impaired:** Instruction in Braille and the use of Braille must be addressed unless the IEP team determined after an evaluation of the student (including an evaluation of the student's future need for instruction in Braille or the use of Braille) that it is not appropriate. Other supports the student might need such as orientation and mobility training, special lighting, descriptive videos, etc. would be based on the student's unique individual needs. If the IEP team determined that one or more additional supports are appropriate for the student, then the specific information must be addressed in writing within the IEP.
- **Communication Needs:** Consider the communication needs of the student or their mode of communication. In the case of a child who is deaf or hard-of-hearing, the IEP team may consider a deaf interpreter or supports for the student's hearing device such as batteries or a personal FM unit (Note: LEAs are **not** required to purchase medical devices that are surgically implanted such as cochlear implants, nor are required to pay for the optimization of that device's functioning such as mapping, nor the maintenance of that device, or the replacement of that device 34 C.F.R. § 300.34(b)(1); 71 Fed. Reg. 46547

August 14, 2006). Another example of a student who has communication needs is a student who is non-verbal. The student may need instruction and the use of basic sign language or pictures to communicate wants and needs. For each child with a disability, the IEP team shall consider the communication needs of the child and address it in writing within the IEP.

- **Assistive Technology:** Consider whether the student requires an assistive technology device(s) or services and address these supports within the IEP.
- **Behavior:** Consider whether the student's behavior impedes their learning or the learning of others; and therefore, the student is in need of the use of positive behavioral interventions and supports, and other strategies to address the behavior within the IEP.

Refer to [Oklahoma ABLE Tech](#) for additional information.

### ***B. 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. The LEA must either address how the district has met the parent's concern within the IEP or provide an explanation on the Written Notice if the LEA is declining to address a parent concern within the IEP and the reasons why the LEA is declining to address the issue within the IEP. If the parent provides a separate document of their concerns attach it to the IEP and indicate in writing how each of the parent's concerns have been addressed.

### ***C. Goals and Benchmarks/Objectives***

Annual goals are developed from the student's educational needs. The information in the Present Levels of Academic Achievement and Functional Performance (PLAAFP) establishes the baseline for the goal and provides data that is used to measure the student's progress toward the goal, including short-term objectives or benchmarks. 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; for preschool children, how the disability affects the child's participation in appropriate activities. An IEP must have goals for specially designed instruction. If a student does not need specially designed instruction, the student does not need an IEP.

The student's eligibility category must **not** drive the goals, services, or educational placement. The IEP team must address the student's individual unique educational and behavioral needs. Each annual goal is written with three crucial components:

- **Condition:** the materials and environment necessary for the goal to be completed.
- **Behavior or Targeted Skill:** the action that can be directly observed and monitored.
- **Criteria:** how much and how often or to what extent the behavior or skill must occur to demonstrate it has been achieved.

If the student will be assessed through alternate achievement standards, then the IEP team must include short-term objectives/benchmarks (34 C.F.R. 300.320(a)(1)(i)(ii)(2)(i)(ii)).

#### **D. Goals and Benchmark/Objectives for Related Services**

An OSEP policy letter addressed to Dr. Hal Hayden (1994) states that the goals and objectives in an IEP must address all of the student's identified needs that the IEP team has determined warrant the provision of special education, related services, or supplementary aids and services, and must enable the team to evaluate the effectiveness of each of those services. For example, if the IEP team has determined that a student needs speech and language therapy services as a component of FAPE, the IEP must include goals and objectives that address the student's need to develop and/or improve communication-related skills. Moreover, if instruction will be provided to the student to enable the student to increase the student's fine motor or gross motor skills, then goals and objectives must be included to address the need to increase fine and gross motor skills. OSEP's letter to Dr. Hal Hayden clarifies by saying, *"If a related service such as air conditioning is necessary to enable the student to attend school, but that service is not intended to increase the student's skills, no goals or objectives are necessary. Similarly, if transportation is being provided solely to enable the student to reach school, no goals or objectives are needed. If, however, instruction will be provided to the student to enable the student to increase the student's independence or improve the student's behavior or socialization during travel to school, then goals and objectives must be included to address the need to increase independence or improve behavior or socialization."*

#### **E. Progress Toward Goals**

The IEP includes a statement describing:

- How the student's progress toward each IEP goal will be measured; and
- How and when the parent will be informed of the student's progress toward the annual goals, including the extent to which progress is sufficient to enable the student to achieve the goals by the end of the IEP timeframe. 34 C.F.R. § 300.320(a)(3)(ii) states, *"A description of - When periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, **concurrent** with the issuance of report cards) will be provided;"* and therefore, parents shall be informed of their child's progress at least as often as parents of nondisabled children.
- If the student lacks the expected progress toward the annual goals and/or in the general education curriculum, the LEA must notify the parent of the need to meet to discuss possible changes, if necessary, to the IEP or to other supports for the student. 20 U.S.C. §1414(d)(4)(A)(i)(ii)(1) *"The local educational agency shall ensure that, subject to subparagraph (B), the IEP team—(i) reviews the child's IEP periodically, but not less frequently than annually, to determine whether the annual goals for the child are being achieved; and (ii) revises the IEP as appropriate to address—(1) **any lack of expected progress toward the annual goals** and in the general education curriculum, where appropriate."*

- If the student meets the annual goal during the IEP year, then the LEA should address the student's progress and amend the IEP to include an updated goal(s).

### ***F. Type of Service/Placement, and Support Components***

Each student's IEP must include:

- Special education services;
- Service Type;
- Frequency/Number of Sessions;
- Duration/Session Length;
- Start Date/End Date of Service;
- Location; and
- Provider.

Each student's IEP may include as needed descriptions regarding:

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

These components are designed to enable the student:

- To advance appropriately toward attaining the annual goals.
- To be involved in and make progress in the general education curriculum and to participate in extracurricular and other nonacademic activities to the maximum extent possible.
- To advance from grade to grade (34 C.F.R. § 300.101(c)).
- To be educated and participate with other students with disabilities and nondisabled students, as appropriate.

The term "Special Education" means specially designed instruction, at no cost to the parent, to meet the unique needs of the student, including providing access to the general education curriculum. Special Education is provided in a variety settings and service types determined on an individual basis through the IEP team with participation of the parent(s). No LEA may make a universal, administrative/unilateral, placement decision regarding subgroups of students with disabilities

without going through the individual IEP team process. For example, LEAs are **not** allowed to make administrative decisions to ubiquitously change the IEPs for a group of students with disabilities by:

- mainstreaming all students with mild disabilities full-time into the general education setting with consulting or monitoring service type;
- providing transportation as a related service to students only identified by a specific primary category of disability; or
- placing students with a specific disability category in a full-time special education classroom (i.e., self-contained) providing only direct instruction for the entire instructional day.

### ***i. Definitions of Service Type***

#### ***Consultation:***

General education teacher(s) have primary instructional responsibility. The special education teacher or related service provider must meet on a regularly scheduled time with the general education teacher(s), as well as other professionals (e.g., outside agency personnel with parent consent for release of confidential information) to discuss issues related to instruction or behavior(s) and problem solve the specific needs of the student with a disability. The special education teacher or related service provider provides the general education teacher(s) resources and input regarding the implementation of modifications, accommodations, behavior intervention plans, targeted academic interventions, etc. to ensure the child remains involved and makes progress towards the general education curriculum. The special education teacher or related service provider does **not** directly provide services to the student but consults with the general education teacher or other professionals involved with the student. The special education teacher or related service provider should document the informal consultation meetings and the outcomes from the discussions at the frequency and duration listed on the IEP. Consultation is to be used in circumstances where a specialty resource is designated to meet specific needs of a student (e.g., a student who is blind/visually impaired may have a VI specialist consult with the general education teacher regarding the student's needs in the classroom). Consultation does **not** include typical, ongoing collaborative efforts and communications between staff or general collegiality. If "consultation" is the only service on the IEP, it must be related to a goal. If the student has other service types and goals on the IEP, the consultation may be based on the established goals for those specific areas of educational needs regarding the student, instead of a separate goal. This type of service should be described in detail in the overall objective statement.

#### ***Monitoring:***

The student receives primary instruction from a general education teacher. The special education teacher or related service personnel monitors the student in the general education setting for a variety of components related to the student's IEP (e.g., collecting data on goals, observing to make certain accommodations are appropriate and implemented within the general education setting, observing student behaviors, checking on chronic absenteeism, assignment completion, grades, etc.). The special education teacher or related service provider should document the outcome(s) of monitoring the student at the frequency and duration length listed on the IEP. If "monitoring" is the

only service type, it must be related to a goal written on the IEP. If the student has other service types and goals written on the IEP, then the monitoring may be based on the established goals for those specific areas of educational need(s) of the student, instead of a separate goal.

### ***Collaboration:***

The student receives primary instruction from a general education teacher. The special education teacher and/or related service provider supports through re-teaching and reinforcing skills, etc. This type of service support may occur within a general education setting (push-in model) or within a special education setting (pull-out model). Collaboration also may include co-planning between general education and special education teachers for accommodations and/or modifications or differentiated instruction. This type of service should be described in detail in the overall objective statement.

### ***Co-Teaching:***

The student receives primary instruction from **both** a teacher who holds a general education credential(s) and a special education teacher with special education credential(s). The special education teacher may also hold content credential(s). The two teachers have an equal partnership in the responsibility of the students' progress. Note: A Paraprofessional is **not** considered a teacher with credentials and it is **not** considered co-teaching when a paraprofessional is in the general education classroom.

### ***Direct Instruction:***

The student receives primary instruction from a special education teacher with special education credential(s) and meet the OSDE requirements for the content credential(s) regarding the specific secondary content area or for elementary or early childhood. This type of service is provided outside of the general education classroom.

No matter the type of service, there must be a measurable goal on the IEP designed to enable the child to be involved in and make progress toward the goal with a way to track data for when periodic progress reports will be provided to the parents. More than one **“Service Type”** may be documented on the student's IEP.

## ***ii. Definitions of Related Services***

The term **“Related Services”** refers to supportive services required to assist a student with a disability to benefit from special education. The following is a list of examples regarding related services that a student might need in addition to the special education services (34 C.F.R. § 300.34(c)):

***Audiology Services:*** Include identification of students with hearing loss, determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing. Audiology may also include the determination of students in need of amplification (e.g., personal FM unit).

**Counseling Services:** Include services provided by qualified social workers, psychologists, school guidance counselors, licensed professional counselor, or other qualified personnel.

**Interpreting Services:** With respect to students who are deaf or hard-of-hearing, include oral transliteration, cued language transliteration, sign language transliteration and interpreting services. Transcription services, such as Communication Access Real-time Translation (CART), C-Print (speech to text), and/or TypeWell (live captioning service).

**Intervener Services:** With respect to students who are deaf-blind, provide access to instruction and environmental information. Includes the support to form relationships with others in the school setting and increase social awareness to participate in extracurricular activities that promote the student's emotional well-being, as well as social skills. Interveners are typically paraprofessionals who work under the direction of the classroom teacher.

**Occupational Therapy (OT) Services:** Include interventions/services provided by an occupational therapist (OTR/L) or certified occupational therapy assistant (COTA) to improve fine motor skills, sensory regulation, or activities of daily living. Services may be indicated for developmental delays, loss of function through illness or injury, and/or in conjunction with a mental health diagnosis. Occupational Therapists may provide direct therapy services, consultation with a school team or family. Additional services including parent/student education, environmental assessment and accommodations, adaptive equipment, as well as skills necessary for transition to community/work activities. The focus of the occupational therapist is to encourage the development or return to the "occupations" of life, which includes home, school, and work activities.

**Orientation and Mobility Services:** With respect to students who are blind or visually impaired, provide teaching to students by qualified personnel to learn systematic orientation and safe movement within their environments in school, home, and their community. Services include spatial and environmental concepts received by their senses (e.g., sounds, temperature, vibrations, etc.) to establish, maintain, or regain orientation and line of travel (e.g., using sound at a traffic light to cross the street to the school, or the use of a cane or service animal to supplement visual travel skills).

**Parent Counseling and Training Services:** Assist parents in understanding the unique needs of their child by providing the parents information about child development; and provide the necessary skills the parent may need to support their child's IEP implementation.

**Physical Therapy (PT) Services:** Include gross motor services provided by a qualified physical therapist (PT) or a physical therapist assistant (PTA) to support a student's ability to access their educational environment. School-based physical therapy is different from medical-based physical therapy. Physical therapy within a school environment is to support the student to travel throughout the school environment (e.g., traveling from class-to-class, stairs, restrooms, cafeterias, access playground equipment, etc.). School-based physical therapy is not intended to meet all the student's therapeutic needs, but to ensure the student has physical access to their educational environment.

**Recreational Therapy Services:** Include therapeutic recreation services by a qualified recreational therapist to support the student's recreational and leisure activities. Services include assessment of recreation and leisure function, leisure education, wellness, prevention, adaptive sports, the development of skills necessary for recreation participation, play, and social development as they relate to leisure and recreation in various environments.

**Speech-Language Pathology (SLP) Services:** If the primary disability is not speech language impairment, then speech-language pathology services may be considered as a related service. Services include assessment and identification of students with speech or language impairments that include but is not limited to articulation or speech sounds, language, fluency, voice or tone, social communication skills.

The service type listed on the student's IEP for related service is the same as the type of services listed above. However, instead of the certified special education teacher, the provider is responsible for the type of service(s) implemented.

### ***iii. Definition of Location***

Location (e.g., special education setting, hospital/home, general education setting, etc.) is where special education and related services will be delivered. LEAs are responsible to ensure that a full continuum of placement options are available for each individual IEP team to consider as options to meet the individual child's unique disability-related needs. More than one placement setting/location may be documented on the student's IEP. See Chapter 6 Least Restrictive Environment (LRE) for more information on the location/setting of services for IEP teams to review when considering the child's LRE.

### ***iv. Definition of Supplementary Aids and Services***

Supplementary aids and services refer to aids, services, and other supports that are provided in general education classes, other education-related settings, and in extracurricular and nonacademic settings to enable the student to be educated with nondisabled peers to the maximum extent possible. Examples include support for school staff, positive behavioral intervention plans, extended school year services, transportation, transition services, assistive technology services, counseling, 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 for personnel 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.

### ***v. Definition of Accommodations***

Accommodations refer to applications that are intended to make educational opportunities more accessible. Accommodations do not lower the expectations or rigor of the educational expectations. Accommodations include any changes that allow students with disabilities the same opportunity as students without disabilities. The IEP team should consider addressing barriers in the student's learning by making changes (if necessary) to the presentation, response, setting, and timing/scheduling, communication modality, equipment, and/or supplemental aids and services. Examples include Braille editions, large print, pencil grips, recording devices, note takers and computers with spell check. Accommodations should be aligned and directly related to the student's unique needs. An IEP team should be careful to select only those specific accommodations that

promote increasing levels of independence and access. The potential harmful effect of providing accommodations the student does **not** need may create a lower learning expectation or a dependence level that may further impact the student's motivation and educational progress.

#### **vi. Definition of Modifications**

Modifications refer to changes in educational expectations for the student with a disability compared to peers without disabilities.

##### ***Special Education Setting:***

In a special education setting, modifications are applied as part of providing specially designed instruction. This may include the use of alternative or supplemental curriculum aligned to state standards, as well as limit the number of standards taught. For students with the most significant cognitive and adaptive behavior deficits, provide alternate achievement standards.

##### ***General Education Setting:***

Modifications in the general education setting, include actual changes in the general education curriculum and instruction or the use of supplemental curriculum. Examples include fewer concepts to be mastered, different test questions, and material at a different reading level. However, in the general education setting, the modifications cannot be so severe that the general education curriculum content for that grade level or subject area is significantly different from their non-disabled peers. If the work assigned to the student with a disability is such a departure from the work that non-disabled students are doing (e.g., to the degree that it requires the student to work separately from the rest of the class, either independently or with the support of a paraprofessional), then the team must consider if the general education setting is the Least Restrictive Environment. Working apart from peers or with the support of a paraprofessional in a general education setting is considered restrictive. In this scenario, the special education setting may represent the most appropriate Least Restrictive Environment (LRE) and the IEP team must consider the need for specially designed instruction in a special education setting. In this situation, the benefit the student may receive socially or behaviorally may be outweighed by the child's lack of educational progress in the core content area(s). For example, a student with cognitive delays with limited abilities to meet the grade level academic standards, even with modifications, may be unable to derive meaningful educational benefit from the general education setting regarding the core content area(s). Therefore, the IEP team may determine the student needs specially designed instruction in a special education setting using alternate academic standards to meet the student's unique needs as the student's LRE. (See Chapter 6 Least Restrictive Environment (LRE) for more information).

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

## ***G. IEP Services under the Primary Disability of Speech Language Impairment IEP***

Students identified as having a primary disability of Speech Language Impairment (SLI) are afforded the same placement LRE continuum, type of services and related services, as well as accommodations, modifications, supplementary aids and services as any other category of disability. For example, if a student with a primary disability of SLI begins to have problem behaviors associated with individuals who cannot understand the speech production of the child, then the IEP team may want to consider counseling as a related service or special factors regarding ways to create behavior interventions. Students with SLI may also have a significant language delay impacting the student's vocabulary and comprehension, causing the IEP team to determine what, if any, accommodations and/or modifications the student may need to address the child's language deficits. A student with a language processing disorder may have difficulty with rhyming, reading, spelling and writing. The IEP team would discuss what additional accommodations, modifications, supplementary aids and services this student might need to support these skill deficits. For example, this same student who struggles with spelling and writing, also struggles to form letters. The team has already ruled out a primary disability of Orthopedic Impairment or any other primary disability involving disorders/diseases impacting fine motor functioning; and therefore, the IEP team may refer the student for an OT evaluation. If eligible, then the student would receive occupational therapy as a related service.

## ***H. Statewide and Districtwide Achievement Testing***

All students with disabilities are to be included in statewide and districtwide assessments. The IEP team determines how each student will participate in state and district wide assessments—with or without accommodations, or by means of an alternate assessment. Assessment accommodations are determined based on the student's needs. Accommodations can only be used for state assessment purposes if they are used routinely by the student during instruction and/or classroom testing before and after the state assessment. The state approved assessment accommodation list is located on the Oklahoma State Department of Education Web site.

### ***i. Alternate Assessment***

Students must meet the state-established eligibility requirements found in the [Criteria Checklist for Assessing Students with Disabilities on Alternate Assessments](#) before taking an alternate assessment. The Oklahoma Alternate Assessment Program (OAAP) is intended for a very small population of students who have significant cognitive AND significant adaptive behavior deficits. The student must meet the state-established eligibility criteria which is determined on an individual basis by the IEP team. Due to the severity of the cognitive disability(ies) of this population of students, alternate achievement standards in all content areas are required in daily instruction, which differ in complexity from the Oklahoma Academic Standards.

Students with the most significant adaptive behavior deficits and significant cognitive disabilities have limited daily living skills, conceptual skills, written language skills, and understanding of numerical concepts such as quantity, time and money. Vocabulary and grammar are quite limited and augmentative communication devices are often necessary to communicate with others. They tend to focus on present, everyday events and rarely attempt to analyze or expand on new ideas and concepts through spoken language. Skill Acquisition and measurable gains on grade-level alternate academic achievement standards require extensive, direct individualized instruction. These students require substantial supports for all activities of daily living including meal preparation, dressing, grooming and personal hygiene. Their personal safety is dependent upon

adult supervision and will be a concern throughout their lifetime. Therefore, the IEP must contain rigorous, measurable goals that include short-term benchmarks/objectives that are aligned to alternate achievement standards in all content areas, as well as adaptive behavior.

### **I. Extended School Year Services (ESY)**

Each LEA must provide extended school year (ESY) services to students, when necessary, in order to provide a FAPE. An ESY policy must be established by the LEA to provide the particular special education and related services, including transportation, to students with disabilities whose IEP teams have determined these services are necessary. ESY services are those services a student requires to maintain academic or functional progress beyond the normal school year of the LEA and are not limited to only the summer months. The IEP team makes individual determinations 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 may not state that ESY is only for a certain group(s) of students. Likewise, an LEA may not limit ESY services to a certain time period or type of activity (*Johnson v. Independent Sch. Dist. No. 4 921 F.2d 1022 (Oklahoma 1990)*).

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

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

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

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

<b>Emerging Skill</b>	A skill is in the process of emerging, and the IEP team believes that with ESY services the student would reasonably maintain the skill.
<b>Regression - Recoupment</b>	The student will regress to such an extent and the amount of time required to relearn a skill or behavior becomes so significant that the student will be unable to benefit from their special education.
<b>Self - Sufficiency</b>	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.

The ESY Determination includes the following factors:

- Degree of disability (i.e., mild, moderate or severe);
- Degree of regression suffered (actual or predicted);
- Recovery time/Recoupment from this regression (actual or predicted);
- Ability of parents to provide educational structure at home;
- Student's rate of progress;
- Student's behavioral problems;
- Student's physical problems;
- Availability of alternative resources;
- Ability of the student to interact with children who are non-disabled;
- Area(s) of the student's curriculum which need continuous attention from the IEP;
- The student's vocational needs; and
- Other relevant factors as determined by the IEP team.

The IEP team must consider the above factors on an individual basis in determining whether a student is in need of ESY services. The LEA must complete the ESY Determination form within the online special education system when considering ESY services.

Decisions concerning ESY services are based on collected data and written documentation. Types of data and information may include, but are not limited to, the following:

- **Criterion-referenced test data.** Consider daily/weekly probes or pre-test/post-test data.
- **Norm-referenced test data.** Consider pre-test/post-test data.
- **Anecdotal records.** Consider information collected throughout the school year.
- **Physical, mental, or emotional health factors.** Consider the educational, medical, and psychological records of the student as well as the prognosis or judgments of educators, medical personnel, parents, and others who work with the student. Consider degenerative types of difficulties that may become intensified during breaks in educational programming.
- **History.** Consider evidence of past regression or past ESY services. The IEP team should not automatically assume that a student who has received ESY services in the past will be eligible for ESY services in the future, but it is a factor to consider.
- **Data on observed performance.** Consider data maintained on the student concerning performance observed in the classroom, during community-based activities, and as part of IEP progress monitoring.
- **Teacher interviews and recommendations.** Consider progress reports by teachers, therapists, and others who have direct contact with the student before and after breaks in educational programming.

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

The ESY services are clearly delineated in the IEP. The LEA can meet this requirement by amending the current IEP. The LEA may not limit ESY services to particular categories of disability or unilaterally limit the amount or duration of these services.

### **J. LRE Explanation**

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

If a student’s needs can be addressed with differentiated instruction and accommodations within the general education program, special education services should be considered too restrictive and not necessary/appropriate at that time. A student’s need for more individualized support (through differentiated classroom instruction, short-term skill remediation and intervention, or individually designed instruction) is the shared responsibility of all professionals working in the LEA’s educational program. The IEP team might consider a service type such as consultation or monitoring if the student is able to stay in the general education classroom with supports. If the student is making progress in the general education curriculum, then the team may want to consider a reevaluation. If the team determines the student is no longer eligible for special education services, then the LEA may want to document and offer an initial evaluation under Section 504 to determine whether the student is eligible for a 504 Accommodation Plan.

If a student’s needs cannot be addressed in the general education setting, then the IEP team would determine to what extent the student would need to be removed from the general education classroom setting to be provided specially designed instruction to meet their unique needs.

IDEA (20 U.S.C. §1412(a)(5)(A) states, *“To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.”*

### **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. The term “assistive technology device” means any item, piece of equipment, or product system, whether acquired commercially, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a student with a disability. The term does not include a device that is surgically implanted or the replacement of such device. The IEP team may determine that the student needs to access school-purchased assistive technology devices in non-school settings to receive a FAPE. The term “assistive technology services” includes the following:

- An evaluation of the student’s assistive technology needs, including a functional assessment in the student’s customary environment;

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

## ***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 access and/or benefit from special education. The student's individual needs concerning their education are the main considerations in determining services—including transportation services.

The IEP team must consider whether the student's disability-related needs prevent the student from using the same transportation provided to students without disabilities. If the student has unique needs that cannot be met using the same transportation provided to students without disabilities, the team will document transportation on the IEP as a related service. The team must also consider and identify any specific supports needed, including use of an aide or nurse, seat belt, car seat, lift, or other special equipment.

Procedural safeguards under the IDEA must be afforded protections to students against removal from transportation services. Refer to Chapter 9 "Procedural Safeguards" for more information.

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

- Travel to and from school and between schools to access special education; specialized equipment including lifts and ramps, if required to provide special transportation;

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

If the team determines that the child needs transportation as a related service, the school district may provide transportation services directly or contract with parents or some other person to furnish transportation. The miles driven and cost per mile to be paid by the school district should be outlined in the LEA’s board policy and should be specified in the IEP.

In the event of a transfer, when transportation is included as a related service in the IEP and the IEP is reviewed and adopted by the receiving LEA, the receiving LEA will be required to provide transportation regardless of the transportation area where the child resides. If an IEP agreement is written between two districts to transfer a student, then the resident district is responsible for the transportation. See Chapter 12 “Transfers and Move-in Students” for more information regarding transportation, transfers, and IEP Service agreements.

## ***M. Secondary Transition***

### ***i. Secondary Transition Indicators***

Indicators are measures of compliance and effectiveness of a state’s implementation of the Individuals with Disabilities Education Act (IDEA), Part B. The IDEA requires each state to develop a state performance plan/annual performance report (SPP/APR) that evaluates the state’s efforts to implement the IDEA, and more specifically, Secondary Transition. The results of these indicators are reflected on the annual District Determination Profile (DDP) and districts are measured against targets which have been set by a group of stakeholders. Visit the Oklahoma State Department of Education, Special Education Services (OSDE-SES) Compliance webpage for more information. Secondary Transition Planning is so important to students’ success that it has four indicators. Following are the measurements for the indicators relating to transition:

- **Indicator 1: Graduation Rates** | "Percent of youth with IEPs graduating from high school with a regular diploma."
- **Indicator 2: Drop-out Rates** | "Percent of youth with IEPs dropping out of high school."
- **Indicator 13: Post-school Transition Goals in IEP** | "Percent of youth aged 16 and above with an IEP that includes coordinated, measurable, annual IEP goals and transition services that will reasonably enable the student to meet the post-secondary goals."

- [Indicator 14: Participation in Postsecondary Settings](#) | "Percent of youth who had IEPs, are no longer in secondary school and who have been competitively employed, enrolled in some type of postsecondary school, or both, within one year of leaving high school."

To help improve school programming and supports for future students in Oklahoma schools, the Oklahoma State Department of Education, Special Education Services (OSDE-SES) annually surveys students with disabilities who have exited public school ("**exiters**"), a year after they graduate, dropout, or age out, and reports the following data to the U.S. Office of Special Education Programs (OSEP):

1. Percent of youth who are no longer in secondary school, had IEPs in effect at the time they left school, and were:
  - Enrolled in higher education within one year of leaving high school.
  - Enrolled in higher education or competitively employed within one year of leaving high school.
  - Enrolled in higher education or in some other postsecondary education or training program, or competitively employed or in some other employment within one year of leaving high school.

It is important to have a high percentage of exiters participate in the Post-School Outcomes (PSO) Survey to ensure that the data are representative of the State and useful in improving effective transition programs and services.

2. There are three main ways that teachers and districts can improve their local response rate:
  - Update student and family contact information. This includes first names, last names, address(es), phone numbers with area codes, and long-term emails. The goal is to make sure that we have student contact information and the contact information of someone who would always be able to reach them. Contact information should be updated in the local student information system (SIS) at the student's exit meeting or when they are given their Summary of Performance and Written Notice. Consider adding current student information to the online special education document system if student information is not able to be entered into the SIS.
  - Inform students and families about the PSO Survey that will be sent out a year after the student exits and encourage them to participate. Teachers and districts can show them the postcard and the survey questions. Make sure students understand they will receive a postcard in the mail and someone representing the OSDE-SES will contact them to find out what they have been doing after high school.
  - Conduct your own district PSO Surveys to get the highest response rates.

For more information about Indicator 14, please refer to the [Indicator 14 PSO Guidance Brief](#).

## ***ii. Secondary Transition Planning***

The purpose of a transition services plan is to assist students in building the skills and supports they need to make progress towards their postsecondary goals when transitioning from school to post-school environments. Successful transition planning requires support from multiple sources so the student and their family can make choices, develop connections, and access services prior to leaving high school.

Secondary transition services must be in effect before the beginning of the ninth-grade year, or on or before age 15, whichever comes first. This means the student will be invited to the IEP meeting and address transition at age 14 (just before turning 15) or during the 8th grade year, whichever comes first. This will ensure that transition services are in effect before the beginning of the student's ninth-grade year or on or before the student's 15<sup>th</sup> birthday. The IEP team may also decide to implement transition services earlier. The transition plan must be updated annually.

To ensure compliance with the IDEA secondary transition requirements, Oklahoma utilizes the [Indicator 13 Checklist](#). The Indicator 13 components and other requirements for Oklahoma are explained below.

## ***iii. Required Components of a Secondary Transition Plan***

### **1. Student Participation**

The student must be invited to attend the IEP meeting if a purpose of the meeting will be the consideration of the postsecondary goals and the transition services needed to assist the student in reaching those goals. The student's name must be listed on the Meeting Invitation and the consideration of needed transition services box must be checked. Students should be informed of terminology, roles of the IEP team, and procedures prior to attending and participating in the IEP meeting. The IEP team should take steps to ensure that the student's voice is heard and that the meeting is a positive experience. If the student does not attend, the team must take steps to ensure that the student's preferences and interests are considered.

Refer to the [Oklahoma's Secondary Transition Education Handbook](#) for strategies to increase student involvement in the IEP.

### **2. Outside Agency Participation**

The LEA must invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services with prior parent consent (or student consent if 18) using the Special Education Parent Consent form. The duration of the consent for an agency representative to attend a student's IEP meetings can be for a specific IEP meeting, or it may last up to a year.

### **3. Age-Appropriate Transition Assessments**

Students must participate in age-appropriate transition assessments each year. Transition assessments should be varied and facilitate the development of transition goals and services. Transition Assessment is an ongoing process of collecting data on the individual's:

- **Strengths** (what they are good at doing)

- **Preferences** (how they learn best, what they choose)
- **Interests** (what they like to do)
- **Needs** (what transition skills they need to be taught. These transition skills will become the annual transition goals).

The results of current transition assessments are an integral part of the Present Levels of Academic Achievement and Functional Performance (PLAAFP), which describes the level at which students are working academically and functionally. The IEP must include the student's strengths, preferences, interests, and specific transition needs identified using age-appropriate transition assessments. The results of these assessments provide the following vital pieces of information:

1. The rate of student progress towards reaching post-secondary goals;
2. Data to support necessary updates to existing postsecondary goals; and
3. Data to assist in the development of annual transition goals, transition services/coordinated activities, and course of study. Transition assessment results should be described in ways that can be readily interpreted by participants without the use of test manuals.

All students must be assessed in the areas of education/training and employment. Students who participate in the OAAP must also be assessed in independent living and community participation due to significant deficits in adaptive behavior and the lifelong need for extensive family/community support. See the [Criteria Checklist for Assessing Students with Disabilities on Alternate Assessments](#) for more information.

In addition, it is also recommended that **all** students are assessed in **all** areas: Education/Training, Employment, Independent Living and Community Participation to determine the need for goals and services.

Best Practice Recommendations for Transition Assessments:

- Assess all students in Education/Training, Employment, Independent Living and Community Participation to determine the need for goals and services.
- Use a variety of transition assessments.
- Use at least one formal assessment that has reliability and validity.

#### ***iv. Postsecondary Goals***

Postsecondary goals are based on the results from the age-appropriate transition assessments (usually a career interest inventory) and include the student's strengths and interests. These goals target what a student will achieve **after** high school. Postsecondary goals must be based on the student's desired postsecondary activities that are measurable, realistic, attainable, and updated annually. The student's progress toward reaching their postsecondary must be consistently

monitored by reviewing the progress of annual transition goals and the transition services/coordinated activities. To meet the criteria of measurable, postsecondary goals should answer the following questions:

- **Education/training:** Where will the student learn after high school? Where can the student receive the education/training they need to achieve their postsecondary employment goal? (e.g., college, career technology center, on the job training, etc.)
- **Employment:** Where will the student work after high school? This can be immediately after high school or long term. (e.g., full-time, part-time, on the job training, internship, etc.)
- **Independent Living:** Where will the student live after high school? (e.g., at home, dorm, apartment with roommates, etc.)
- **Community Participation:** How will the student participate in the community after high school? (e.g., community outings with friends/family, entertainment, recreation, leisure, social groups, advocacy groups, faith-based, cultural, etc.)

All students must have postsecondary goals in the areas of education/training and employment. The IDEA states students must have appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills (34 C.F.R. § 300.320). However, Oklahoma mandates students who participate in the OAAP must also have postsecondary goals in the areas of independent living and community participation due to significant deficits in adaptive behavior and the lifelong need for extensive family/community support. For all students, it is appropriate to develop independent living and community participation goals when results from the assessments indicate students' needs in these areas. Students should have input and assist in writing their postsecondary goals.

#### ***v. Annual Transition Goals***

Students must have measurable annual transition goals that are updated annually and align with each of their postsecondary goals. Each annual goal consists of three crucial components:

1. **Condition:** the materials and environment necessary for the goal to be completed.
2. **Behavior or Targeted Skill:** the action that can be directly observed and monitored.
3. **Criteria:** how much and how often or to what extent the behavior or skill must occur to demonstrate it has been achieved.

Annual transition goals are based on **specific transition needs** identified through annual transition assessments. They are designed to help the student reach each of their desired postsecondary goals. They address what skills the student will learn in the timeframe of the IEP to demonstrate movement toward reaching their Postsecondary Goals. Annual goals are not mere statements of passing a class with a certain grade or completing requirements for high school graduation.

Using the results from the assessments, students and IEP teams can answer the questions below to facilitate the development of annual transition goals that support student achievement of postsecondary goals.

- **Education/training:** What skills do I need to learn in the timeframe of this IEP to learn and/or go to school where I want? (e.g., self-determination, academic, behavior, communication, assistive technology, study skills, etc.)
- **Employment:** What skills do I need to learn in the timeframe of this IEP to work where I want? (e.g., employability skills, positive behavior strategies, communication, self-advocacy, etc.)
- **Independent Living:** What skills do I need to learn in the timeframe of this IEP to live where I want? (e.g., money management, health, safety, cooking/cleaning, etc.)
- **Community Participation:** What skills do I need to learn in the timeframe of this IEP to participate in my community? (e.g., self-determination, communication, assistive technology, positive behavior strategies, mobility, social skills, etc.)

All students must have annual transition goals in the areas of education/training and employment. Students who participate in the Oklahoma Alternate Assessment Program (OAAP) must also have annual transition goals in the areas of independent living skills and community participation. If the student's IEP includes independent living and community participation postsecondary goals, it must also include corresponding annual transition goals. In addition, **all annual transition goals for students assessed by OAAP must include short-term objectives/benchmarks.**

IEP Teams must monitor the student's progress of the annual transition goals to demonstrate movement towards their postsecondary goals ([OSEP Letter to Pugh](#)).

#### ***vi. Transition Services and Coordinated Activities***

Secondary transition services are defined as a coordinated set of activities for a student with a disability that is designed within a results-oriented process. These services are focused on improving the academic and functional achievement of the student to facilitate the student's movement from secondary school to post-school activities (e.g., postsecondary education, vocational education, integrated employment, supported employment, continuing and adult education, adult services, independent living, or community participation). Transition services may include instruction, related services, community experiences, development of employment and other post school adult-living objectives and, if appropriate, acquisition of daily living skills and a functional vocational evaluation. These services are based on the individual student's needs, taking into account the student's strengths, preferences and interests. It may be necessary to document specific transition services on the IEP in the service section as well as in the transition services/coordinated activities section if the transition service is specially designed instruction. For example, a student may require direct instruction for life skills for one hour per day, five days a week.

Coordinated activities are the tasks for the student to complete that will assist them in learning the skills and knowledge associated with each annual transition goal. The IEP team should consider all the activities that the student might benefit from or participate in to achieve each annual transition goal. Coordinated activities must be updated annually and can only occur during the IEP. These

activities are based on the individual student's needs, taking into account the student's strengths, preferences and interests.

### **vii. Course of Study**

The course of study focuses on the 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. It relates directly to the student's postsecondary outcome goals, annual transition goals, and transition services. The course of study identifies the specific courses that a student will take, whether special education or general education, that demonstrate progress toward postsecondary and annual goals. The OSDE-SES requires the names of the courses be listed for the student's current and remaining years in school for compliance. The course of study is updated annually and if the postsecondary goals change, the course of study may change. The IEP team should consider the entry requirements of desired postsecondary educational programs and scholarship requirements to ensure the student is on track to achieve their postsecondary goals.

### **viii. OK Promise**

The Oklahoma Promise program offers Oklahoma students who meet specific academic and financial requirements a scholarship for college tuition to an Oklahoma college/university. The IEP team must indicate if the student plans on enrolling in the OK Promise program. If the student plans on enrolling in the OK Promise program, the IEP team should ensure that all the requirements, including coursework requirements, of the program are considered and addressed when completing the student's transition services plan. For more information on Oklahoma's Promise program visit [OK Promise](#).

### **ix. Curriculum Participation**

Oklahoma offers the College Preparatory/Work Ready and the Core Curriculum. Successful completion of either curriculum will result in a student receiving a standard diploma. However, the core curriculum does not meet some college entrance requirements, nor requirements for the Oklahoma's Promise. The IEP team should consider the student's postsecondary goals when determining the appropriate curriculum (ex: If the student is planning to go to college, they should be enrolled in the College Preparatory/Work Ready Curriculum). Students entering the 9<sup>th</sup> grade are automatically enrolled in the College Preparatory/Work Ready Curriculum. To participate in the Core Curriculum, the parent must complete an opt-out form provided by the school. The IEP must indicate the curriculum option and it must match the student's educational records in their cumulative folder (70 O.S. § 11-103.6).

### **x. Projected Date of Graduation/Program Completion/Type**

The projected date of graduation is the month and year that the student will most likely complete their secondary education program. It is a very important part of the Transition Services Plan. This should be completed annually. Thoughtful consideration should be given to determine the completion date, and any support the student may need to obtain a high school diploma. A small number of students may need additional time to meet Oklahoma graduation requirements as well as make progress toward their academic and secondary transition IEP goals. These students may

receive their high school education through the school year in which they turn 22, if necessary, to complete credits to obtain a standard diploma (Refer to Chapter 1 FAPE for more information). If the projected date of graduation will extend beyond four years, the IEP team must also address this through the course of study.

Oklahoma only maintains a standard diploma (i.e., regular high school diploma). Students enrolled in GED programs not attending public schools are not eligible for special education services. The GED is a certificate of high school “equivalency” yet is not considered a “regular” diploma. Therefore, a student who has obtained a GED certificate may reenroll in public school to work toward obtaining credits for a standard diploma. The LEA may deny admittance of persons **over** twenty-one (21) (70 O.S. § 5-132.1). For more information, refer to Chapter 7 “Non-Discriminatory Practices”, Section 1. “Discontinuation of Special Education Services” (ii) “Student Completes Requirements for a Standard High School Diploma” regarding the GED.

### ***xi. Vocational Education/Rehabilitation***

Students and parents should be provided information regarding opportunities for vocational education (e.g., high school vocational education courses, school-based training, work study programs, technology education, area career technology center programs, pre-employment transition services). This is documented on the IEP.

The Oklahoma Department of Rehabilitation Service (DRS), also referred to as Vocational Rehabilitation (Voc. Rehab.), may provide numerous services to students with disabilities in school and as they transition from high school into adulthood. Therefore, the IEP Team should discuss and provide information to the parent regarding the DRS for vocational education, including services of career counseling, and guidance with competitive integrated employment. Upon receiving the **parent’s consent** (i.e., using the Consent for Release of Confidential Information), special educators must complete a DRS Referral (Voc. Rehab.) form for **each** student, regardless of disability level, during the school year that the student is 15 years of age and prior to them turning 16 (around 15 ½ years old). The DRS Referral and Consent for Release of Confidential Information forms are submitted to the local DRS Counselor. If the student is not referred, the special educator documents the reason (e.g., parent did not consent, student is too young). The OKDRS Referral is not an application and does not make the student eligible. It is best practice to follow up with families and keep encouraging them to complete an application so students may qualify to receive valuable transition services from DRS. Find more information about the variety of DRS Programs on their website titled “[Brochure and Handbooks.](#)”

Sometimes students and/or families may be hesitant to give consent for the DRS Referral and/or to apply for DRS services because they are afraid of losing their disability benefits. However, it is possible for individuals who receive Supplemental Security Income (SSI) and/or Social Security Disability Insurance (SSDI) to work and still receive benefits. Please refer to the [Oklahoma’s Secondary Transition Education Handbook](#) for more information and resources on this topic.

### ***xii. Transfer of Rights***

Oklahoma’s age of majority is 18 years of age. At 18, students have all the rights of any United States citizen, and the educational legal rights previously held by parents transfer to the student. Therefore, 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 their birthday unless the parent/guardian obtains guardianship of the student through a court proceeding.

### ***xiii. Progress Towards Graduation***

Progress toward meeting graduation requirements for the student receiving special education services should be monitored to ensure students are on track to graduate and have made progress toward their goals. Therefore, all goals and transition services must be updated on the IEP annually. Students take an active role in monitoring the implementation of their IEP/transition plan to ensure they are completing activities to support achieving their goals. Beginning with the Class of 2023, Individual Career Academic Planning (ICAP) is required for all Oklahoma students, including students with disabilities, as part of their graduation requirements under House Bill 2155 passed in May of 2017 (70 O.S. § 1210.508-4). For more information about ICAP, and state graduation requirements, refer to the [High School Graduation Resources](#) located on the OSDE website.

### **Exiting Due to Graduation**

When a student exits from special education as a result of earning a standard diploma or aging out, the LEA must provide the parent or adult student or guardian:

- **Written Notice** that the LEA’s obligation to provide FAPE, including special education and related services ends when the student obtains a standard high school diploma; and
- **Summary of Performance** of their academic achievement and functional performance along with recommendations concerning how to assist the student in meeting postsecondary goals.

The student should have the opportunity to be an active participant in the development of the Summary of Performance (SOP). The document should contain the most updated information on the performance of the student and include both the student’s abilities and aspirations.

For more information, refer to the [Summary Of Performance Guidance Brief](#) and Chapter 7 “Non-Discriminatory Practices”. For detailed information regarding transition planning, please refer to the [Oklahoma’s Secondary Transition Education Handbook](#).

### ***N. 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 they refuse 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 a due process hearing. More information provided in Chapter 4: “Evaluation and Eligibility.”

## Section 3. IEP Reviews

### **A. Annual IEP**

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

The Annual IEP review addresses the following:

1. Whether the student's annual goals have been achieved, including those for related services and secondary transition;
  - a. Provide the parent with a progress report to close out the current IEP prior to developing the new Subsequent IEP.
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. 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 Subsequent IEP Meeting**

Following the Subsequent IEP team meeting, a copy of the IEP and a Written Notice is given to the parent in a timely manner after the meeting, including a copy of Parents Rights in Special Education: Notice of Procedural Safeguards. It is recommended to upload the original IEP with signatures into the online special education system.

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 their 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. Whenever the parent provides consent for outside agencies to participate in the IEP meeting regarding their role, responsibility for providing or paying for transition services, the LEA must also provide a copy of the IEP to the agency partners (e.g., DRS, Technology Center, etc.).

### **C. IEP Amendments/Addendums**

In making minor changes to a student's IEP (e.g., accommodations) after the annual IEP meeting, the parent and the LEA may agree not to convene an IEP meeting for these purposes, and instead may develop an amendment to the student's current IEP. A revised copy of the IEP with amendments

finalized will be provided to the parent. An IEP amendment does not change the annual review date. Following any changes, including minor changes, the LEA must send a Written Notice to Parents explaining the reasons for the changes to the student's IEP, options considered and not appropriate, the basis for making the changes, and any other factors regarding the changes to the IEP. Prior Written Notice must be sent prior to implementing the change.

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 their specific responsibilities.

If the LEA or the parent believes that the student is not progressing satisfactorily or that there is a problem with the current IEP, they 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, as well.

## *Legal Citations*

### **Code of Federal Regulations, Title 34: Education**

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

## CHAPTER 6. LEAST RESTRICTIVE ENVIRONMENT (LRE)

### Section 1. LRE Considerations

The Individuals with Disabilities Education Act (IDEA) 20 U.S.C. § 1412(a)(5)(A) states, 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 process 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 alternative placements/educational setting options available to meet the individual LRE needs of each student (34 C.F.R. § 300.115).

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.

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

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

### Section 2. LRE & Continuum of Alternative Placements

#### A. Continuum of Alternative Placements

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

**LRE decisions are always made individually for each student and based on the student's unique, disability-related needs.** Placement decisions are never based solely on the student's category of disability. The student's IEP is developed before the determination of the placement of services and settings. The services and settings needed for each student with a disability must be based on the student's IEP and unique needs that result from their disability, not on the student's category of disability.

The IEP team must make placement decisions in conformity with the LRE provisions discussed in Section 1 of this chapter, including the following from IDEA (34 C.F.R. § 300.116 (b)(c)(d)(e)):

1. **Age-Appropriate Peers.** Students with disabilities must be educated with age-appropriate peers to the maximum extent appropriate.
2. **School of Attendance.** The student should be educated in the school he or she would attend if the student did not have a disability, unless the IEP requires a different arrangement to best meet the individual needs.
3. **Harmful Effects.** Consideration must be given to any potential current or long-term adverse effect on the student or on the quality of services the student needs, including the student's ability to graduate and achieve their post-high-school goals.
4. **Accommodations and/or Adaptations.** A student with a disability should receive accommodations, modifications, and/or adaptations in the general education curriculum to the maximum extent appropriate. For more information, please see the [Oklahoma Accommodations Guide and the Oklahoma ABLÉ Tech.](#)

It is important that the student is fully participating in the general education curriculum with the use of supplementary aids, accommodations/adaptations, and services to meet the student's unique needs, yet not modified to the point the curriculum is no longer the same content. In *R.M. v. Gilbert Unified School District*, 768 F. Appx. 720 (9th Cir. 2019), a decision was concluded that any benefit the student received either behaviorally or socially in the general education environment was outweighed by the student's lack of educational progress from the instruction provided in the classroom. The 9th Circuit District Court found "because his work is so different from that of his nondisabled peers that he is not truly participating in the instruction taking place in the general education classroom."

5. **Participation in Nonacademic and Extracurricular Services and Activities.** A student with a disability must be allowed to participate with students without disabilities in nonacademic and extracurricular services and activities to the maximum extent appropriate. These services and activities may include nutritional breaks, recess, field trips, counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the LEA, referrals to community agencies, career development, and assistance in making outside employment available.

The IEP team determines the supplementary aids and services that are appropriate and necessary for the student to participate in nonacademic settings and extracurricular services and activities. This determination should include but is not limited to, field trips,

participation in clubs, Special Olympics, referral to agencies that provide services, special interest groups, employment assistance, counseling, health services, or athletics. An IEP does not negate eligibility requirements, such as having to try out for the team or having an “A” average to be in French Club. It is also important to note, parent attendance or participation in extracurricular activities cannot be a requirement when determining necessary supports.

## **B. Program Options**

Students identified as having a disability under the IDEA are general education students. They 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 areas provided by the LEA, including art, music, industrial arts, family and consumer education, advanced programs, and vocational education.

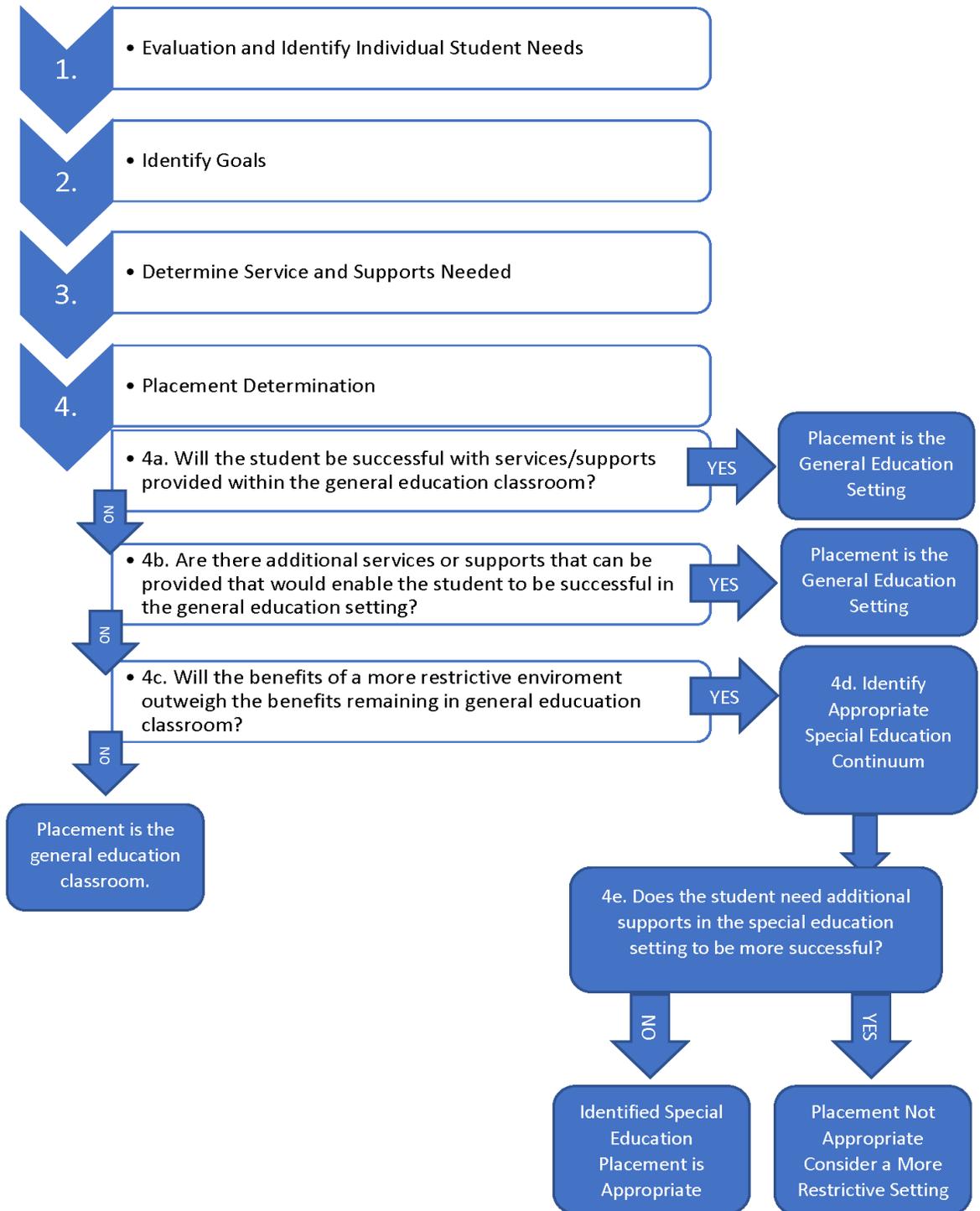
## **C. Continuum of Alternative Placements**

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. The following are some examples of alternative placements or location of services for students (ages 6 through 21) with disabilities:

<p><b>General Education Full-Time</b> (Inside the regular class more than 80% of the day)</p>	<p>The student receives the majority of their core instruction in the general education setting. The IEP special education service type might be consultation or monitoring, or collaboration, or possibly co-teaching. Another example is a student who receives one class period of direct instruction.</p>
<p><b>Special Education Services Part-Time</b> (Inside regular class 40%-80% of the day)</p>	<p>The student receives some of their core instruction in the general education setting. However, the student is pulled out of the general education setting to receive the IEP service type of “direct instruction” by a certified special education teacher who is also certified in the core area of instruction the student is receiving.</p> <p><b>For example,</b> a secondary student with a disability who has educational needs in the areas of English and Geometry would attend two class periods for just students with disabilities taught by a special education teacher who is also certified in the general education subject area (e.g., English or Geometry). The class is taught on grade level with specially designed instruction in order for the student to obtain a grade on their transcript for Geometry. The student would receive all other core subjects Science and Social Studies in the general education setting.</p>
<p><b>Special Education Services Full-Time</b> (Inside the regular class less than 40% of the day)</p>	<p>The student receives the majority of their core instruction in the special education setting and the IEP service type is “direct instruction.” However, the student may attend general education classrooms for electives or specials such as PE, Music, and Art.</p>
<p><b>Public/Private Separate Day School Facility</b></p>	<p>The student attends a public or private separate day school for half of the day, or possibly more depending on the facility, receiving core instruction (i.e., Reading/English, Math, Science, Social Studies, and Art) and special education services.</p>

<b>Public/Private Separate Day School Facility</b> (cont'd)	<b>For example</b> , a partial hospitalization facility where the student receives all their core instruction for half of the day and the other half of the day is participating in treatment (e.g., individual, group or family counseling), including special education services.
<b>Public/Private Residential Facility</b>	The student attends a public or private residential facility at public expense (e.g., DHS, LEA, etc.) where 24-hour care is provided to the student separated from their family. The student receives their core instruction (i.e., Reading/English, Math, Science, Social Studies, and Art) and special education services for half of the day, or more depending on the facility, and participates in required treatment for the remainder of the day.
<b>Home Instruction / Hospital Environment</b>	The child receives education (1) through home instruction, or (2) in a hospital program. (1) When an IEP team determines that the student is unable to attend physically in a school building due to a health issue, the LEA may provide specially designed instruction conducted in the student's home. (2) Students who are placed in a hospital receive their core instruction and special education services from the LEA where the hospital is located.
<b>Correctional Facility</b>	The child receives an education in a: (1) Short-term detention facility (community-based or residential); or (2) Correctional facility.
<b>Parentally Placed in Private School</b>	The parent or guardian enrolls the child in a parochial or private school, and their primary education is paid through private resources; however, they receive special education and related services at public expense from an LEA under an individual service plan (ISP). This does not include students who are placed in private schools by the LEA.

## LRE Decision Tree



## Section 3. When to Review Placement Decisions

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

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

### A. Lack of Expected Progress

Under IDEA, IEP teams have the responsibility to periodically review the child's IEP, *"but not less frequently than annually to determine whether the annual goals for the child are being achieved; and revises the IEP as appropriate to address any lack of expected progress toward the annual goals and in the general education curriculum, where appropriate"* (20 U.S.C. § 1414 (d)(4)(A)(i)(ii)(I)). As teams conduct these reviews, lack of expected progress may be an appropriate reason and time to review placement decisions.

### B. Special Circumstances

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

- The student has been adjudicated as a delinquent for certain offenses including violent crimes (refer to 70 O.S. § 24-101.3(F)(1)(2), and Chapter 10 "Private, Charter, Residential and Other Settings," Part 3, Section 1);
- The student has been removed by administrative or judicial process from an LEA or private school in any state for a violent act or an act showing deliberate or reckless disregard for the health or safety of faculty or other students; or
- The student, as a sixth through twelfth grader, has been suspended out of school for having assaulted, attempted to cause physical serious bodily injury, or acted in a manner that could reasonably cause bodily harm to LEA personnel or a person volunteering for an LEA.

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

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

## ***Legal Citations***

### **Code of Federal Regulations, Title 34: Education**

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

## CHAPTER 7. NON-DISCRIMINATORY PRACTICES

### Section 1. Discontinuation of Special Education Services

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

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

##### ***i. Student No Longer Meets Eligibility Criteria***

If it is suspected that a student no longer meets the eligibility criteria for the Individuals with Disabilities Education Act (IDEA), the evaluation group will conduct a reevaluation (with or without new assessments, as determined appropriate) to determine whether the student continues to meet the criteria for one or more disabilities under IDEA and requires 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 (See Chapter 4 “Evaluation and Eligibility” for more information regarding reevaluation.)

##### ***ii. Student Completes Requirements for a Standard High School Diploma***

The LEA’s obligation to provide special education services ends when the student meets the minimum State requirements as documented on the IEP or meets the State and the LEA requirements that apply to all students for receipt of a standard high school diploma. Although graduation is considered a change of placement, a reevaluation is not required.

A GED is not considered a standard high school diploma. Students enrolled in GED programs are **not** attending public schools and are therefore not eligible for special education services. However, a student who obtained a GED certificate but wants to return to public school to complete credits toward a standard high school diploma may reenroll if 21 years old or younger on or before September 1st of that school year, and if eligible, receive special education and related services. Based on Oklahoma Statute (70 O.S. § 5-132.1(B)) the LEA may deny admittance of persons over the age of 21 on or before September 1st.

If a student moves in from out of state with an alternate diploma and is twenty-one (21) years old on or before September 1 or younger, they are still eligible for FAPE until they meet the requirements for a standard high school diploma in Oklahoma, or through the school year in which they turn 22, whichever comes first.

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

- (a) Provide the parent and/or adult student with written notice that the LEA’s obligation to provide special education services ends when the student obtains a standard diploma.
- (b) Provide the parent and/or adult student with a written summary of academic achievement and functional performance, including recommendations to assist the

student in meeting their postsecondary goals. This summary is known as the Summary of Performance.

For more information about Summary of Performance (SOP), please refer to the [SOP Guidance Brief](#).

### ***iii. Student Reaches Maximum Age***

In the State of Oklahoma, the maximum age a student may enroll to complete credits towards a standard diploma is defined as twenty-one (21) on or before September 1st (O.S. § 70-1-114). The student may enroll and remain enrolled through the end of the school year in which they turn 22 in order to earn the required credits for a standard diploma. For students who have not yet graduated from high school and do not meet the requirements for graduation, the LEA's obligation to provide special education services ceases at the end of the school year in which the student turns 22.

Although reaching maximum age is considered a change of placement, a reevaluation is not required.

Prior to reaching maximum age and discontinuing special education services, the LEA **must**:

- (a) Provide the parent and/or adult student with written notice that the LEA's obligation to provide special education services will cease upon the end of the school year in which the student turns 22; and
- (b) Provide the parent with a written summary of academic achievement and functional performance, including recommendations to assist the student in meeting their postsecondary goals. This summary is known as the Summary of Performance (SOP).

For more information about Summary of Performance (SOP), please refer to the [SOP Guidance Brief](#).

## ***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 transfers to a new LEA, the LEA will make reasonable efforts to promptly forward the student's special education records electronically or by mail upon request from the new LEA. The records must include, at least, the student's most recent individualized education program (IEP) and all eligibility documentation.

### **2. Enrollment in Private School**

When a parent withdraws a student from public school and enrolls them in a private school, the LEA's responsibilities vary depending on the circumstances. See Chapter 10, Section 1 "Private Schools" for more information.

### 3. **Withdrawal to Homeschool**

When a parent withdraws a student from public school in order to homeschool the student, the student will no longer be eligible for special education and related services and the parent will be fully responsible for the student's instruction and educational programming.

### 4. **Parent Revocation**

When a parent revokes consent, the student will no longer be identified as a student with a disability and will no longer have special education services or procedural safeguards. For more information on parent revocation of consent, See Chapter 9 "Procedural Safeguards", Section 3, E. "Revoking Consent".

## **Section 2. Graduation**

Graduation means meeting the minimum State and/or LEA credit requirements for receipt of a standard high school diploma.

### ***A. Credit Requirements for Graduation***

Students demonstrating competency in a curriculum subject shall receive credit. Credit can also be earned for the successful completion of a Carnegie Unit (OAC 210:35-25-2 (5)).

IEP teams have the flexibility of allowing young adults with disabilities to meet the state minimum requirement for graduation, even if the LEA requires additional credits (70 O.S. § 11-103.6(L)). However, the IEP team does not have the authority to increase credits required beyond the LEA's Board Policy for graduation requirements, nor can the team decrease credits required below the state's minimum credit requirement. IEP teams must collaborate with the school counselor or administration for local and state credit requirements to confirm graduation status.

For more information about state graduation requirements, refer to the [High School Graduation Resources](#) located on the OSDE website.

### ***B. Participation in Graduation Ceremonies***

LEAs should clearly define in district policies or procedures the criteria for participation in graduation ceremonies by students who have not met graduation requirements (e.g., A senior who lacks one credit may participate in the graduation ceremonies at the end of the spring semester and completes the final credit requirement during the summer months of the same year). The criteria for participation in graduation ceremonies should be established district-wide, rather than at the individual school level. LEAs should make these policies or procedures available to students, parents, and LEA staff.

In the event a student on an IEP participates in graduation ceremonies while not officially graduating due to a lack of credits and/or a need to continue to receive special education and related services, the student will not officially graduate until the time the student officially completes all requirements for high school graduation.

## Section 3. Transcripts & Diplomas

The transcript serves as a record of individual accomplishments, achievements, and courses completed. Transcripts must **not** contain any information that would be considered discriminatory based upon their disability (e.g., Algebra 1 Basics, Biology Concepts, English Essentials, etc.). The transcript will **not** indicate graduation until the time the student officially completes all requirements for a standard high school diploma.

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

## Section 4. Grades, Class Ranking, Honor Roll, and Accelerated Programs

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

### A. Grades

A student with a disability as identified under IDEA may receive a failing grade. However, under IDEA (20 U.S.C. § 1414(d)(4)) the LEA is obligated to meet to consider the appropriateness of the IEP and revise the IEP to address any lack of expected progress toward the annual goals and in the general education curriculum.

Any unique grading methods or criteria required to evaluate an individual student's progress must be determined by the IEP team. Parent(s) should be informed of these unique methods or criteria, how the student is functioning, and what progress is being made (which includes how the data is used to determine grading scales on a report card). Any unique grading or progress reporting is to be determined and documented on an individual basis within the IEP.

Federal regulation does not hold LEAs accountable for a child reaching a certain level of achievement. However, the IEP must be "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." A child's educational program must also be "appropriately ambitious in light of his [or her] circumstances"; and, that "every child should have the chance to meet challenging objectives (Endrew F. v. Douglas County School District (2017))."

### B. Class Ranking, Honor Roll and Accelerated Programs

While the LEA may establish criteria for class ranking, honors, grades, etc., they cannot be discriminatory. A child with a disability is required to have the same opportunities as any nondisabled child. Therefore, setting maximum grade caps would be discriminatory (e.g., allowing no child with a disability to make a grade higher than a grade of "B"). Grades, which impact class

ranking and honor roll status, must be applied in the same manner for students with disabilities as they are for students without disabilities.

The practice of denying a qualified student with a disability the opportunity to participate in an accelerated program, solely on the basis of having a disability, violates both Section 504 and Title II. Discrimination prohibited by these laws includes, on the basis of disability, denying a qualified individual with a disability the opportunity to participate in or benefit from the recipient's (LEA's) aids, benefits, or services, and affording a qualified individual with a disability with an opportunity to participate in or benefit from the aid, benefit or service in a manner that is not equal to that offered to individuals without disabilities ([34 C.F.R. § 104.4\(a\), \(b\)\(1\)\(i\), \(b\)\(1\)\(ii\)](#); [28 C.F.R. § 35.130\(a\), \(b\)\(1\)\(i\), \(b\)\(1\)\(ii\)](#)).

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

## **Legal Citations**

### **Code of Federal Regulations, Title 34: Education**

§300.9 Consent.

§300.102 Limitation—exception to FAPE for certain ages.

§300.300 Parental consent.

§300.305 Additional requirements for evaluations and reevaluations.

### **Code of Federal Regulations, Title 28: Judicial Administration**

§35.130 General prohibitions against discrimination.

## CHAPTER 8: PRIVATE, CHARTER, RESIDENTIAL AND OTHER SETTINGS

### Part 1. Private Schools

#### Section 1: Definitions

**Private School.** A private school is privately owned. It is supported by private organizations or private individuals, often in the form of tuition. It is funded without the assistance of local, state, or federal funds.

Accreditation is optional for private schools in the State of Oklahoma. Private and parochial schools may be accredited and classified in the same manner and procedures as public schools by the Oklahoma State Board of Education (OSBE). Private schools who are state-accredited will have teachers who hold a bachelor's degree and meet the Oklahoma standards of certification, as well as employ a full-time administrator/headmaster. Other private schools who are not accredited by the OSBE are still considered a private school in relationship to the LEA's obligation under the IDEA.

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

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

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

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

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

#### Section 2: LEA Obligations

There are times when an LEA has the responsibility for serving students who are placed in or attending private schools.

## **A. Child Find**

For parentally-placed children in private schools, the IDEA places the responsibility for Child Find activities on the school district where the private elementary or secondary school is located regardless of the student's residency status, even if the student is out-of-state (34 CFR § 300.131 (f)). The district follows the same process for evaluating the student as evaluating a public school student of residence.

Each LEA must consult throughout the school year with both appropriate representatives from private schools and parent representatives of parentally-placed private school children attending facilities located within their district's boundary on how to locate, identify, and evaluate all private school children with disabilities. As part of the Child Find process, districts must determine the number of parentally-placed children with disabilities who are attending private schools within their district regardless of the student's residence (including state boundaries).

If a student enters a private school during the school year and is suspected of having a disability, the LEA where the private school is located is responsible for ensuring the student is evaluated and identified, regardless of whether the student was previously evaluated and determined not eligible for special education and related services by another LEA.

A parent may request that the school district of residence evaluate the student since the resident district is responsible for providing a FAPE to the child should they enroll. The resident district cannot refuse to undertake Child Find responsibilities simply because the student attends a private school located outside their LEA's boundary lines (See Letter to EIG, 52 IDELR 136 (OSEP, Jan. 28, 2009)). Parents may request an evaluation by the LEA of residence and/or by the LEA in which the private school is located for purposes of determining eligibility, and if eligible, considering their child for possible equitable services under an Individualized Service Plan (ISP). While the U.S. Department of Education discourages parents from requesting an evaluation by two LEAs, both LEAs are required to conduct the evaluation upon parent request.

The Child Find process must be completed in a period of time comparable to that for students attending public schools. Districts shall not delay the initial evaluation process in evaluating students suspected of having a specific learning disability (SLD) because the private school has not implemented a response to intervention (MTSS/RTI) process. The LEA must obtain parent consent for release of confidential information to communicate directly with the private school personnel. The 45-school day timeline is still required when conducting an initial evaluation for students attending private schools. LEAs who utilized a student's response to scientific, evidence-based intervention framework as part of the SLD determination process, are encouraged to provide collaboration, training, observations, modeling, and support with private school personnel. This type of collaboration on a regular basis will not only assist in gathering the necessary documentation for the SLD evaluation process but will also produce the benefit of developing a multi-tiered framework that is a proactive, prevention system to maximize the achievement levels of all students attending the private school. LEAs may not deny or delay the initial evaluation upon request for an initial evaluation solely on the basis of implementing a multi-tiered system of support.

If the child qualifies for special education, the LEA of residence must document the offer of a FAPE through a draft IEP and notify the parent that if the child were to enroll in the public school all proposed IEP services would be implemented. If the parent declines to enroll their child in a public school, then the LEA of residence does not have an obligation to provide any of the IEP services

delineated in the draft proposed document. The LEA of residence must document through the Written Notice to the parent an explanation of LEA's proposal, including the parent declined the IEP services because of their refusal to enroll their child in the public school.

If the student is a resident of one LEA, but attends a private school located in the boundary lines of another LEA, then the LEA where the private school is located is responsible for conducting the evaluation. The LEA where the private school is located is not obligated to offer an IEP but notify the parent through the Written Notice regarding their rights for special education and related services if they choose to enroll their child in the public school district of residence. The LEA where the private school is located may offer an ISP to the eligible student depending on the consultation process that determined what services would be provided to parentally-placed private school students.

Both the state and federal laws are silent surrounding students who are homeschooled; and therefore, the LEA does not have an obligation to offer equitable services through an ISP. Equitable services are paid for by public funding that is set aside specifically for students with disabilities whose parents enroll them in a private school.

## **B. Consultation**

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

The consultation should include a discussion of:

- Types of services;
- The determination of the proportionate amount of federal funds available to serve parentally placed private school children with disabilities, including determination of how the amount was calculated;
- Services will be apportioned if federal funds are insufficient to serve all children with disabilities who attend private school;
- How and when these decisions will be made;
- How parents, teachers and private school officials will be informed of the process;
- How parentally placed private school children suspected of having a disability can participate equitably in special education and related services;
- How, where and by whom special education and related services will be provided for parentally placed children with disabilities;

- How to conduct the annual count of the number of parentally placed private school children with disabilities; and
- How the process will operate throughout the school year to ensure that parentally placed private school children with disabilities identified through the child find process can participate in special education and related services.

Decisions about which services and the amounts of services students with disabilities enrolled by their parents in private schools will receive are made during the consultation process and are based on the needs of the students designated to receive services. These students have no individual entitlement to receive some or all of the special education and related services they would receive if enrolled in a public school. Therefore, it is possible that some parentally placed students in private schools with disabilities will not receive any services while others will.

LEAs must obtain a signed written affirmation statement from the private school representatives who participated in the consultation process. The private school representative is confirming with their signature that the LEA has engaged them in timely and meaningful consultation prior to any decision that affects the location, identification, and provision of services to parentally placed private school students attending private schools within the jurisdiction of the public school district.

It is the responsibility of the LEA to reach out to the private school representatives who did **not** attend the consultation meeting by sending a letter, along with documents discussed, including the request to consult and sign the written affirmation statement. If the private school representatives do **not** respond and/or provide a written affirmation within a reasonable period of time, the LEA must forward the documentation of the attempted consultation process to the Oklahoma State Department of Education-Office of Special Education Services (OSDE-SES).

All documents (e.g., list of all private schools located within the LEA, invitation of consultation meeting, sign-in sheets, agendas, handouts, signed affirmation statement(s), letters to private school representatives not in attendance, etc.) must be maintained for 5 years to record the LEA's obligation to private schools for consultation has been fulfilled over multiple years.

Only after discussing key issues relating to the provision of special education and related services with all private school representatives located within the district's boundary, as well as attempting to contact private school representatives who did not participate in the meeting, may the LEA make its final decision regarding the services to be provided to eligible private school children with disabilities. If the LEA disagrees with the views of the private school officials on the provision of services or types of services, the LEA shall provide a written explanation to the private school officials of reasons why the LEA chose not to provide services directly or through a contract.

If the private school representatives believe that the consultation has not occurred in a timely and meaningful manner, or that the LEA has not given due consideration to the private school representatives' opinions, they have the right to file a formal complaint with the OSDE-SES. The private school representative(s) must document in the complaint to the OSDE-SES the basis of the noncompliance by the LEA, including any documents supporting their complaint applicable to the provisions within the IDEA regulations.

### **C. Equitable Services**

The Local Education Agency's (LEA) obligations to parentally placed private school students with disabilities are different from its responsibilities to those enrolled in public schools. Parentally placed students with disabilities do not have an individual entitlement to services they would receive if they were enrolled in a public school. Instead, the LEA is required to spend a proportionate share or amount of Individuals with Disabilities Education Act (IDEA) federal funds to provide equitable services to this group of students. The school district, in consultation with private school officials and representatives of students parentally-placed in private schools, will make the final determination of what special education services will be available to parentally placed private school students with disabilities.

Equitable Services are special education and related services for parentally-placed private school students with disabilities, ages 3-21, whose parents have elected not to receive FAPE from their resident school district. Equitable Services for a parentally placed private school student with a disability must be provided as determined through the consultation process. To the extent determined appropriate, Equitable Services provided through an Individual Service Plan (ISP) (Refer to Section 4 below) should include:

- The child's present levels of academic achievement and functional performance in the areas identified for services by the LEA;
- Annual goals specific to the services to be provided;
- The type, amount, frequency, location and duration of services to be provided.

For additional information regarding equitable services refer to Section 5: Funding

## **Section 3: Settings Not Under Private School IDEA Requirements**

### **A. Preschool Children (Ages 3-5)**

An LEA's obligation to serve children aged three through five under the equitable services provisions (Refer to Section 2 "LEA Obligations", C "Equitable Services" in this chapter for more information) depends on whether a child is enrolled in a private school or facility that meets the definition of "elementary school" in the IDEA and its regulations. In Oklahoma, the school code defines an elementary school district as one that offers grades Kindergarten through eighth and a student must be at least 5 years old on or before September 1st of that school year. Therefore, a student placed in daycare facilities or private preschools by their parents would **not** fall within the IDEA definition of a privately placed elementary school student; and therefore, would be provided services through the Individualized Education Program (IEP) process.

Any Kindergarten parentally placed private school student who is eligible under IDEA for special education and related services would fall under the IDEA private school requirements; and therefore, would not receive an IEP unless the parent chose to enroll their child in a public-school setting. Instead, since this scenario falls under the IDEA private school requirements, if eligible, may possibly be provided services through an Individualized Service Plan (ISP), if the parent chose to remain in the private school setting.

## ***B. Children in For-Profit Private Schools***

The definitions of elementary school and secondary school specify that the school must be nonprofit. According to current Oklahoma law, students with disabilities who attend for-profit private schools are not included in the proportionate share calculation and are therefore not considered for equitable services. However, the State must ensure that all students with disabilities, including students with disabilities attending private schools, who are in need of special education and related services, are identified, located, and evaluated through the Child Find process. The Child Find process includes students with disabilities attending for-profit schools.

## ***C. Homeschool Children with Disabilities***

Oklahoma does **not** have governing laws for homeschools. Students who are homeschooled would be included under the private school provisions of the IDEA only if, under State law, homeschools are considered private schools. Under the current School Laws of Oklahoma, homeschools are not included in the definition of a private school. Although homeschooled students are not included under the private school provisions, the LEA where the child resides is still responsible for conducting Child Find activities, including initial evaluations and reevaluations, for children who are homeschooled.

## **Section 4: Placements**

There are three general scenarios for private school placements:

1. The LEA elects to place the child in a private school because the private school is better suited to provide FAPE in the least restrictive environment (LEA Placed).
2. The parents elect to place their child in private school even though FAPE is **not** at issue (Parentally-Placed).
3. The parents unilaterally place their child in a private school because they believe the district has failed or will fail to provide FAPE (Unilaterally Placed).

In Oklahoma, a student placed in daycare facilities or private preschools by their parents would **not** fall within the IDEA definition of a private school placement.

The general rule to determine which LEA is responsible for the provision of FAPE depends on how the student was placed and who made the placement decision. All students with disabilities are entitled to a FAPE.

### ***A. Students Placed in Private Schools by the LEA***

Federal regulations allow an LEA to place a child with a disability in a private school or facility in order to meet its obligation to provide a Free and Appropriate Public Education (FAPE) to the student. Should the IEP team determine a student with a disability requires specialized services and supports that the LEA is unable to provide locally, then the IEP team must consider viable placement options, which may include private schools or facilities, to ensure that the student receives a FAPE. This decision is defined as a Local Education Agency (LEA) Placement. Once this determination is made through the IEP process, the LEA must ensure the following requirements are met:

- All special education and related services and supports be provided in accordance with the student's IEP and at no cost to the parents;
- The private school or facility provides services and supports consistent with IDEA requirements;
- The student maintains all the rights afforded to a student with a disability served by a public school;
- The LEA is responsible for the development of the subsequent IEPs, reevaluations, and making sure the student is making progress towards their goals/objectives on the IEP, while the student is attending the private school or facility; and
- The LEA is responsible for the transportation costs for the parent to attend the IEP meetings.

### ***B. Students Enrolled in Private School by Their Parents When a FAPE is Not at Issue (Parentally-Placed)***

Parents may choose to withdraw their child from a public school and enroll them in a private school, including religious schools or facilities that meet the definition of an elementary or secondary school. This decision is defined as a parentally-placed decision. When parents remove their child from the LEA they do so at "their own financial obligation." This decision is made solely by the parents and is **not** a determination made by the student's Individualized Education Program (IEP) team.

Parentally-placed students with disabilities attending an approved private school located outside of their resident district may receive Equitable Services from the public school within which the private school is located.

### ***C. Students Enrolled in a Private School Voluntarily by Their Parents When a FAPE is at Issue (Unilateral Placement)***

Parents may withdraw their student with a disability from a public school and enroll the student in a private school at parent expense if the parent believes the Local Education Agency (LEA) has not provided a Free Appropriate Public Education (FAPE) in a timely manner. This decision is defined as a Unilateral Placement.

All students who are placed by a parent when FAPE is an issue are voluntarily enrolled in a private school. If the LEA has made a FAPE available to the child, the LEA is not obligated to fund the private placement. However, when parents enroll their child in a private school because they believe the educational program proposed by the school district does not provide a FAPE, the school district may be obligated to reimburse them for the costs of the placement. For parents to be entitled to reimbursement, they must ultimately prevail in an administrative or judicial proceeding and meet certain procedural requirements.

The parents may attempt to seek reimbursement for the costs associated with the placement by requesting a due process hearing. Specific information regarding a parent's request for administrative remedies through dispute resolution are discussed in Chapter 11 "Dispute Resolution."

## **Section 5: Services**

### ***A. Services with an Individual Service Plan (ISP)***

When a student has been designated to receive special education and related services by the LEA, the LEA develops an Individual Service Plan (ISP), which describes the specific special education and related services the child will receive from the school district, in light of the services the school district has determined will be provided through the consultation process.

The ISP is developed at a meeting, including appropriate school district personnel, representatives of the private school, and the parent. To the extent appropriate, the ISP must be developed in accordance with similar IEP development procedures.

Nonresident/resident students with disabilities parentally-placed in a private school located within the LEA's boundary, and designated by the LEA to receive special education services, must have an ISP in place before the student can receive services. An ISP describes the specific special education and related services the student will receive from the public school district in light of the services the LEA has determined through the consultation process that will be made available to private school students with disabilities parentally-placed in a private school.

The ISP does **not** entitle students with disabilities to a Free and Appropriate Public Education (FAPE). Therefore, the ISP may not include the same services the nonresident/resident parentally-placed student with disabilities would receive from the resident school district.

The ISP must be developed, reviewed, and revised in the same manner as an IEP. Similarly, the ISP must include present levels of performance, goals, and the Equitable Services. The LEA must initiate

and conduct meetings to develop, review and revise ISPs; the LEA must also ensure the participation of a private school representative in the development, review and revision of ISPs.

To the extent appropriate, the LEA must initiate and conduct meetings to develop, review, and revise ISPs in accordance with the following requirements:

- Given the “equitable” services that the LEA has elected to provide to private school students, the ISP must meet similar requirements of the IEP to the extent appropriate (e.g., present levels of academic achievement and functional performance; annual goals; type, amount, frequency, duration, and location of services, etc.).
- An ISP is in effect at the beginning of each school year and accessible to each person responsible for its implementation.
- ISPs are reviewed and revised at least annually regarding student progress toward goals and in the general education curriculum.
- 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.
- Parents are 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 parents are informed that they may bring other persons knowledgeable about the student to the meeting. A copy of the ISP will be given to the parents.
- The team developing the ISP will consider the student’s strengths, educational needs/deficits, and results of the most recent evaluations. The private school general education teacher should participate in the development, review, and revision of the ISP.
- Special education services provided to parentally-placed private school students with disabilities, including materials and equipment, will be secular, neutral, and non-ideological.
- Services may be provided at a public school building or another agreed-upon site (including religious schools to the extent consistent with the law) determined by the LEA in consultation with appropriate representatives of private school students.
- Services provided to private school students with disabilities by the LEA must be provided by personnel meeting the same standards as service providers in the public schools.

## **B. Location of Services**

Taking into consideration the information obtained in the consultation process, the LEA makes the final determination of the location of services. Services can be provided at the private school, a public school, or other location. The Comments to the Federal IDEA regulations state that the United States Department of Education believes, in the interests of the student, that services should be provided on-site at the private school so as not to unduly disrupt the student’s education unless there is a compelling rationale for the services to be provided off-site.

### **C. Transportation**

The LEA is not required to transport a student with disabilities enrolled in the private school from home to the private school. If transportation is necessary for a private school student to benefit from or participate in special education or related services, the LEA must provide transportation from the student's school or home to the site where those services will be provided. The LEA is responsible for the student's return 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.

## **Section 6: Funding**

### **A. IDEA Part B Funding**

Part B funds for Equitable Services may **not** be paid directly to a private school. The LEA must spend a proportionate share of both Section 611 federal grants (for students aged 3-21) and Section 619 federal grants (for children, ages 3-5). It must be used to provide special education and related services to students with disabilities who are enrolled by their parents in private elementary schools and secondary schools in order for the LEA to meet its responsibility for providing Equitable Services. The proportionate share under each federal grant is calculated by taking the proportionate number of students parentally placed in private schools located in the LEA's geographical boundaries (as reported on the October 1 Child Count) who have been identified as having a disability under the IDEA, compared to the total number of students with disabilities under the IDEA in the LEA.

**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, and 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 and 619 grant funds 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

### **B. Carryover of Unspent Funds**

Flow-Through funds (611/621) 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 and separate from the proportionate share requirements. Furthermore, regarding a student who does not reside in the district but attends school in the district where the private elementary or secondary school is located, the LEA cannot charge the LEA of residence for Child Find activities and Equitable Services, even if the student is a resident of another state.

### ***C. 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 services 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.

### ***D. Annual Count of Eligible Students***

On October 1, the LEA must submit to the OSDE the number of private school students evaluated, the number found eligible, and the number provided special education services. This includes 3-5 year-olds identified through the Child Find process who are enrolled in a private school or facility that meets the definition of an elementary school. This count is used to determine the amount of funds the LEA may expend providing special education and related services to private school students in the next school year. The LEA will consult with representatives of private school students to determine how to conduct the count.

### ***E. Required Expenditures for Parentally Placed Private School Students***

Parentally placed students with disabilities do not have an individual entitlement to services they would receive if they were enrolled in a public school. Instead, the LEA is required to spend a proportionate share or amount of Individuals with Disabilities Education Act (IDEA) federal funds to provide equitable services to this group of students. LEAs are required to consult with private school representatives and representatives of parents of parentally placed students with disabilities during the design and development of special education and related services for these children.

To meet the proportionate share requirement, each Local Education Agency must spend a proportionate share under each federal grant. It is calculated by dividing the total number of all students with disabilities under the IDEA in the LEA's district who have been identified through Child Find activities (including those in private schools) by the number of students parentally placed in private schools located in the LEA (as reported on the October 1 Child Count).

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.  $50 \text{ students with disabilities in private schools} / 1,000 \text{ total students with disabilities} = 5\%$  of the Section 611 grant. Meaning:  $(50/1000=.05)$ .

### **Flow Through (Project 621)**

- For students ages 3 through 21, an amount that is the same proportion of the LEA's IDEA Part B Flow Through funds as the number of students with disabilities ages 3 through 21 who are enrolled by their parents in private schools, including religious, elementary schools and secondary schools located in the LEA, is to the total number of students with disabilities in its jurisdiction ages 3 through 21.

### **Example of Purchases:**

- instructional materials and supplies (e.g., workbooks, books, etc.)
- periodicals
- private school personnel training
- testing materials
- related services (OT/PT/Speech)
- technology
- 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.

### **Preschool Private (Project 641)**

- For students ages 3 through 5, an amount that is the same proportion of the LEA's IDEA Part B Preschool funds as the number of students with disabilities ages 3 through 5 who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the LEA, is to the number of students with disabilities in the jurisdiction ages 3 through 5.
- Private School expenditures and purchases are the same as mentioned under Flow Through Project 621. 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.

### **Equitable Services Carryover**

- If a district hasn't expended all of the funds for equitable services described above by the end of the fiscal year for which funds were appropriated, the district must spend the remaining funds for special education and related services on parentally placed private school students with disabilities during a carry-over period of one additional year plus 3 months. The allocation has a 27-month lifespan.

### **For example:**

- First Year (12 months)
- Second Year (15 months)

**NOTE:** As part of the consultation and resulting agreement between the LEA and private school, it should be noted that all items purchased with proportionate share funds remain the property of the LEA.

## **Section 7: Lindsey Nicole Henry (LNH) Scholarship**

The Lindsey Nicole Henry Scholarship for Students with Disabilities Program Act was established by Oklahoma law in 2010. The Lindsey Nicole Henry (LNH) Scholarship Act authorizes the parent or guardian of a public school student with a disability who is served under the Individuals with Disabilities Education Act (IDEA) to exercise their parental option and request to have an LNH Scholarship awarded for their child to enroll in and attend in participating private school approved by the State Board of Education. The child must have been on an IEP prior to the request; spent the prior school year in attendance at a public school in Oklahoma; and reported by public school for funding purposes during that year. For purposes of the scholarship, "prior school year in attendance" means that the student was enrolled in and reported by a school district for funding purposes during the preceding school year on October 1.

The Act authorized LNH scholarship eligibility without the "prior school year in attendance" for the following categories of students:

- A student who is a child of an active service military family with permanent change of station orders who has moved to Oklahoma after receiving IDEA services in another state.
- A student who has been provided services under an Individualized Family Service Plan (IFSP) through the Sooner Start program and during transition has been determined to be eligible for school district services.
- A student who has been in out-of-home placement through the office of Juvenile Affairs.
- A student who has been in out-of-home placement through DHS, or who was adopted while in the permanent custody of DHS.

## ***A. LNH Scholarship Calculation Criteria***

The calculated LNH Scholarship amount will be equivalent to the total State Aid factors for the applicable school year multiplied by the grade level and disability weights (not applicable to students with ISPs) generated by that student for the applicable school year. Students who are eligible due to their DHS status will not have disability weights; therefore, their calculated scholarship amount will be equivalent to the total State Aid factors for the applicable school year multiplied by the grade level weight.

- The disability weights used in calculating the scholarship amount will include all disability weights which correspond to the disabilities included in the multidisciplinary evaluation and eligibility group summary for the student at the time the request for a scholarship is made by the parent or legal guardian (not applicable to students with ISPs).
- The maximum scholarship amount is calculated by the Oklahoma State Board of Education for each year the student is participating in the scholarship program.
- The amount of the scholarship will be the amount calculated in the above paragraph or the amount of tuition and fees for the private school, whichever is less, minus up to two and one-half percent (2 ½%) of the scholarship amount which may be retained by the OSDE as a fee for administrative services.
- Payments are made in arrears at the end of each school quarter. The payments are made payable to the parent or legal guardian and mailed from the OSDE to the private school that the student attends.
- The parent or legal guardian will restrictively endorse the warrant to the private school for deposit into the account of the private school.
- The parent will be responsible for all additional costs associated with the education and special education services incurred by the private school for the student including the cost of teachers, equipment, material, and special costs associated with the special education class, including transportation.

## ***B. LNH Scholarship Application Procedure***

### **Private School Application Procedures:**

Private schools that wish to participate with the LNH Scholarship program must notify OSDE of its intent by completing the Lindsey Nicole Henry Scholarship Private School Application and providing the required documentation. The OSDE shall approve a private school as eligible to participate in the scholarship program upon the determination that the private school meets specific requirements, such as accreditation set by the Oklahoma State Board of Education (OSBE) or another accrediting association approved by the OSBE. Additional requirements for private schools can be found on the OSDE's website for the Lindsey Nicole Henry Scholarship Program for Children with Disabilities.

**Parent Application Procedures:**

LEAs are only responsible for notifying the parent about the LNH Scholarship. However, the LEA is **not** involved in the application nor the approval of the LNH Scholarship. The application process and approval must go through the OSDE. Below is a list of requirements for parents to apply for the LNH Scholarship:

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, 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. Accepting the LNH Scholarship is the same as revoking consent for special education services. Parents will complete and submit to the resident LEA a Revocation of Consent for Special Education and Related Services form within (10) business days of receipt of the scholarship approval memo. Services cannot be revoked in part; therefore, the parent's request for revocation will forfeit all special education, related services and any other supports included in the student'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 that the student will now be considered nondisabled. Offer the parent a copy of the Notice of Procedural Safeguards (Parents' Rights).
6. If the parent revokes consent for special education, the LEA:
  - a. Is not in violation of the requirement to make available a FAPE to the student for its failure to provide services to the student;
  - b. Will treat the student as a nondisabled student for disciplinary purposes;
  - c. Is not required to amend the student's education records to remove any references to the student's receipt of special education services; and
  - d. The parent or the LEA may, at a later date, initiate a request for an initial evaluation to determine if the child is a child with a disability.

## Section 8: Disagreements, Mediation, Due Process

### A. Dispute Resolution

Parents of parentally-placed students in private schools have limited grounds to file complaints with OSDE or request a due process hearing. However, a parent of a student enrolled by that parent in a private school has the right to file a due process complaint regarding child find requirements and evaluation.

## **B. Due Process Hearing**

Due process hearing provisions do **not** apply to issues regarding the provision of special education or related services on an ISP to any particular parentally-placed private school student with disabilities whom an LEA has agreed to serve. There is no individual right to provide all special education and related services for such children under the IDEA. Federal rules limit the grounds on which parents can file for due process specific to the LEA's Child Find obligation (e.g., the parent challenges the determination of their child's eligibility for special education services (34 C.F.R. §300.140(a) Due process not applicable, except for Child Find). The complaint must be filed with the LEA in which the private school is located; and a copy must be forwarded to the Oklahoma Department of Education, Special Education Services by the LEA.

## **C. State complaints**

Disputes that arise regarding Equitable Services are subject to State complaint procedures. A parent may file a signed written complaint, in accordance with State complaint procedures, alleging that an LEA has failed to meet the private school requirements, such as failure to properly conduct the consultation process.

Refer to Chapter 9 "Procedural Safeguards" and Chapter 11 "Dispute Resolution" for more information regarding due process and State complaints.

# **PART 2: CHARTER SCHOOLS**

## **Section 1. Definition of Charter Schools including Virtual Charter Schools**

In Oklahoma, a charter school is a public school established by contract with a board of education of a school district, a technology center school district, a higher education institution, a federally recognized Indian tribe, or the State Board of Education pursuant to the [Oklahoma Charter Schools Act](#). Oklahoma offers:

1. Brick and Mortar Charter Schools where students can attend in-person;
2. Virtual Charter Schools where students participate in online instruction; and
3. Blended Charter Schools where students participate in a blended program of in-person and virtual instruction.

A charter school operates as a non-profit, publicly funded (at no cost to parents), 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).

## **Section 2. Accreditation, Purposes and Responsibilities of Charter Schools**

Like any other public school, charter schools must go through an accreditation process through the Office of Accreditation at the OSDE. This is to ensure that charter schools are compliant with all federal and state laws. A charter school maintains its own board of governance in addition to being accountable to their sponsor, its authorizer.

The Oklahoma Charter School Act lists seven (7) purposes for charter schools:

1. Improve student learning;
2. Increase learning opportunities for students;
3. Encourage the use of different and innovative teaching methods;
4. Provide additional academic choices for parents and students;
5. Require the measurement of student learning and create different and innovative forms of measuring student learning;
6. Establish new forms of accountability for schools; and
7. Create new professional opportunities for teachers and administrators including the opportunity to be responsible for the learning program at the school site.

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

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

- Provide oversight of the operations of statewide virtual charter schools in this state;
- Establish a procedure for accepting, approving, and disapproving statewide virtual charter school applications and a process for renewal or revocation of approved charter school contracts that meet the procedures set forth in the Oklahoma Charter School Act; ([70 O.S. § 3-145.3](#))

- Make publicly available a list of supplemental online courses, of high-quality options aligned with the subject matter standards adopted by the State Board of Education; and
- Negotiate and enter into contracts with supplemental online course providers to offer a state rate price to school districts for supplemental online courses that have been reviewed and certified by the Statewide Virtual Charter School Board. ([70 O.S. § 3-145.3](#))

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

### ***B. FAPE for Virtual Charter and Charter Schools***

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

Students, who attend public charter schools or virtual charter schools, and their parents retain all the rights given to them in the public school under the IDEA. Charter schools or virtual charter schools must make available a full continuum of services needed to provide FAPE 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 team may determine that specific services are needed to offer a FAPE and are not available at the charter school; therefore, these services must 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.

## **Section 3. Parent/Student Rights Regarding Attendance and Participation**

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

A charter school student is a public school student. Students with disabilities who attend charter schools and their parents have all of the same rights granted to students who attend other public schools. These rights are provided under the IDEA; the Elementary and Secondary Education Act (ESEA), reauthorized as the Every Student Succeeds ACT (ESSA); Section 504 of the Rehabilitation

Act, the Americans with Disabilities Act (ADA), and the Family Educational Rights and Privacy Act (FERPA). Pursuant to Oklahoma State law, charter schools are required to comply with all federal and State laws relating to the education of students with disabilities in the same manner as a school district.

## Section 4. Responsibility and Provision of Services

The Oklahoma Charter Schools Act requires each charter school to comply with all federal and State laws relating to the education of students with disabilities in the same manner as a public school district. A charter school may not unilaterally limit the type or amount of services it will provide to a child with a disability and must ensure a program of FAPE in accordance with that student's IEP. The charter school must have in effect policies, procedures, and practices that are consistent with State policies, procedures, and practices in special education. Areas to be addressed include the following:

- Nondiscriminatory enrollment procedures.
- Adequate plans, policies, procedures, contractual or other arrangements, and budget to ensure that students with disabilities attending the charter school will receive special education and related services that meet all the requirements of the IDEA. Those requirements include:
  1. Parental consent for initial evaluation and placement must be obtained in writing consistent with [34 CFR § 300.9](#) and [34 CFR § 300.300](#);
  2. Special education and related services are in place by the first day of the school year each year and in accordance with each student's IEP;
  3. Conduct Child Find activities and evaluations, including reevaluations;
    - a. Do the child find obligations apply to children enrolled in public charter schools? Yes, the Child Find requirements apply to children enrolled in public charter schools, including virtual charter schools, that operate as LEAs themselves or are public schools of an LEA (34 C.F.R. §§ 300.111(a)(1)(i), 300.201, and 300.209).
    - b. Who conducts the evaluation the LEA where the charter school is located or the charter school themselves? The answer depends on if the charter school operates as part of an LEA or if they operate as their own LEA or that the charter is neither an LEA themselves nor a school of an LEA:
      - If a student is enrolled in a charter school that **is part of an LEA**, the LEA would be responsible for implementing child find requirements for students attending the charter school, unless State law assigns responsibility to some other entity (34 C.F.R. § 300.209(b)(2)(i)).
      - If the student is attending a charter school that **operates as its own LEA**, the charter school LEA would be responsible for implementing

child find requirements, unless State law assigns responsibility to some other entity (34 C.F.R. § 300.209(c)).

- If the student is enrolled in a charter school **that is neither an LEA nor a school of an LEA**, the SEA is responsible for ensuring the child find requirements are met.

For additional guidance and answers involving Child Find obligation for charter schools see [“Return to School Roadmap: Child Find Under Part B of the Individuals with Disabilities Education Act.”](#)

1. Develop, review, and revise IEPs to ensure the educational needs of students, including behavioral and social/emotional needs, are addressed in accordance with State and federal law;
  2. Meet least restrictive environment (LRE) requirements that include a full continuum of placement options;
    - Although types of special education and related services are the same for virtual schools as compared to brick-and-mortar schools, how those services are delivered may differ.
  3. The provision of supplementary aids and services, including accommodations and modifications, in the general education environment;
  4. Implementation of the IDEA discipline procedures and protections; and
  5. Procedural Safeguards to protect student and parent rights.
- Provisions to employ special education and related services professionals who are appropriately licensed and/or certified for the duties they are assigned.
  - A professional development plan for the training needs of special education personnel, as well as, general education teachers in order to meet the needs of students with disabilities who are enrolled in the charter school.
  - A plan that ensures access to charter school programs, as required by the ADA. This plan may include the actual location of the school, classrooms, and settings within the classrooms to permit access by students with disabilities.
  - A transportation plan for students with disabilities who may, because of the nature of the disabilities, be entitled to specialized transportation as a related service even if the charter school does not provide transportation to other students.

### ***A. Considerations for Virtual Charter Schools***

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

### ***i. Individualized Education Program (IEP)***

By definition of Individualized Education Programs, IEP's for each student should be specific to promote successful learning. For example, not all IEP's for all students should include the same face-to-face-instruction.

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

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

### ***ii. Least Restrictive Environment (LRE)***

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

### ***iii. Related Services***

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

1. In-person at home;
  - If students reside close to speech therapists and parents are comfortable with the therapist providing the services in the home, the school may arrange for a therapist to provide these services in the student's home.
2. At the therapist's office; or
  - The virtual charter school may make arrangements for the child to be transported to an office outside of their home to receive services. This arrangement requires that the virtual school secure appropriate transportation for the student (and in some cases the parent). Appropriateness depends on the unique circumstances of the student. For example, a student may need accessibility supports, such as transporting a wheelchair, as part of the transportation. The school must also consider the length and duration of the transportation in determining appropriateness (transporting a student to services two hours away may be inappropriate – and services should be provided closer to the student). Transportation arrangements must be described on the IEP as a part of the related services provided by the school.

3. Via synchronous (real-time) or asynchronous (over a period of time) online communication.
  - **Tele-practice**, also referred to as tele-therapy, is therapy provided to students via electronic communication devices when the student and therapist are not in the same physical location. While still viewed as a relatively emerging field, tele-practice may improve students' access to therapists in fields with shortages (i.e., speech and language, psychotherapy counseling, physical therapy, and occupational therapy) and provide access for services to students in remote rural locations.

### ***B. Considerations for Charter Schools Sponsored by LEAs***

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

- The charter school will ensure services to students with disabilities attending the charter schools are provided in the same manner as the LEA services students with disabilities in its other schools, including providing supplementary and related services at the charter school to the same extent to which the LEA has a policy or practice of providing such services to its other public schools. The charter school will provide services so that students with disabilities receive a FAPE, and at no cost to the parents. 20 U.S.C. §1414(d)(1)(A)(i)(IV) and §1401(9).3.
- The charter school will participate in all monitoring activities conducted by the OSDE.
- The charter school may enter into an Individualized Education Program (IEP) service agreement with the chartering LEA or other entity to provide special education and related services for its students.

### ***C. Considerations for Charter and Virtual Charter Schools Not Sponsored by an LEA***

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

- Participate in all monitoring activities conducted by the OSDE; and
- Participate in technical assistance in its first year of operation through the OSDE to ensure that the essential components of a special education program are in place.
- The charter school may enter into an Individualized Education Program (IEP) service agreement with another entity to provide special education and related services for its students.

## **PART 3 RESIDENTIAL AND OTHER SETTINGS**

### **Section 1: Residential Facilities**

Students may be placed in a residential facility for full time care and treatment whether the facility is public or private. Students with disabilities are either parentally placed in a residential facility, placed through a court system, placed by the Department of Human Services (DHS), or through the IEP team determination. Students who have been adjudicated and sentenced to treatment at a secure care treatment facility or juvenile correctional facility may be placed in the residential facility through the Department of Human Services. They are not always sentenced to serve time in prison, unless convicted as an adult.

#### ***A. Education in Residential Facility Types***

When students are placed in a residential treatment facility they are still entitled to a Free Appropriate Public Education (FAPE) and the special education services that are specifically designed to meet the student's individual disability-related needs. In most circumstances, the LEA where the facility is located is responsible for providing these educational services. No school district shall be required to provide educational services for residents of the facility or participants in the program until at least sixty (60) calendar days have elapsed from the time in which the local board of education was initially notified of the need unless the school district so agrees to provide the educational services sooner. OAC 210:10-1-13(d)(1)

Residential treatment facilities include but are not limited to:

- Juvenile Detention & Secure Care Treatment Facilities
- Drug and Alcohol Treatment Facilities
- Inpatient Mental Health Facilities
- DHS Residential Child Care Programs
- DHS Foster Care and Group Homes

Residential Treatment Facility	Level of Care	Site for Provision of Educational Services
Orphanage facility for children who have been abandoned by their parent and parent's failure to respond to notice; or a Eleemosynary (charitable) child care facility for children and youth placed by their parent or guardian.	Full Time Residential	The LEA where the facility is located is responsible for providing education services for students living in Orphanages or Eleemosynary Child Care facilities either at the facility or on the LEA's school campus. (OAC 210:10-1-13(c)(1))
State Operated Institutions (includes emergency shelters)	Full Time Residential	The LEA where the facility is located is responsible for providing education services for students living within State Operated Institutions at the facility or on the LEA's school campus.
*Foster Home	Full Time Residential	The LEA where the foster home is located is responsible for the education services on the LEA's school campus; or the LEA in which the child resided prior to being placed in foster care, or the school district in which the child's previous foster family home is located, whichever is best for the student.
**Out-of-Home Placement means "a living arrangement for a child other than the home of the child's parent(s), legal guardian, or legal custodian from whose custody the court has removed the child" (OAC 340-75-6-4). For example, a 24-hour residential child care facility where children live together with or are supervised by adults who are not their parents or relatives.	Full Time Residential	The LEA where the facility is located is responsible for providing education services for students living in Out-of-Home facilities either at the facility or on the LEA's school campus depending on the contractual agreement.
<p>Juvenile Detention Facility -and- ***Secure Care Treatment Facilities -and- County or City Jail</p> <p>"While incarcerated in a jail, the student shall be considered a resident of the school district where the jail is located" (OAC 210:10-1-13(g)(1))</p>	Full Time Residential	<p>The LEA where the facility is located is responsible for providing education services for students at the Juvenile Detention or Secure Care Treatment facility</p> <p>Students do <b>not</b> attend an onsite (LEA) public school campus.</p>
Inpatient Hospitalization	Full Time Residential	The LEA where the hospital facility is located is responsible for providing

		education services for students at the facility Students do <b>not</b> attend an onsite (LEA) public school campus.
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\*For school purposes if a foster parent requests that the residence of a foster child to be the school district in which the child resided prior to being placed in foster care, or the school district where the child's previous foster family home is located, the district selected by the foster parent shall be the child's district of residence.

\*\*There are situations when a child does not meet residency standards such as when children are placed in a facility that is out of the child's home and not in the school district where the child legally resides such as the J.D. McCarty Center. In such situations, no later than the tenth school day of admittance, the district in which the out-of-home placement or treatment is located must be notified of the child's admittance.

\*\*\*Students in secure care treatment facilities are not incarcerated but have been adjudicated and are in a secure placement for treatment.

## ***B. Contractual Agreements***

Under (OAC 210:10-1-13(d), a contractual agreement for the provision of educational services between the LEA and the facility must be developed and signed by the chief executive officer of each agency or organization or the chairman of the board of each licensed public or private agency. The purpose of the agreement is to outline the responsibilities of each party. The district and facility will enter a written contract at least annually. The State Department of Education shall provide a sample contract with standard or uniform provisions for use by school districts that provide education to students in such facilities or programs. Provision in the contract shall be designed to ensure an appropriate education to which a student is entitled in the most cost-efficient manner to the responsible school district and shall allow for local flexibility in funding and education arrangements. The cost for related services, therapies, treatments, or support services for eligible students shall be the responsibility of the facility unless otherwise agreed by the contractual parties or as otherwise specified in the IEP. Otherwise, valid obligations to provide or pay for such services, such as Medicaid, shall remain in effect for students who are eligible from sources other than the school district.

This contract should address responsibilities related to staffing, technology, books/instructional materials, meals, classroom space, cleaning, etc. The contractual agreement for educational services shall include the following as a minimum:

### ***i. Number of Hours Taught***

Many residential facilities provide for 3 hours of instructional time due to requirements necessary for the mental health treatment of the student; and therefore, the LEA is required to complete an application describing the reasons for the abbreviated school day. For example, one-half of the day is focused on group, individual and family therapies, while the other half of the day is focused on instruction and earning credits toward graduation (if

high school age). Students will receive instruction in the core subjects of English, Math, Science, Social Studies and Art while placed in the residential facility.

OAC 210:10-1-13(d)(3)(B) states, *“The State Department of Education shall authorize, upon application by a school district, an abbreviated day schedule for the education provided for students in a residential care or treatment facility located within the district. The Application for Accreditation or amended application shall serve as the district’s application for these purposes. Education services available shall be provided to children/youth no later than the tenth school day of admittance. Exception will be for cause in the interest of the child and documentation by recommendations of the attending licensed psychologists, psychiatrists, or physicians on the residential care or treatment staff.”*

## **ii. Teacher Certification**

OAC 210:10-1-13 (d)(3)(A) states, *“Teachers shall be appropriately certified by the Oklahoma State Department of Education. A certified teacher who is qualified to teach in an accredited school district’s educational services for a residential care or treatment facility may teach subjects in which the teacher does not hold certification This shall only be valid upon application of a school district offering on-site educational services in a residential or treatment facility and approved by OSDE only for those purposes.”*

## **iii. Adequacy of Facilities**

OAC 210:10-1-13 (d)(3)(C) states, *“The residential care, treatment, or emergency shelter facilities shall provide and maintain areas appropriate for the school district to conduct the educational program pursuant to contractual agreement and shall be responsible for all services and costs associated with such services which are not directly related to education. Relevant safety and health standards shall be followed. Such facilities shall meet the accreditation standards of the State Board of Education for educational services and shall meet other existing standards which apply to facilities of residential care, treatment, or emergency shelter programs.”*

## **iv. Educational Plans**

OAC 210:10-1-13 (d)(3)(D) states, *“Educational plans, including plans for transition in to regular school setting. Education plans for students shall describe the appropriate curriculum, instructional time, and setting for each child.”* For specific information about the educational plans see (OAC 210:10-1-13 (e)(1) et seq).

## **C. Child Find**

Students may be placed in a residential facility for a length of stay that ranges from a few days to weeks to multiple years. Regardless of the length of the placement, the LEA where the facility is located is ultimately responsible for implementing Child Find and a FAPE for students residing in these facilities. Evaluations for students living in residential facilities must be completed in a timely manner, (within 45 school days from the date of parent consent to the MEEGS) as are the evaluations for students not living in treatment facilities, even if the student will not be in the facility long enough to complete the evaluation. If the student transfers to another LEA or residential facility and the evaluations have begun but they have not been completed, the responsibility for Child Find and a

FAPE transfer with the student. Both districts should coordinate to ensure completion in a timely manner.

#### ***D. Enrollment/Child Count***

Students in residential facilities will be enrolled in the LEA in the same way as other resident students of the LEA. In addition, students in residential facilities will be included in Child Count in the same way as other resident students of the LEA.

#### ***E. Secondary Transition***

Students in residential facilities are entitled to receive secondary transition services applicable through IDEA. Students placed in adult prisons and whose eligibility will end because of their age or before being released from prison based on consideration of their sentence are not eligible for secondary transition services through IDEA.

#### ***F. Behavior/Discipline***

The LEA and the IEP team should be cautious if shortening a student's school day beyond the abbreviated day for all students within the Residential Treatment Facility. Shortening the student's day will limit the student's ability to make adequate progress towards their IEP goals and limit the student's access to the general education curriculum. If the IEP team determines a need to shorten the student's instructional day in a residential facility, then it must be in collaboration with the licensed physician/psychiatrist/psychologist treating the student's mental health needs and other agency staff involved in the child's care. The IEP team should consider all other options and document the reasons why these options were not appropriate, before making a determination of shortening the student's abbreviated school day within the residential facility. These actions of the LEA must include a Functional Behavioral Assessment (FBA) and a Behavior Intervention Plan (BIP) to make certain all means have been attempted to intervene and reduce the maladaptive behaviors.

If determination is made to shorten the student's abbreviated school day, documentation must be provided as to the reasons and include a reintegration plan to increase the student's instructional day/week to the same length as the other students within the residential facility. It is recommended to monitor and review the reintegration plan frequently in an IEP meeting to determine whether a shorten day continues to be necessary. See Chapter 10 "Behavior", Section 4 "Shortened Day", for more information.

OAC 210:10-1-13(e)(10) states, *"The facility shall provide assistance in severe, disruptive situations and will provide supervision of out-of-classroom suspension, time-out, and detention during school and, when requested by the assigned education personnel, will intervene in matters of discipline, unless otherwise agreed to in the contract."* LEAs may consider adding this language to the contract between the LEA and Facility.

#### ***G. Student Transfers***

When a student transfers from one facility to another within the same state, the new LEA is responsible to provide the student with FAPE and services that are described in the IEP from the previous LEA. The services must be comparable to the services described in the student's IEP from

the previous LEA. All the components of the IEP are still applicable for the student to receive services.

Students who have multiple transfers between facilities and districts are at greater risk for drop-out. Similarly, these same students are a greater risk to not earn credit, which in turn delays graduation or further increases the risk of drop-out. It is best practice to review the student's transcript and withdrawal grades upon transfer. If enrolling mid-semester, enroll the student in the same core courses which will allow the student to complete the course and earn credits toward graduation. Upon the student transferring to another LEA and/or facility, include a copy of the transcript along with withdrawal grades in the forwarding paperwork to the new receiving district.

#### **H. Individualized Education Program (IEP)**

OAC 210:10-1-13(e)(1) states, *"Each child/youth shall have his/her educational needs reviewed within five (5) school days by a team of professionals to determine the educational needs of the student and to develop an educational plan which is consistent with state and federal laws and regulations."* Therefore, the LEA should document the review of records on the "Record of Access" (OSDE Form 1) within five days of the date the student was admitted to the residential facility. The education services must be made available to a student no later than the 10th school day of enrollment, including the provisions of the IEP (either writing a new subsequent IEP or accepting the IEP as written from the previous LEA).

OAC 210:10-1-13(e)(8) states, *"The eligible student's school district of residence shall be notified immediately by the providing district upon finding that the eligible student requires special education and related services and notified as to the time, date, and location of meetings for the purpose of planning the student's IEP and subsequent reviews. The facility may have a representative present at the IEP conference to advise the IEP team of any concerns or information the facility has to offer regarding the eligible student's educational needs and eligibility for related services. The facility and the providing district shall coordinate with the eligible student's school district of residence as necessary for the development of the IEP."*

OAC 210:10-1-13(e)(9) states, *"Teachers shall be assigned for provision of educational services in accordance with the appropriate class size and teacher to student ratio."* Each residential facility has specific adult to student ratio requirements determined by other state agencies and may need to be defined within the contract between the residential facility and the LEA. However, the class size and caseload must not exceed the requirements as outlined in Chapter 13 "Special Education Staffing".

#### **I. Parental Rights**

The IDEA permits, but does not require, a State to transfer all rights afforded to parents under IDEA to students who are in an adult or juvenile, State or local residential facility when the student with a disability reaches the age of majority under State law, unless the student has been determined to be incompetent under State law. In Oklahoma, parental rights transfer to students once they reach eighteen (18) years old. Once a student reaches eighteen (18), questions regarding guardianship as an adult may arise. As a best practice, it is advisable for students, families, and the IEP team to consider alternatives to guardianship first, in order to preserve a young person's legal independence to the maximum extent possible.

Until a student turns eighteen (18), parents do not lose their rights under the IDEA when their child is placed in a residential or a correctional facility, even if the student has been convicted as an adult and incarcerated in an adult prison. When a student is removed from the home by DHS or another State agency, it does not automatically take away the parent's rights. Parent's rights are terminated only by an action of the court. Parents whose rights are still in-tact, must be included on the IEP team and be afforded all other parental rights under IDEA and FERPA.

Residential facilities may not assume the role of a parent under the IDEA; and therefore, may not, for example:

- Provide or refuse consent for a student's initial evaluation or reevaluation, or
- Provide, refuse or revoke consent for services under the IDEA or
- Serve as the parent on an IEP team.

### ***J. Surrogate Parent***

If the child is in a residential child care facility maintained by the Oklahoma Department of Human Services (OKDHS) where the parents' rights have been legally terminated and the child is a ward of the state, then the LEA will need to assign a surrogate parent if one has not already been appointed by a judge. "Surrogate Parent" means an individual appointed by the LEA to make educational decisions regarding the Free Appropriate Public Education (FAPE) of a child with a disability (34 C.F.R. § 300.519).

The LEA must ensure that the person selected as a surrogate parent is **not** an employee of the LEA, SEA, or any other state agency (e.g., DHS Social Worker) involved in the education or care of the child and has no personal or professional interest that conflicts with the interest of the child. The surrogate parent must have knowledge and skills that ensures adequate representation of the child. The LEA is required to provide the assigned person surrogate training which includes:

- Information regarding state and federal requirements for education of children with disabilities.
- Procedural Safeguards (i.e., Parents' Rights) and responsibilities.
- Structures, procedures, or forms of the LEA to document procedural safeguards (e.g., explain special ed forms such as the IEPs, MEEGS, etc.);
- Step-by-step process for delivery of special education services;
- Information about the nature of the child's disability and needs; and
- Other information deemed necessary by the LEA or surrogate parent.

Once the surrogate parent training has occurred, then the LEA representative and the surrogate parent will sign and date the Surrogate Parents Verification of Training (OSDE Form 10). This record will be maintained in the child's confidential special education folder, as well as

electronically uploaded into the online special education system provided by the OSDE. If the assigned surrogate parent no longer wishes to serve as the child's representative, then this request is honored by the LEA. A written statement by the resigning surrogate parent or a statement written on the OSDE Form 10 could be made to document this action. Place this documentation in the student's file. A new surrogate parent must be selected, trained, and assigned to the same student. A new OSDE Form 10 will need to be signed and dated with the new surrogate parent.

### ***K. Parent Participation***

If parents are still legally the parent, then the LEA must fulfill their obligation to contact the parent and provide parent participation in the IEP process. It may be difficult for some parents to participate in person in the IEP team meetings if the residential facility is not located near the parent's residence. Nonetheless, the parent participation requirements are fully applicable to LEAs that are responsible for educating students with disabilities in residential facilities. LEAs should offer opportunity for participation via phone conference, or virtual/remote means, including various location options.

If neither parent will attend an IEP team meeting, the LEA must document the options provided to the parents for alternative means of participation, including the parent's response that they decline to meet. The LEA must maintain required documentation each time the IEP team meeting is conducted without either parent in attendance if the LEA is unable to convince the parent to attend. Moreover, the LEA must take whatever action is necessary to ensure that the parents understand IEP team meeting proceedings, including arranging for an interpreter for parents with deafness or whose native language is other than English. Following the meeting, the LEA must provide a copy of the finalized documents in addition to the Parents' Rights and a Written Notice. Refer to Chapter 9 "Procedural Safeguards" regarding parents' rights.

### ***L. Correctional Facilities***

#### ***i. Definition***

A correctional institution or correctional facility refers to juvenile justice facilities, detention facilities, jails, and prisons where students with disabilities are, or may be, confined. Additionally, students with disabilities are defined in 34 CFR § 300.8.

#### ***ii. Interagency Agreements***

When students are placed in a correctional facility, it often requires ongoing cooperative collaboration between multiple agencies responsible for the care, welfare, and education of students. The interagency agreement is purposed to share information between programs and representatives of the juvenile court systems, law enforcement, social services, probation, and prosecution. The agreement outlines each party's responsibilities for the safety, welfare and education of youth placed in a facility. The LEA should obtain the parent/guardian's signed Consent for Release of Confidential Information in order for the LEA to share personal identifiable information (PII) with the collaborating agencies. For information on who can serve as the parent see Chapter 9 "Procedural Safeguards".

#### ***iii. Educational Services***

LEAs are responsible for providing special education and related services to eligible students with disabilities in the correctional facilities located within the boundaries of their district, unless the

facility is accredited as an LEA through the Oklahoma State Department of Education. Students residing within correctional facilities will work to meet the graduation requirements of the State. For more information about when a student is no longer entitled to special education services, see Chapter 7, Section 1.

The U.S. Department of Education, Office of Special Education Programs (OSEP) makes it clear that “[r]egardless of the structure in a State, the State as the IDEA, Part B grantee, has ultimate responsibility for ensuring FAPE is made available to all eligible students with disabilities residing in State and local juvenile and adult correctional facilities.”

10A O.S. §10A-2-5-301 “Any child under eighteen (18) years of age who is a legal resident or the child of a legal resident of the State of Oklahoma who is detained, held or arrested for any offense...shall be identified within seventy-two hours of such detention or arrest for educational needs.....while in such facility or jail, including city, county and state jails.” When a school district receives notification of the need for educational services from a facility admitting a minor who committed a crime, the school district shall provide the student with an appropriate education plan, through the IEP process, which is designed for the possible reintegration of the student into school once released from jail. The educational plan shall include, as part of the eventual reintegration into the public school, only the core units (i.e., English, Math, Science, Social Studies, and Art) required by the State Board of Education while the student is incarcerated, in order for the student to progress in the general curriculum in which the student is enrolled. The education plan contemplated by this rule corresponds to the education plan referenced in the Oklahoma School Laws at 70 O.S. § 24-101.3(D) for students suspended from school. A copy of the education plan developed by the school district shall be provided to the facility, the student, and a copy shall be kept on file by the school district.

Each school district that includes a correctional facility within the district's boundaries shall designate an employee or employees of the school district who will be responsible for overseeing the educational services to eligible juveniles or adult students identified by the facility. While incarcerated, the student shall be considered a resident of the school district where the correctional facility is located.

#### **iv. Juvenile Detention Facilities (Tribal or County Juvenile Detention Centers)**

Juvenile detention facilities provide secure temporary care and custody of a child/youth under the age of 18 years charged with delinquency, pending Court disposition. Students eligible for special education services who have an IEP and who are in a facility operated by the Office of Juvenile Affairs (OJA) must receive their special education and related services. The LEA where the facility is located is responsible for providing FAPE to students with disabilities and fulfilling Child Find obligations.

#### **v. Secure Care Treatment Facilities (Central Oklahoma Juvenile Center, Southwest Oklahoma Juvenile Center)**

A minor who has committed a certain crime is not considered “convicted” but is identified as youthful offender or an adjudicated delinquent who, depending on the juvenile court determination, may be placed in a Secure Care Treatment Facility or Juvenile Correctional Facility. Students eligible for special education services who have an IEP and who are in a facility operated by the Office of Juvenile Affairs (OJA) must receive their special education and related services. The LEA where the facility is located is responsible for providing FAPE to students with disabilities and fulfilling Child Find obligations, unless the facility is accredited through the Oklahoma State Department of Education as its own LEA.

## **vi. Community/Local Jails**

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 jail is located is responsible for providing services. LEAs need to work closely with the local jail authorities 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. LEAs should work with local jails in advance to establish a procedure and be prepared to serve a student when necessary.

## **vii. Adult Correctional Facilities**

Prisons refer to State Facilities not Federal under the Bureau of Prisons...IDEA is not applicable to federal prisons.

The LEA where the correctional facility is located is responsible for providing FAPE to eligible adults. However, some exceptions apply.

### **LEAs are not required to provide special education and related services if:**

- The student is between 18 and 21 years old; **and**
- Prior to their incarceration in an adult correctional facility, the student was not identified as being a child with a disability; **and**
- Did not have an IEP. (34 C.F.R. § 300.102 (a)(2)(i)(A)(B)).

### **IMPORTANT NOTE:** This exception **does not** apply where:

1. The student with a disability, aged 18 through 21, had been identified as a student with a disability and had received services in accordance with an IEP, but left school prior to their incarceration, or
2. Did not have an IEP in their last educational setting but had been actually identified as a student with a disability (34 C.F.R. § 300.102(a)(2)(ii)).

### **LEAs do not have to include children with disabilities in state and district wide assessments if:**

- The student was convicted as an adult under State law; **and**
- Is incarcerated in an adult prison (34 C.F.R. § 300.324(d)(1)(i))

### **LEAs do not have to provide transition services if the student was (34 C.F.R. § 300.324(d)(1)(ii)):**

- Convicted as an adult under State law;
- Incarcerated in an adult prison; **and**
- Will age out of services before they are eligible to be released.

**LEAs may modify the student's IEP or placement (34 C.F.R. § 300.324(d)(2)(i)(ii)), if:**

- The student is convicted as an adult under State law;
- Incarcerated in an adult prison; **and**
- There is a bona fide security or compelling penological interest that cannot otherwise be accommodated.

### ***M. Adjudicated Students Returning to their Home District***

A student on a current IEP who has been adjudicated for violent crime must be provided FAPE as they return to their home district. Pursuant to 70 O.S. § 24-101.3(F)(1)(2) the LEA/IEP team may elect to not provide education services in the regular school setting until the school determines that the student no longer poses a threat to self, other students or school district faculty or employees. The IEP team must determine the most appropriate services and LRE.

70 O.S. § 24-101.3(F)(1)(2) states:

1. *"No public school of this state shall be required to provide educational services in the regular school setting to any student who has been:*
  - a) *adjudicated as a delinquent for an offense defined in Section 571 (2) of Title 57 of the Oklahoma Statutes (e.g., assault, battery or assault and battery with a dangerous or deadly weapon)*
  - b) *convicted as an adult of an offense defined as a violent crime in Section 571 of Title 57 of the Oklahoma Statutes,*
  - c) *who has been removed from a public or private school in the State of Oklahoma or another state by administrative or judicial process for a violent act or an act showing deliberate or reckless disregard for the health or safety of faculty or other students,*
  - d) *suspended as provided for in paragraph 3 of subsection C of this section*
  - e) *removed from a public or private school in the state or another state by administrative or judicial process for an act of using electronic communication, as defined in 70 O.S. § 24-100.3 of this title, with intent to terrify, intimidate or harass, or threaten to inflict injury or physical harm to faculty or other students.*
2. *The school in which a student as described in paragraph 1 of this subsection is subsequently enrolled may elect to not provide education services in the regular school setting until the school determines that the student no longer poses a threat to self, other students or school district faculty or employees. Until the school in which such student subsequently enrolls or re-enrolls determines that the student no longer poses a threat to self, other students or school district faculty or employees, the school may provide education services through an alternative school setting, home-based instruction, or other appropriate setting. If the school provides education services to the student at a district school facility, the school shall notify any student or school district faculty or employee victims of the student, when known,*

*and shall ensure that the student will not be allowed in the general vicinity of or contact with a victim of the student, provided the victim notifies the school of the victim's desire to refrain from contact with the offending student."*

## **Section 2: Group Homes/Family Foster Homes/Residential Child Care Facilities**

The treatment needs for children and youth who are in Oklahoma Department of Human Services (OKDHS) custody may be met either in a group home, specialized community-based home, or in acute or Residential Treatment Care (RTC) facility. These programs are either operated by OKDHS, by an agency, or individuals under formal contract with OKDHS and licensed by the Oklahoma Child Care Services as a child placing agency or residential child care facility.

To meet the complex treatment needs of the children and youth in DHS custody, the Child Welfare Agency maintains a continuum of community based residential care placement resources which vary in the level and intensity of treatment services provided:

**(Most Restrictive)**

Level E+

Level D+ and Level E

Level D

Level C

Level B

**(Least Restrictive)**

Students in DHS custody are placed for protections in cases filed against their parents exemplified as Parent vs. State. In these cases, the child welfare agency (CWA) has placement and care responsibility.

Students with disabilities ages 3-21 might live in environments such as:

- Group Homes for 18 years and older
- Family Foster Care
- Tribal Foster Care
- Interstate Compact on Placement of Children (ICPC) Out-of-State
- Other Foster Care
  - Specialized Foster Care
  - Therapeutic Foster Care (TFC)
- Community-Based Residential Services

- Residential Child Care Facilities
  - Emergency Children's Shelters
  - Pre-adoptive Homes

**Group Homes:** OKDHS (OAC 340-2-3-2) defines group homes as a single-family home located in the community close to other services and activities, which emphasizes family-style living in a homelike environment. The home is owned or leased by a private agency. The agency receives reimbursement from Developmental Disabilities Services (DDS) for supervising and supporting the residents of the home. Group Homes offer living arrangements for 6 to 12 people who share a home and receive up to 24 hours per day of supervision, support, and training in daily living skills. Group Home residents are 18 years of age or older. The LEA of residence for the group home would be responsible for providing IDEA services to eligible students with disabilities who have not obtained a regular diploma and are ages 18-21, including Child Find and FAPE obligations. The LEA of residence is not obligated to provide on-site educational services unless the IEP team determines home instruction as a type of service.

**Family Foster Care** provides 24-hours a day substitute temporary care and supportive services in a home environment for children in OKDHS custody who are school-age. If a child resides in a foster home, the residence of that child for school purposes is the foster home, not the school district where the parent, guardian or person having legal custody resides. If the foster parent requests that the residence of the foster child for school purposes be the school district in which the child resided prior to being placed in foster care, or the school district in which the child's previous foster family home is located, the district selected by the foster parent shall be the child's district of residence.

#### **Foster Parent vs Biological Parent**

Federal Register Vol. 71, No. 156, 46565 states that *"if more than one person is attempting to act as a parent, § 300.30(b)(1) provides that the biological or adoptive parent is presumed to be the parent if that person is attempting to act as the parent under § 300.30, unless the biological or adoptive parent does not have legal authority to make educational decisions for the child, or there is a judicial order or decree specifying some other person to act as a parent under Part B of the Act."* Therefore, the LEA must reach out to contact the biological or adopted parents to participate in the IEP meeting if the parents' rights have not been terminated, even though the child is temporarily in the State's custody living in foster care. Oklahoma laws limit a foster parent's rights under the IDEA if the biological parents still have the legal right to make decisions regarding the child's education (10A O.S. § 1-4-904: Termination of parental rights in certain situations). LEAs will need to communicate directly with the DHS and document attempts to contact the biological or adopted parents. The LEA may also invite the foster parent to participate in IEP and other IDEA meetings as an individual who has knowledge or special expertise about the child. In addition, the LEA should work closely with DHS and the foster family to understand the relationship between the biological parent and the foster parent. In some cases, it is necessary for the safety of the child, that the biological parent does not obtain the foster family's address or contact information. In this case, it is necessary to redact such information on any IDEA documents provided to the biological parent by the LEA.

**Tribal Foster Care** falls under the Oklahoma tribes' responsibility for certifying tribal foster care homes. OKDHS follows all federal and state Indian Child Welfare Acts (ICWA). The OKDHS must identify ICWA compliant placements to maintain the child's connection to family and tribe. Preference for placement is given to the child's family. If the family is not available, then tribal members from the child's tribe would be considered. Indian Tribes may intervene in any state child custody ICWA case.

When students with disabilities who are on an IEP are placed in a reservation or tribal school funded by the Bureau of Indian Education (BIE), those schools are then responsible for all special education and related services under IDEA and not the LEA where the tribal school is located. However, there are other schools where the individual school is tribally controlled and are not administered by the Bureau of Indian Affairs and BIE. Tribally Controlled Schools (TCS) are under the direction of individual Tribal Governments and build their programs based on educational sovereignty (i.e., they have a right and responsibility to educate their Indian children in a manner that supports their cultural and traditional belief systems).

**Interstate Compact on Placement of Children (ICPC):** There are times when states cannot find an appropriate placement for a child/youth in their home state. However, there exists an appropriate out-of-state placement with which the child has an existing connection, be it with a family member or other close relatives. This law is called the "Interstate Compact on the Placement of Children" (ICPC), which allows for "temporary" family foster care or possible adoption. If the child is placed temporarily with the foster family out-of-state, then the LEA of residence for the foster family's home is the LEA responsible for Child Find and FAPE obligations. The LEA where the parent lives, no longer is responsible for providing special education and related services since the child has been placed out-of-state. Collaboration is necessary with the out-of-state LEA to make certain to provide comparable services.

**Other Foster Care:** There are other types of foster care when the traditional foster family care placement is not meeting the child's needs such as:

- **Specialized Foster Care** provides 24-hours a day substitute temporary care and supportive services in a home environment for children who have a primary diagnosis of Intellectual Disabilities and are three years and older.
- **Therapeutic Foster Care (TFC)** is a residential behavioral management service provided in a family foster home setting. TFC serves children ages 4-18 who have special psychological, social, behavioral, and emotional needs. Children in TFC have special needs which require more intensive or therapeutic services than are found in a traditional foster family care home. Children placed in TFC receive counseling services; and other behavior management services.

When an LEA is unable to provide the educational program for students with disabilities placed in therapeutic or specialized foster care there are options for the LEA:

- Oklahoma School Law Section 13(C) Residence of Child - Attendance in Transportation Area. *"For the purpose of ensuring that a child placed in a therapeutic foster family home, as defined in Section 10A-1-1-105 of the Oklahoma Statutes [Oklahoma Children and Juvenile Code], receives an appropriate education, no receiving school district shall be required to enroll such a child if the enrollment would cause the proportion of students in*

*therapeutic foster family homes as compared to the average daily membership of the receiving district for the preceding school year to exceed two percent (2%).” However, the law further states, “Any school district may enroll such students who are outside the student’s resident district in therapeutic foster care home placements which exceed this limit if the school determines it possesses the ability to provide such child an appropriate education.”*

- Based on 70 O.S. § 13-103, when the LEA cannot provide special education and related services, including qualified teachers, a child with a disability may be transferred to another school district who has the appropriate special education program to meet the student’s unique needs. The receiving district shall establish availability of the appropriate program, staff, and services prior to the approval of the transfer. Also, prior to the approval of the transfer, a joint IEP conference shall be required between the district of residence and the receiving district. Upon approval of the transfer, the receiving district shall claim the child in the ADM for state and federal funding purposes and shall assume all responsibility for the education of the child, including the child’s IEP special education and related services. See Chapter 12 “Transfers and Move-In Students” for more information regarding IEP Service Agreements.

**Community-Based Residential Services** provide program support management for the care and treatment of youth in Oklahoma Department of Human Services (OKDHS) custody who are determined deprived and whose treatment needs can no longer be met in their own home, a relative’s home or in traditional foster family care, as well as their treatment needs currently do not require inpatient psychiatric care.

- Residential Child Care Facilities are provided to children and youth with the more severe behavioral issues that currently do not need hospitalization nor a psychiatric residential treatment center.
  - Contracted **Level E+** placements are designed to serve the special needs of children and youth in DHS custody with Conduct Disorder, Oppositional Defiant Disorder, trauma, and other behavioral needs that prevent the student from being cared for in other foster homes. Some may have Oklahoma Juvenile Authority (OJA) cases. The LEA where the residential child care facility is located is responsible for children who are admitted to **Level E+** placements for Child Find obligations and FAPE for children with disabilities. The LEA is responsible for contracting with the child-placing agency or the residential child care facility to provide onsite educational services at the facility, including special education and related services for children with disabilities identified under IDEA. All requirements under this chapter for Section 1 regarding residential facilities, including surrogate training, apply to children with disabilities who are in the custody of DHS and placed in a residential child care facility.
  - Based on OAC 340:75-11-360(d)(1)(2)(3)(4) DHS-Child Welfare, “The primary goal of **Level D+ and E** Qualified Residential Treatment Program (QRTPs) services is the remediation of emotional or behavioral disorders or behavioral problems through clinical interventions.” The LEA where the residential child care facility is located is responsible for children who are admitted to **Level D+** and E QRTPs for Child Find obligations and FAPE for

children with disabilities. The LEA is responsible for contracting with the child-placing agency or the residential child care facility to provide onsite educational services at the facility, including special education and related services for children with disabilities identified under IDEA. All requirements under this Chapter for Section 1 regarding residential facilities, including surrogate training, apply to children with disabilities who are in the custody of DHS and placed in a residential child care facility.

- Contracted Level D placements are designed to serve the special needs of children, 13 to 17 years of age, in DHS custody, with emotional disorders who are certified as developmentally disabled by Developmental Disabilities Services. **Level D** staff are available to respond in a crisis to stabilize a child's behavior and prevent placement disruption, 24-hours a day, seven-calendar days per week. OAC 340:75-11-350. The LEA where the residential child care facility is located is responsible for children who are admitted to Level D QRTPs for Child Find obligations and FAPE for children with disabilities. The LEA is responsible for contracting with the child-placing agency or the residential child care facility to provide onsite educational services at the facility, including special education and related services for children with disabilities identified under IDEA. All requirements under this Chapter for Section 1 regarding residential facilities, including surrogate training, apply to children with disabilities who are in the custody of DHS and placed in a residential child care facility.
- Family-style living residential programs provide the equivalent to a foster home placement for children requiring a home-like environment with a full-time house parent or parents. Contracted **Level B and C** placements are provided in a setting licensed as a child-placing agency or residential child care facility that is not located in a hospital, either medical or psychiatric, or a psychiatric residential treatment center. OAC 340:75-11-300(a)(c). Level B contractors provide services to children 14 to 18 at minimum a focus on restoration of skills for personal health/hygiene; maintenance of daily living skills (food preparation); money management; job skills readiness, acquisition, and retention; community awareness and mobility; and socialization skills/communication. Level C contractors provide services to children, 13 to 18 years of age, whose behavioral health conditions, such as impulse control disorders, results in actions that may include, but are not limited to: minor criminal offenses, difficulty in school, verbal aggression, issues with peer interaction, defiance with authority figures, infrequent runaway behavior, or a few unsuccessful placements in a family setting. OAC 340:75-11-330. The LEA where the residential child care facility is located is responsible for children who are in this residential program for Child Find obligations and FAPE for children with disabilities. These students will attend school on campus. All requirements under this Chapter for Section 1 regarding residential facilities, including surrogate training, apply to children with disabilities who are in the custody of DHS and placed in a residential child care facility.

## Section 3: Inpatient Hospitalization

Students who are placed in inpatient hospitalization must continue to receive special education and related services while in this placement. Students must continue to be provided a FAPE and must not experience a lapse in educational services. The LEA where the facility is located carries the responsibility for child find without regard to the severity of the student's disability. The LEA is required to follow the federal guidelines regarding the timelines for referrals, initial eligibilities, reevaluations, and IEP timelines for students who are receiving special education and related services.

There is a difference in a psychiatric hospital and a psychiatric residential treatment facility. Both placements are considered a residential facility. Both placements or facilities must adhere to FERPA and HIPPA guidelines.

Inpatient hospitalization means a psychiatric hospital or an institution which is primarily engaged in providing, by or under the supervision of a physician, psychiatric services for the diagnosis and treatment of mentally ill persons, as defined by Section 1395x(f) of Title 42 of the United States Code.

A psychiatric residential treatment facility (RTF) means a non-hospital facility contracted with the Oklahoma Health Care Authority to provide inpatient psychiatric services to SoonerCare-eligible members under the age of twenty-one (21), as defined by 42 C.F.R. § 483.352.

Students are required to spend the night in these residential facilities (24/7) and are considered a resident of the district where the facility is located. Therefore, the LEA where the facility is located is responsible for providing onsite educational services, Child Find obligations, and FAPE for students with disabilities when they are admitted for inpatient treatment.

## Section 4: Partial Hospitalization/Day Treatment

A partial hospitalization is an outpatient setting where children and youth are stepping down from inpatient hospitalization or residential care yet need more intensive treatment beyond the regular outpatient counseling sessions. The children and youth are able to go home at night and on weekends to their parents. The partial hospitalization provides psychiatric services combined with assessment and medication management for individual care, as well as group, individual, and family therapy. As mentioned in the section above for inpatient hospitalization, students who are placed in partial hospitalization must also continue to receive special education and related services while in this placement. The students must continue to be provided a FAPE and must not experience a lapse in educational services. The LEA where the facility is located carries the responsibility for Child Find without regard to the severity of the student's disability. The LEA is required to follow the federal guidelines regarding the timelines for referrals, initial eligibilities, reevaluations, and IEP timelines for students who are receiving special education and related services.

### ***Instructional Day within a Partial Hospitalization***

Department of Mental Health and Substance Abuse Services has promulgated rules applicable specifically to children admitted to partial hospitalization facilities. Those rules require that the hours

of operation "make it possible for consumers [students] to receive a minimum of three (3) hours of treatment and service each day in the program, excluding time spent in fulfillment of academic educational activities as required by law." OAC 450:17-5-34(a)(1). Therefore, the LEA will be required to apply with the OSDE for an abbreviated school day in order for the students to meet the minimum 3 hours of treatment. However, OAC 210:35-31-5 states, "the number of hours taught shall be at least 3 hours daily on regularly scheduled school days." Exceptions to the minimum hours of instruction shall be for verifiable cause in the interests of the child and documented by recommendations of the attending licensed psychologist, physician, and/or psychiatrist, and supported by recommendations of the treatment team with representation from the educational staff of the LEA. It is required to implement curriculum, courses, and instruction in order to ensure that students meet the skills and competencies in the subject matter standards adopted by the State Board of Education (e.g., English/Language Arts, Math, Science, Social Studies and Arts 70 O.S. §11-103.6(D)(1)(2)(3)(4)(5)) during the abbreviated instructional day. The LEA will provide special education and related services for eligible students on an IEP in addition to the core instruction. Once the student is ready for discharge, the LEA must demonstrate collaboration with the child's district of residence by developing plans for eventual reintegration into a full school day upon the student returning to their neighborhood school.

Each LEA shall create a plan for on-site educational services at the facility and develop a contract that will be approved by the LEA School Board in agreement with the partial hospitalization facility.

### ***Residency and Transportation***

HB 2069 in 2015 amended 70 O.S. 2011, §1-113 by adding a provision to the residency statute which states that a student's residence is "Any facility in which a child has been admitted and is receiving on-site educational services as provided for in section 3-104.7 of this title..nonresidential settings in which school-age children are placed for psychiatric or psychological treatment which precludes their attendance at a regular public school, 'including' partial hospitalization programs, day treatment programs and day hospital programs." (70 O.S. Supp. 2015, §3-104.7(A)).

The Attorney General E. Scott Pruitt in 2016 stated, "Establishing residency in this way thus requires three things:

- (1) that the child is admitted
- (2) to a day treatment program
- (3) in which he or she receives on-site educational services."

Therefore, if a child lives in another school district but is admitted into a partial hospitalization that is located outside the child's residency, the student is now considered a resident of the LEA where the facility is located. The AG opinion written in 2016 stated, "Legislature plainly and unambiguously determined that the facility with a day treatment program in which a child has been admitted and is receiving on-site educational services establishes the residency for the child." The AG further stated, "Even though a public school district where a facility with a day treatment program is located must ensure that the children admitted to the facility are receiving educational services, the law does not restrict a day treatment program's ability to contract with an outside school district or even an accredited private school in arranging for the provision of on-site educational services."

Head Start Policy and Regulation §3-104.7(B)(C) state that a partial hospitalization or day treatment program will only qualify as a licensed program if it provides or has arranged for the provision of educational services on-site (i.e., at the facility) and that no day treatment program

shall be licensed unless the facility meets the standards for educational services established by the State Board of Education. If the facility is not licensed in this manner, then the LEA is not responsible for the on-site educational services.

The transportation of a child with a disability would become the responsibility of the LEA where the facility is located. An alternative option would be for the LEA who contracts with the facility to provide reimbursement to the facility for transportation costs rendered.

Inpatient hospitalization and partial hospitalization have many commonalities and very few variations to distinguish the two. The chart explains their likenesses and differences.

<b>Inpatient Hospitalization</b>	<b>Partial Hospitalization</b>
Residential Facility	Nonresidential
Children spend the night	Children go home at night and on weekends
Extended stay through all hours	Extended stay through daytime hours only
1/2 day of school offering core classes	1/2 day of school offering core classes
May apply for Deregulation for an abbreviated day	May apply for Deregulation for an abbreviated day
Contracted Food Services	Contracted Food Services

## Section 5: Head Start and Early Head Start

The U.S. Department of Health & Human Services, Office of Head Start states, “Infants, toddlers, and pregnant women are served through Early Head Start programs. Early Head Start programs are available to the family until the child turns 3 years old and is ready to transition into Head Start or another pre-K program. Head Start programs promote the school readiness of children ages 3 to 5.”

The low-income guidelines are established by the Poverty Guidelines published by the federal government. Children in foster care, homeless children, and children from families receiving public assistance (Temporary Assistance for Needy Families-TANF or Supplemental Security Income-SSI) are categorically eligible for Head Start services regardless of the family’s income.

Head Start programs may enroll up to ten percent (10%) of children from families that have incomes above the Poverty Guidelines. Head Start and Early Head Start programs may also serve up to an additional thirty-five percent (35%) of children from families whose incomes are above the Poverty Guidelines.

The table below is a brief summary of the differences and similarities between programs serving students with disabilities from Early Head Start to Kindergarten.

	<b>Early Head Start</b>	<b>Head Start Early Childhood (EC3)</b>	<b>Head Start Pre-K</b>	<b>Head Start Pre-K</b>
<b>Ages</b>	Birth to 3	3	4	5
<b>Income Based</b>	Yes	No	No	No
<b>Compulsory Ed.</b>	No	No	No	Yes

By federal regulations Head Start programs must accept children with disabilities. The Head Start Act was reauthorized in 2007 requiring that, beginning in fiscal year 2009, *"not less than ten percent (10%) of the total number of children actually enrolled by each Head Start agency and each delegate agency will be children with disabilities who are determined to be eligible for special education and related services, or early intervention services...by the State or local agency providing services under section 619 or part C of the Individuals with Disabilities Education Act [IDEA] (20 U.S.C. 1419, 1431 et seq.)."*

### **A. Regular Education Preschool Program**

Head Start is considered a general/regular education preschool setting with typically developing peers. OSEP, in a 2017 Dear Colleague letter written by Acting Director Ruth E. Ryder, stated, *"the Department defines a Regular Early Childhood Program as a program that includes a majority (at least 50 percent) of nondisabled children (i.e., children who do not have IEPs) and that may include but is not limited to Head Start. Therefore, in determining the placement for a child with a disability who already participates in a regular public preschool program [like Head Start], the placement team must consider whether the LEA, in collaboration with the regular public preschool program, can ensure that the child receives all of the special education and related services and supplementary aids and services included in the child's IEP in order to meet the needs of the particular child with a disability."* The IEP team may determine that the child's special education and related services are appropriately provided within the Head Start classroom (e.g., during center time, or during calendar/circle time or in small groups within the classroom). However, if the IEP team determines the child needs to be removed from the Head Start classroom to receive their special education and related services, then the IEP team must consider any "potential harmful effects" on the child with a disability, including the quality of services before removing the child from the regular education preschool setting to a more restrictive setting. Services and placement may include but is not limited to therapeutic setting (e.g., speech therapy in a separate room) or instruction in a small group comprised solely of children on IEPs provided in another location outside of the Head Start classroom. In this case, the location of services is no longer considered the general/regular education preschool setting, but a special education setting. Location of service delivery is an individualized determination through the IEP process.

### **B. Child Find and Child Count**

The LEA is responsible for Child Find activities for students enrolled in the Head Start program who are residents of the district or have been granted a transfer under the Open Transfer Act. If a student attends a Head Start that is located outside of their home residency, then the LEA of the

child's residency is responsible for Child Find and not the LEA where the Head Start facility is located. In collaboration with Head Start, the LEA shall provide a free evaluation for children aged 3 and up suspected of having a disability. The LEA must obtain written parent consent for the release of confidential information to communicate with Head Start personnel and share records of the child (e.g., screening data). The LEA cannot decline a child find referral from a Head Start program solely on the basis that Head Start did not implement scientific evidence-based interventions. OSEP (Brekken 2010) has clarified that the category of specific learning disability (SLD) is generally not applicable to preschool age children.

Once the child is determined to have a disability under IDEA, then the LEA is responsible for developing an IEP proposal to the parent in collaboration with Head Start. The LEA is responsible for ensuring that an appropriately licensed/credentialed Regular Early Childhood or Head Start general education teacher is present at the IEP meeting, along with the special education teacher (or speech-language pathologist if the disability is a Speech Language Impairment), an administrator and the parent for the development of the IEP. The LEA is obligated to ensure that appropriate special education and related services are provided to those children with disabilities who are residents of the LEA and are eligible under the IDEA who are enrolled in the Head Start Program as outlined, as well as agreed upon in each child's IEP.

The LEA will maintain and submit on the annual child count of eligible children with disabilities served in the Head Start program.

### **C. Residency**

When considering residency for Head Start Programs the Oklahoma residency guidelines for public school enrollment are applicable. The child's district of residence is responsible for educational services, the provision of a Free Appropriate Public Education (FAPE) and Child Find.

If a parent chooses to enroll the child with a disability in a Head Start program located outside of their district of residence, the parent must apply for a district transfer to obtain special education services from the LEA where the Head Start is located. The parent may apply for a transfer under the Oklahoma Open Transfer Act or if the child is already on an IEP, may discuss the option of an IEP agreement between the two school districts. The decision of the transfer will be made between the sending and receiving districts.

If the LEA, where the Head Start program is located, enrolls and/or accepts a transfer for a student who is not a resident of the LEA, the district becomes responsible for Child Find and FAPE obligations for the child upon the transfer being approved. If the child on the transfer is evaluated and determined eligible under IDEA after transferring, then the LEA is responsible for implementing the provisions regarding the special education and related services written on the child's IEP until such time the transfer is no longer valid. Refer to Chapter 12. "Transfers and Move-In Students" for more information.

### **D. IDEA Services**

Head Start programs must ensure the individual needs of children with disabilities are being served under IDEA and that the children have full range of activities and services offered. Head Start programs must provide:

- Necessary modifications to the environment
- Multiple and varied formats for instruction
- Individualized accommodations and supports as necessary to support the full participation of children with disabilities
- Protections from discrimination under and provided with all services and program modifications required by section 504 of the Rehabilitation Act (29 U.S.C. 794), the Americans with Disabilities Act (42 U.S.C. 12101 et seq.), and their implementing regulations

### ***E. Limitations for Suspensions***

The LEA in collaboration with Head Start must prohibit or severely limit using suspensions due to a child's behavior. Such suspensions may only be temporary in nature. A temporary suspension must be used only as a last resort in extraordinary circumstances where there is a serious safety threat that cannot be reduced or eliminated by the provision of reasonable modifications. Before a team determines whether a temporary suspension is necessary, the LEA and Head Start must engage with a mental health consultant or a school psychologist, collaborate with the parents, and utilize appropriate community resources, as needed, to determine no other reasonable option is appropriate.

If the team determines a temporary suspension is necessary, the team must help the child return to full participation in all program activities as quickly as possible all while ensuring the child's safety by:

- Continuing to engage with the parents and a mental health consultant
- Continuing to utilize appropriate community resources
- Developing a written plan to document the action and supports needed
- Providing services that include home visits and
- Determining whether a referral to a LEA is appropriate.

A child cannot be expelled or unenrolled from Head Start because of the child's behavior. When a child exhibits persistent and serious challenging behaviors, the IEP team must explore all possible steps taken with careful documentation addressing such problems and facilitating the child's safe participation in the program. Such steps should include, at a minimum:

- Engaging a mental health consultant or school psychologist
- Obtain consent for a Functional Behavioral Assessment (FBA) and develop a Behavior Intervention Plan (BIP).

- Consulting with the parents and the child's teacher
- Ensure the child currently receives the needed supports and services outlined within the IEP, and
- Discuss whether or not there is a need for reevaluation to determine if the primary disability is appropriate and the child continues to be eligible for special education services.

After exploring all documented steps listed above the team may determine that a child's continued enrollment is a serious safety threat to the child or other children enrolled, at which point the team may determine the Head Start program is not the most appropriate placement or the least restrictive environment for the child. Upon making this decision, the team must work cooperatively to facilitate transitioning the child to an appropriate placement in the least restrictive environment.

#### ***F. Transportation for Children with Disabilities***

A Head Start program must ensure there are school buses or allowable alternate vehicles adapted or designed for transportation of children with disabilities available as necessary to transport children enrolled in the program. This requirement does not apply to the transportation of children receiving home-based services unless school buses or allowable alternate vehicles are used to transport the other children served under the home-based option. Whenever possible, children with disabilities must be transported in the same vehicles used to transport other children enrolled in the Head Start program.

A program must ensure special transportation requirements in a child's IEP are followed, including:

- Special pick-up and drop-off requirements
- Seating requirements
- Equipment needs
- Any assistance that may be required, and
- Any necessary training for bus drivers and monitors.

#### ***G. LEA/Head Start Agreements and Dispute Resolutions***

Head Starts are required to enter into an agency agreement with the LEA where the Head Start is located. Such agreements should outline the responsibilities of the Head Start and LEA services (e.g., screening, information sharing, referrals for an evaluation, evaluations administered as part of the determination of eligibility under IDEA, IEP services, resident and non-resident students, staffing, the use of IDEA 619 funds/Project 641 preschool funds, etc.). As part of the agency agreement, the LEA will provide special education and related services for children enrolled in the Head Start Program who is considered a resident of the LEA, including students on a transfer.

The Office of Special Education Programs (OSEP) strongly encourages all team members to work collaboratively and in the best interest of children with disabilities resolving disagreements with positive early intervention experiences. However, when disagreements cannot be resolved there are options for dispute resolution (Refer to Chapter 11 “Dispute Resolution” for more information).

## **Legal Citations**

### **[Code of Federal Regulations, Title 34: Education](#)**

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

§300.129 State responsibility regarding children in private schools.

§300.132 Provision of services for parentally-placed private school children with disabilities—basic requirement.

§300.134 Consultation.

§300.137 Equitable services determined.

§300.138 Equitable services provided.

## **OSERS/OSEP Policy Documents**

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

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

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

## CHAPTER 9. PROCEDURAL SAFEGUARDS

### Section 1. Notice of Procedural Safeguards

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), which 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 Notice of Procedural Safeguards Is Provided***

The LEA must provide a Notice of Procedural Safeguards Notice that includes a full explanation of the special education rights afforded to the parent and/or adult student once per year, in addition to the following circumstances (34 C.F.R § 300.504(a)):

- Upon an initial referral or parent and/or adult student request for evaluation;
- Upon receipt of the first due process complaint or administrative state complaint in a school year;
- When a decision is made to take a disciplinary action that constitutes a change of placement; or
- Upon request by the parent.

### Section 2. Domestic Considerations

#### ***A. Who Serves as the “Parent” Regarding Special Education Decisions?***

Oklahoma recognizes the federal definition of a parent (See 34 C.F.R. § 300.30). Throughout this document, the Individuals with Disabilities Education Act (IDEA) definition of parent is being used wherever “parent” is referenced, specifically:

- **“Parent”** means a biological parent, an adoptive parent, a person acting as a parent, a legal guardian, a surrogate parent, or a foster parent.
- **“Person acting in the place of a parent”** means 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.
- **“Surrogate Parent”** means an individual appointed by the LEA or a judge to make educational decisions regarding the Free Appropriate Public Education (FAPE) of a

child with a disability, when no parent can be identified after reasonable efforts to locate the parents (34 C.F.R. § 300.519). Note: It is the LEA's responsibility to seek out the parents even when children are in a family foster care placement by DHS to make certain the biological or adopted parents have the opportunity for meaningful participation, unless they no longer have legal authority to make educational decisions for the child. The LEA cannot appoint a surrogate parent when the parent is available but chooses not to participate.

- **“Guardian”** means a person authorized to act as the child's parent and/or to make educational decisions, but it does not mean the State if the child is a ward of the State. There are some exceptions when a biological or adoptive parent still has the legal authority to make educational decisions for the child, even when the child has a guardian (See 34 C.F.R. § 300.30(b)).

### ***i. Other Considerations***

“If a judicial decree or order identifies a specific person or persons as the ‘parent’ to act as the “parent” of a child or to make educational decisions on behalf of a child, then such person or persons shall be determined to be the ‘parent’” as defined by 34 C.F.R. § 300.30(a).

If more than one party is qualified to act as a parent, and the biological or adoptive parents attempt to act as the parent, the biological or adoptive parents must be presumed to be the parents and the legal decision makers, unless they do not have legal authority to make educational decisions for the child (34 C.F.R. § 300.30(b)(2)).

If there is more than one parent who has the legal authority to make education decisions for the child and they do not reside in the same location, LEAs are obligated to provide each parent access to Prior Written Notices of any special education action. This condition applies even if only one parent has the right to consent, unless a court order precludes this from happening or one parent declines to participate. It also applies to all special education notice requirements, including notice of an IEP meeting. If the school is only aware of only one parent's address, the school must make reasonable efforts to locate the other parent to provide notice. However, consent from one parent is sufficient.

In the event that one parent provides consent for the action and the other parent revokes consent, the LEA must accept the parent's revocation of consent. OSEP's Letter to Cox in 2009 acknowledged that disputes between parents who have joint custody and share the right to make educational decisions for their child and who disagree about the provision of special education and related services for their child, may place an LEA in a difficult situation. In addition, the consenting parent does not have a right to use Subpart E of the IDEA Part B (i.e., due process complaint) to overcome the other parent's revocation of consent. A parent may only file a due process complaint with respect to any other matter covering actions by an LEA violating the IDEA, but not by another parent. A decision by one parent to revoke consent is not an action by the LEA and when invoked, the LEA has no discretion. The LEA must provide a Written Notice to Parents indicating their proposal to initiate an action but must cease action or providing special education and related services consistent with the parental revocation.

If disputes arise between parents regarding their child's special education program and/or related services, such as disputes must be resolved privately. IDEA does not provide any mechanisms for school districts to resolve disputes between parents (Letter to Cox (2009)).

## **B. Surrogate Parent**

### **i. What is a "Surrogate Parent"?**

All students with disabilities are entitled to a FAPE under State rules and the IDEA. Included in these laws is a mandate that the parents of students with disabilities have the opportunity to participate actively in the educational decision-making process. However, some students with disabilities do not have parents (as defined in the previous section) who can fulfill this critical role. The IDEA requires, in certain cases, an individual must be appointed by the LEA or a judge as a surrogate parent to make decisions regarding the FAPE of a student with a disability. A surrogate parent is needed for students under the age of 18, when:

- No parent (as defined by the IDEA) can be identified;
- The LEA, after reasonable efforts, cannot locate a parent;
- The student is a ward of the State; or
- The student is an unaccompanied, homeless youth as defined by the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(6)).

(Note: 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 for up to thirty (30) days until a surrogate parent can be appointed who meets the requirements of a surrogate.

### **ii. Who is Not Eligible to be a Surrogate Parent?**

- Someone with financial responsibilities or other responsibilities for the day-to-day care of the student;
- A school district employee or any agency involved in the care or education of the student, such as the Oklahoma State Department of Education (OSDE), the Oklahoma Office of Juvenile Affairs (OJA), or the Oklahoma Department of Human Services (DHS); and
- Any person with personal or professional interests that conflict with the interests of the student.

### **iii. What are the Responsibilities of the LEA Regarding Surrogate Parents?**

- Have a method for determining whether a student needs a surrogate parent and a method for assigning surrogate parents prepared to serve in that role.
- Maintain a list of eligible persons who are not, LEA, employees to serve as surrogate parents and provide a one-time surrogate parent training. If a surrogate parent resigns, then a new individual will need to be selected and provided the one-time surrogate parent training.
- Document the training provided by the LEA for surrogate parents (utilizing OSDE form 10 Surrogate Parents Verification of Training). Include information in the training regarding Oklahoma State and IDEA requirements for the education of students with disabilities; parents' rights; due process procedures and procedural safeguards; the process for delivery of special education services; information about the nature of the student's disability(ies) and needs; and information regarding the IDEA Part B rights that transfer to the student at the age of majority (18). This Surrogate Parents Verification of Training form can be found at <https://bit.ly/3JX1IIX>
- Share student records and educational information with the appointed surrogate. FERPA allows parents, including those individuals acting as a surrogate, to inspect and review all educational records of their child maintained by the LEA.
- Document contacts with surrogate parents and Child Welfare Specialist/ Department of Human Services (DHS) Caseworker.

### **iv. What are the Responsibilities of a Surrogate Parent?**

- Protect the student's rights in educational decision-making processes, including the identification, evaluation, and placement of the student and the provision of a FAPE to the student,
- Follow confidentiality requirements of Oklahoma Rules and federal law (FERPA),
- Participate in developing, reviewing, and revising the student's Individualized Educational Program (IEP,
- As needed, exercise other rights given to parents under the IDEA,
- The surrogate parent may, but is not required to, invite other people with information specific to the student or charged with the care of the student, such as the Child Welfare Specialist, a counselor or behavioral health specialist working with the student, a staff member of the congregate care setting's team, a former foster parent/relative/someone who knows about the student's disability, behaviors and needs, and/or a Court Appointed Special Advocates (CASA) or other educational advocate.

**v. What is the Role of the Surrogate Parent in an IEP Meeting?**

- Attend and represent the student’s educational interests at the IEP meeting,
- Ask for an IEP meeting whenever it is needed to address concerns, needs, and/or progress.

**vi. What if a Disagreement Arises or the Surrogate Parent has Concerns with Progress?**

The surrogate parent should consider the following:

- Contact the special education teacher or building principal to address questions or concerns,
- Request an IEP meeting;
- Request a facilitated IEP meeting through the Special Education Resolution Center (SERC);
- Seek special education advocate assistance;
- Be willing to participate in a resolution meeting with the school; or as a last resort,
- File an impartial special education State complaint; or
- File a due process complaint.

**vii. Who can the LEA Choose to be a Surrogate Parent?**

- CASA worker (CASA serves children in 62 of Oklahoma’s 77 counties as well as four tribal courts)
- Relative of the student
- Other neutral party who may know the student

34 CFR Section 300.519

*“(d) Criteria for selection of surrogate parents.*

*(1) The public agency may select a surrogate parent in any way permitted under State law.*

*(2) Public agencies must ensure that a person selected as a surrogate parent—*

*(i) Is not an employee of the SEA, the LEA, or any other agency that is involved in the education or care of the child;*

*(ii) Has no personal or professional interest that conflicts with the interest of the child the surrogate parent represents; and*

*(iii) Has knowledge and skills that ensure adequate representation of the child.*

(e) *Non-employee requirement; compensation.* A person otherwise qualified to be a surrogate parent under paragraph (d) of this section is **not** an employee of the agency solely because paid by the agency to serve as a surrogate parent.”

### **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. Thus, a young adult of this age becomes the eligible “adult student,” granted the rights for consent and inspection of records (except where otherwise indicated by federal regulations, State laws, or court order). Each LEA must provide notice to the student and the parent that rights are transferred at the age of majority and document within the IEP.

**Discussion of the Transfer of Rights:** No later than the student’s 17<sup>th</sup> birthday, the IEP team must discuss the transfer of special education rights to the student. Special education rights will transfer from the parent to the adult student when the student turns 18 years of age unless a parent has obtained legal guardianship that includes the scope of educational matter.

Parents of adult students who have reached the age of majority who are still living at home, supported by parents, and counted on the parents’ income tax, have the right to receive copies of any notices given to the adult student, to attend IEP meetings, and to access their young adults’ records. However, if an adult student who has reach the age of majority requests in writing that their parents do not have access to records, the LEA must comply with that request.

### **D. Emancipated or Married Minor**

The age of majority is not the same as the age of emancipation. Emancipation is when a minor has achieved independence from their parents, such as by getting married before reaching age 18 or by becoming fully self-supporting. In order to become emancipated in Oklahoma, a young adult (usually 16 years old) can marry or petition the courts to grant them the same rights as a legal adult. Parental authority ceases upon marriage of the minor, at which time the legally married minor may give legal consent on their 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 is in the custody of a public child welfare agency. The term does not include a foster child who has a foster parent who meets the definition of a parent in Section 2A.

## **Section 3. Informed Consent**

Consent is written approval given by a parent and/or adult student who has been fully informed of and understands all information relevant to the activity for which consent is sought. All information must be provided in the native language or mode of communication of the parent and/or adult student, unless not feasible (OSEP Letter to Boswell 2007). The parent and/or adult student must be informed that the approval is voluntary and may be revoked at any time prior to the action. Consent is indicated by the parent’s/adult student’s signature.

### ***A. Actions Requiring Consent***

The following actions require the LEA to obtain written consent from the parent and/or adult student.

- Conducting assessments as part of an initial evaluation to determine whether a student is eligible for special education.
- Initial provision of special education and related services to a student with a disability.
- Disclosing personally identifiable information to unauthorized persons, unless provided as an exception under the Family Educational Rights and Privacy Act (FERPA) regulations. See Section 5 “Confidentiality and Access to Records”, C. Disclosures Not Requiring Consent within this chapter.
- Accessing for the first time, and annually thereafter, private insurance or public insurance benefits to pay for services listed in the IEP (34 C.F.R. § 300.154(d)(iv)(v)).
- Inviting outside agency representatives paying for or providing transition services to an IEP team meeting (34 C.F.R. §300.321(b)(3)).

### ***B. When Consent Is Not Required***

The following actions do not require the LEA to obtain written consent from the parent and/or adult student.

- A review of existing data as part of an initial evaluation or a reevaluation.
- Tests are administered to both general and special education students in a grade or class and consent is not required for all students.
- Teacher or related-service provider observations, ongoing classroom evaluations, or criterion-referenced test used as an assessment in determining the student’s progress toward goals and benchmarks/objectives on the IEP.
- Screening to determine appropriate instructional strategies for curriculum implementation and interventions.
- A disclosure of personally identifiable information to persons authorized to have access under FERPA.

### ***C. Refusal to Give Consent***

The LEA must obtain 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 a due process complaint 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.

The LEA does not violate its obligation under IDEA and 34 C.F.R. § 300.111 and §§ 300.301 through 300.310 if, upon receiving the parent's refusal to give consent, the school team determined not to pursue the initial evaluation and not to file a due process complaint.

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 initial evaluation. If a parent and/or adult student fail to consent to the initial provision of the IEP services, then the LEA cannot be charged with failing to provide a FAPE to the student.

#### ***D. Failure to Respond to a Request for Consent***

It should be noted for procedural considerations, failure to respond is **not** the same as refusing consent.

### **INITIAL EVALUATION**

The LEA must make reasonable efforts to obtain the informed consent from the parent for the initial evaluation. Reasonable efforts must be documented revealing at least two different methods of attempting to contact the parent (e.g., phone, email, home visit, etc.), one of the two contacts must be an "Invitation of Meeting" form. If no response from the parent, then the LEA must send the parent a copy of the Review of Existing Data information along with a Written Notice indicating the proposal to initiate an initial evaluation. If the LEA does not hear back from the parent, then the LEA shall **not** conduct the initial evaluation without parent consent. Please note additional actions school personnel could take in the above Section 3. C. "Refusal to Give Consent."

If the parent signs consent for the initial evaluation but does not respond to the LEA to participate in the eligibility determination meeting, after reasonable efforts to obtain the parent's participation, then the LEA must meet to make the "initial" eligibility determination without the parent. The LEA will send a Written Notice along with the signed MEEGS and written evaluation reports or other information that was used as the basis for making the eligibility determination. If eligible, the LEA must not place the child into the special education setting or provide any services without parental written consent for the "initial" IEP. If the parent does **not** respond within thirty (30) calendar days after the initial eligibility team determination date, then the LEA must convene a second Initial MEEGS meeting and create a second initial MEEGS using the current existing information and change the eligibility determination on the MEEGS to *"This student is Eligible for Special Education because the student meets the State of Oklahoma's eligibility standards for the following disabilities; however, the student's parent/legal guardian is declining services."* All LEA members and any other qualified professionals will sign the second initial MEEGS and date it on the day the team met, even if the parent fails to respond to participate in the second eligibility meeting. The LEA must not go over the thirty (30) **calendar** day timeline before creating the second MEEGS. The LEA must document on the second MEEGS the various attempts to meet with the parent to obtain parental consent, but with no response from the parent. Send the parent a copy of the second MEEGS, along with another new Written Notice that indicates the LEA proposed to change the determination due to the parent not responding to their request to obtain parental consent for the initial eligibility and for the initial placement for special education and related services as outlined within the draft IEP. Include in the Written Notice that the child is now considered non-disabled, but the school personnel are willing to meet again to discuss the proposal to initiate another initial evaluation.

## REEVALUATION

When a parent fails to respond to reasonable measures taken by the LEA to obtain written consent to determine continued eligibility or to gather additional data for the reevaluation (e.g., educational needs, modifications to the IEP services, suspecting a change in category, etc.), the LEA must send a Written Notice regarding the proposal for the reevaluation prior to gathering new information or conducting the evaluation. 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. If after several documented attempts to obtain the parental consent for the reevaluation with no response from the parent, the LEA may proceed with the reevaluation (34 C.F.R. § 300.300(c)(2)).

### E. Revoking Consent

A parent or adult student has the right to revoke consent for the continued provision of special education and related services at any time. The parent or adult student must submit in writing the request to revoke consent for special education and related services. Services cannot be revoked in part; therefore, the request for revocation would forfeit **ALL** special education services, related services and other supports included in the student's IEP. Within a reasonable time, the LEA must respond to the revocation with a Written Notice, including the following information:

- Termination of the educational placement and special education and related services
- The student will no longer receive the procedural protections afforded special education students in disciplinary decisions.
- The parent, adult student or LEA may at a later date initiate a new request for an initial evaluation.

If a parent or adult student revokes consent for special education:

- The LEA is not in violation of the requirement to make available a FAPE for its failure to provide services to the student.
- The LEA is not required to amend the student's education records to remove any references to the child's receipt of special education and related services.

## Section 4. Written Notice

Written Notice is written documentation sent to the parent every time the LEA proposes or refuses to initiate or change the identification, evaluation, educational placement, or provision of a FAPE to the student. Written Notice is a summary describing the action and reasons for the proposal or refusal. It also documents options discussed and determined not appropriate, with information listed as the basis for the determination, including any other factors to help parents understand the proposal or refusal made by the LEA.

## ***A. Criteria for Written Notice***

Written Notice must be provided in a reasonable amount of time before implementing the proposal or refusal to initiate or change the identification, evaluation, educational placement of the student or the provision of FAPE to the student.

Written Notice must use language understandable to the general public. It must be provided in the native language or other mode of communication normally used by the parent unless it is not feasible to do so. If the native language or other mode of communication is not a written language, the LEA must take steps to ensure the following:

- The Notice is translated orally or by other means in the native language or other mode of communication.
- The parent and/or adult student understands the content of the notice.
- There is written evidence that the notice requirements of this section have been met, such as a written record in the student's special education file documenting what was discussed.

## ***B. Written Notice Is Required***

### **Proposal**

The LEA must provide Written Notice before taking action regarding a proposal to initiate or change the following (not an exhaustive list):

- Identification of the student;
- Any assessments for initial evaluation or reevaluation;
- Educational placement or educational programming; or
- The provision of a FAPE.

### **Refusal**

The LEA must provide Written Notice regarding a refusal to initiate or change the following (not an exhaustive list):

- A parent request to initiate or change the identification, assessment, placement, educational programming, or provision of a FAPE; or
- Convene an IEP team meeting at the request of a parent.

## **Other Circumstances**

The LEA must provide Written Notice when making certain decisions, which includes the reasons for the decisions (not an exhaustive list):

- When the evaluation group determines that additional assessments are not required during for a reevaluation to determine whether the student continues to meet eligibility criteria.
- If a parent files a due process complaint, the LEA is required to send the parent a Written Notice specific to the issues raised in the due process complaint within ten (10) calendar days, if it the LEA had not previously provided Written Notice about those specific subject matters contained in the due process complaint.

### ***C. Content of Written Notice***

The content within the Written Notice is intended to provide the parent with enough information so that they are able to fully understand the LEA's proposed action or refused action and, if necessary, to make informed decisions. The Written Notice must include the following:

- A description of the action proposed or refused by the LEA;
- An explanation of why the LEA proposes or refuses to take the action;
- A description of any other options the IEP team considered and the reasons why those options were rejected;
- A description of each procedure, assessment, record, or report that the LEA used as a basis for the proposed or refused action;
- A description of any other factors relevant to the proposed or refused action;
- A statement of the parent's special education rights and a description of how to obtain a copy of the Notice of Procedural Safeguards; and
- Contact information for resources to support their understanding of the Notice of Procedural Safeguards.

## **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 the Family Educational Rights and Privacy Act (FERPA) contain provisions to protect the confidentiality of personally identifiable information in student special education records. These statutes also provide parents 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, of their rights under FERPA. The notice must include all of the following:

- Procedures for exercising the right to inspect and review education records;
- Procedures for requesting amendment of records; and
- Specific criteria for determining who constitutes an LEA official or employee and what constitutes a legitimate educational interest.

The LEA must permit a parent or their representative, to inspect and review any educational record 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 their child unless there are legal documents limiting access to those records under State law.

The LEA will make records available to a parent for review:

- Without delay but no later than forty-five (45) calendar days after the request;
  - Note: 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 their right to inspect and review those records. Each LEA should have a local board policy outlining fees for copies of records. The LEA may not charge a fee to search for or retrieve records.
- Before any IEP meeting
- Before a resolution session; and
- Not less than five (5) business days before any due process hearing.

In addition, the LEA must:

- Upon request, provide a parent with a list of the types of education records the LEA collects, maintains, or uses and where they are kept;
- Respond to any reasonable request made by a parent for an explanation and interpretation of a record; and
- Always provide a parent 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, which provides the parent the right to inspect and review. Because FERPA requires a parent be given access and not copies, except in specific instances, the school district is not required to provide the parent a copy of the answer sheet or the question booklet(s) of a test protocol. Test publishers require LEAs to maintain the integrity and validity of tests. Parents 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 evaluation results and the meaning of the various items and data contained in the protocol.

If any educational record includes information on more than one child, the parents of those children have the right to inspect and review only the information relating to their child or to be informed of that specific information related to their child. Each LEA must make certain not to disclose information about other students to a parent of another child when more than one child's identifiable information is on one document.

### ***C. Disclosures Not Requiring Consent***

Consent is generally required to disclose personally identifiable information to others who are not currently involved with the student within the educational setting. However, consent is **not** required when:

- An LEA official or employee has a legitimate educational interest to access the records.
- A representative of the Federal Comptroller General, the United States Department of Education, or the Oklahoma State Department of Education accesses records necessary for an audit or evaluation of a federal program or the enforcement or compliance with federal regulations.
- A student transfers to another LEA (receiving district) in which the student intends to enroll, unless an LEA has adopted a procedure requiring consent. However, the receiving LEA should notify the parent and/or adult student that it will be requesting records from the previous LEA.
- The health and safety of the student or other individuals is in jeopardy because of an emergency.
- The disclosure concerns the juvenile justice system's ability to effectively serve the student or the ability to respond to court orders or subpoenas, as specified in State law. The LEA will make a reasonable effort to notify the parent of the court order in advance of compliance, unless the subpoena specifically states that it is not to be disclosed.
- An organization conducts studies on behalf of education agencies or institutions under specified FERPA criteria.
- The disclosure is in connection with an application for financial aid and is necessary to determine eligibility for the aid, the amount of the aid, conditions for the aid, or to enforce the terms and conditions of the aid ("financial aid" means a payment of funds

to an individual that is conditioned on the individual's attendance at an education agency or institution).

- The LEA has designated information as “directory information” under the conditions in FERPA.
- An agency caseworker or other representative of a child welfare agency or tribal organization may access a student's education records when the caseworker/representative has the right to access the student's case plan when the agency/organization is legally responsible for the student's care and protection (Uninterrupted Scholars Act of 2013). The LEA should request some form of identification from the agency caseworker or other representative or tribal organization and have this individual sign the access of record form.
- The Oklahoma Department of Human Services (DHS) is conducting a child abuse or neglect investigation of the child who is the suspect of the record. In addition to juvenile records, employees of DHS may inspect, without a court order and upon a showing of proper credentials and pursuant to their lawful duties, information that includes, but is not limited to, psychological and medical records, and non-directory education records (10A O.S. §1-6-103).

#### ***D. Frequently Asked Questions – Adopted from the U.S. Department of Education***

##### **In the case of a divorce, do both parents have rights under FERPA?**

Generally, yes. Unless a school is provided with evidence that there is a court order, state law, or other legally binding document relating to such matters as divorce, separation, or custody that specifically provides to the contrary, FERPA gives custodial and noncustodial parents alike certain rights with respect to their children's education records. A school may ask for legal certification denoting parenthood, such as a birth certificate or court order, from the parent requesting access.

**Source: 34 CFR § 99.4**

##### **Can stepparents, grandparents, and other caregivers be considered parents under FERPA?**

In some cases, a stepparent may be considered a “parent” under FERPA if the stepparent is present on a day-to-day basis with the natural parent and child and the other parent is absent from that home. Conversely, a stepparent who is not present on a day-to-day basis in the home of the child does not have rights under FERPA with respect to the child's education records. A grandparent or other caregiver who is acting in the absence of the parent(s) may also be considered a “parent” under FERPA.

**Source: 34 CFR § 99.3**

##### **Do students under the age of 18, not in college, and not in the physical custody of a parent or guardian have rights under FERPA?**

FERPA does not specifically afford minors who are separated from their parents the rights that are afforded to parents and eligible students under the law. However, schools may use their judgment in determining whether an unaccompanied minor is responsible enough to exercise certain privileges, such as inspecting and reviewing education records and providing consent for disclosure.

**Source: 34 CFR § 99.5(b)**

**Does a school have to record disclosures made under FERPA's health or safety emergency exception?**

Yes. When an educational agency or institution makes a disclosure under the health or safety exception, it must record in the student's education records the articulable and significant threat that formed the basis for the disclosure, and the parties to whom the information was disclosed.

**Source:** 34 CFR § 99.32(a)(5).

**Does FERPA permit educational agencies and institutions to disclose personally identifiable information (PII) from education records to Child Welfare Agencies (CWAs) or tribal organizations, without consent, when the student reaches 18 years of age or attends a postsecondary institution but remains in foster care?**

Yes. Once a student reaches 18 years old or attends a postsecondary institution at any age, the student becomes an eligible student and the rights under FERPA transfer to that student. FERPA governs the disclosure of PII from the education records of an eligible student in the same fashion as it governs the disclosure of PII from the education records of a student under the age of 18. As a practical matter, most States consider an individual who has reached the age of 18 to be an adult; therefore, the individual would generally not remain in foster care placement. However, if under State or tribal law, an individual is who is 18 or older or is attending a postsecondary institution remains in a foster care placement, then the educational agency or institution may choose to disclose education records to the CWA that is legally responsible for the care and protection of the eligible student without the consent of the eligible student.

**Does FERPA protect the education records of students that are deceased?**

Consistent with our analysis of FERPA and common law principles, we interpret the FERPA rights of eligible students to lapse or expire upon the death of the student. Therefore, FERPA would not protect the education records of a deceased eligible student (a student 18 or older or in college at any age) and an educational institution may disclose such records at its discretion or consistent with State law. However, at the elementary/secondary level, FERPA rights do not lapse or expire upon the death of a non-eligible student (i.e., a student under the age of 18) because FERPA provides specifically that the rights it affords rest with the parents of students until that student reaches 18 years of age or attends an institution of postsecondary education. Once the parents are deceased, the records are no longer protected by FERPA.

For more Q&A regarding FERPA see U.S. Department of Education Frequently Asked Questions: <https://studentprivacy.ed.gov/frequently-asked-questions>

***E. Destruction of Records***

Oklahoma State law requires that records generated by the LEA must be maintained between five (5) and seven (7) years after the student has graduated, transferred, or withdrawn from the district, except transcripts shall be maintained by the LEA for not less than eighty (80) years (70 O.S. §24-114(C)(D)). Special education records, including personally identifiable information generated under the IDEA will be collected and maintained to document compliance. These records may be destroyed after the determination that these records are no longer needed to provide educational services to the student, and if there is no outstanding request by a parent or adult student to review records. If the records meet these requirements and the parent or adult student requests that these records be destroyed, the records must be destroyed by the LEA (34 C.F.R. § 300.624(b)).

Destruction of records includes physical destruction or removal of personal identifiers as described in IDEA 34 C.F.R. § 300.611. The records manager should maintain a log or a copy of the notice of destruction sent to the last known address which documents the date of destruction or release of records.

A letter or email notice must be sent to the student, if 18 or older, or to the parent, if the student is under 18, at the last known mailing or email address to notify them when non-transcript records are scheduled to be destroyed and to inform them of their ability to obtain a copy of the student records.

The LEA should remind the parent and/or adult student that certain records might be needed for Social Security benefits or other purposes in the future.

### ***F. Request for Amendment of Records***

A parent and/or adult student may request that the LEA amend the student's records if they believe that information collected, maintained, or used in the education record is inaccurate, misleading, or in violation of the privacy or other rights of the student. The LEA will use the following procedure:

- The LEA, within a reasonable period of time—not to exceed forty-five (45) calendar days of receipt of the request—must decide whether to amend the record. If the LEA refuses to amend the record, the parent and/or adult student must be informed of the refusal and be advised of the right to and procedure for requesting an LEA hearing. An LEA hearing is an informal hearing that does not have all the requirements of a due process hearing.
- If an LEA hearing is requested and the LEA decides that the information in the record is inaccurate, misleading, or in violation of the student's rights, the LEA must amend the record and inform the parent and/or adult student in writing.
- If an LEA hearing is requested and the LEA decides the information is accurate and does not violate the student's rights, the LEA must inform the parent and/or adult student that they 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. Independent Educational Evaluations (IEE)**

An Independent Educational Evaluation (IEE) means one or more individual evaluations, each conducted by a qualified examiner who is not employed by the LEA responsible for the education of the student in question.

A parent and/or adult student has the right to obtain an IEE at public expense if they disagree with an evaluation obtained or conducted by the LEA. Parents are not entitled to an IEE at public expense before they allow the LEA to conduct its own evaluation. The LEA will provide the parents with a list of qualified examiners from which to choose for the IEE.

- The parent and/or adult student is entitled to only one IEE at public expense for each LEA evaluation.
- The parent and/or adult student has the right to an IEE at their own expense at any time, and the MEEGS group or IEP team must consider the results of each individual assessment completed when presented to the LEA.
- The LEA may file a due process complaint, without undue delay, to determine if the evaluation the LEA conducted is appropriate. If the final decision of a hearing officer, or a court of law's decision on an appeal, is that the student still has the right to an IEE but at their own expense, Conversely, a hearing officer may order an IEE at public expense if they determine that the evaluation conducted by the LEA was not appropriate.

### ***A. Procedures for Requesting an IEE***

If a parent and/or adult student requests an IEE at public expense, the LEA may ask why they disagree with the evaluation obtained by the LEA, but the LEA cannot require an explanation. The LEA must give the parent and/or adult student the criteria under which an IEE may be obtained.

The LEA's IEE criteria may include the following information:

- The location for the evaluation;
- The required qualifications of the examiner;
- The eligibility requirements for the specific disability categories; and
- Reasonable cost containment criteria applicable to personnel for specific assessments to eliminate unreasonably excessive fees.

Except for the criteria listed above, the LEA may not impose other conditions or timelines if doing so would be inconsistent with the parent's and/or adult student's right to an IEE.

#### ***i. Criteria for Reasonable Costs***

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

- Not simply be an average of the fees customarily charged in the area.
- Only eliminate excessive fees, while still allowing for the parents to choose from qualified examiners in the area.

- Allow the parents an opportunity to demonstrate unique circumstances that justify an IEE that exceeds the criteria or maximum fee schedule.

If the LEA has established a cost ceiling that is reasonable for the type of evaluation requested and the IEE exceeds the ceiling, the LEA must pay up to the ceiling amount.

In addition to other criteria for an IEE, if the LEA establishes a schedule of reasonable fees, it must be provided as part of the information available to parents upon request.

### ***ii. LEA Responsibilities Following IEE Requests***

If a parent and/or adult student requests an IEE at public expense, the LEA must do one of the following without unnecessary delay:

1. Provide the LEA's IEE criteria and information about where an IEE may be obtained; or
2. Request a due process hearing without undue delay to show that the LEA's evaluation is appropriate.

### ***iii. Consideration of the IEE Results***

If a parent and/or adult student obtains an IEE and makes that evaluation available to the LEA, the results must be considered by the LEA in any decision made with respect to the provision of a FAPE, identification, eligibility, or educational placement. If the IEP team determines, upon consideration of the IEE, that the results of the IEE do not necessitate a change to eligibility or provision of services for a student, the LEA should provide an explanation of that determination to the parent in a Written Notice. The results of an IEE cannot be the sole determining factor for eligibility. The evaluation group has the responsibility to use existing evaluation data in addition to the IEE to determine whether a student has or continues to have a disability under the IDEA.

## **Section 7. Complaint, Mediation, Due Process**

Disputes or disagreements may arise between the LEA and the parents. The options to assist in resolving disputes include:

- IEP Facilitation
- Mediation
- State Level Complaint Procedures
- Due Process Complaint

## ***A. IEP Facilitation***

The Oklahoma Special Education Resolution Center (SERC) provides, at no cost to the parent or the LEA, an IEP Facilitation process when the IEP team process is at risk of breaking down. SERC provides a highly trained facilitator to attend an Individualized Education Program (IEP) meeting to help guide the discussion in a structured manner, helping the team focus on the child's unique needs. The IEP Facilitator does not have the authority to decide the issue nor render any legal advice. The IEP Facilitator is present to work on behalf of all parties involved to help the members of the IEP team attempt to reach a mutual agreement on the child's IEP services.

## ***B. Mediation***

The Oklahoma Special Education Resolution Center (SERC) also provides a trained neutral mediator who works to assist both parties to come to a mutually agreed-upon solution. The mediator does not take sides. Mediation is voluntary; and therefore, both sides must agree to use mediation. The mediator summarizes each party's position and assists the parties in considering possible alternatives. The parents and the LEA may bring an attorney to the formal mediation but are responsible for their own legal fees. There is no cost to either party for the mediator. Both parties understand that the mediator is not a substitute for independent legal advice.

If both parties come to an agreement, then the mediator will draft an agreement for both parties to sign. The written agreement will be signed by both parties and is legally binding and enforceable in any State court of competent jurisdiction or in a district court of the United States. Both parties will receive a copy of this signed written agreement.

If an agreement is not reached, then the options include attempting mediation again at a later time or seeking other means of resolving the dispute, such as filing a state complaint requesting an investigation or filing a due process complaint.

All discussions during the mediation will be kept confidential and both parties will sign a form indicating they understand that the process is confidential. The mediator will be excluded from participation in subsequent proceedings, complaint investigations and/or due process hearings. Nothing occurring at a mediation session is admissible as evidence in a due process hearing, except the written signed agreement by both parties. No electronic recording of the mediation sessions will be allowed, and no records of the actual mediation proceedings will be kept other than the written agreements in successful mediations. All notes taken during the session will be destroyed. Note: Mediation may not be used to deny or delay the parent's right to a due process complaint.

## ***C. State Complaint Procedures***

The Oklahoma State Department of Education (OSDE), Special Education Services (SES), has available a formal complaint management system for filing and resolving specific complaints regarding alleged violations of the requirements under Part B of the Individuals with Disabilities Education Act (IDEA). If filing a state complaint, the parent does not have to file a written formal complaint at the local level. The OSDE-SES will conduct an investigation and render a written finding of the results within sixty (60) days.

If it is found through a formal State complaint that the LEA failed to provide appropriate services to a child with a disability, the resolution will address both how to remediate the denial of services

(which can include, but not limited to an award of compensatory services, or other corrective action appropriate to the needs of the child) and how to provide the appropriate services for children with disabilities.

Within seven (7) business days of the issuance of the final written findings, OSDE-SES will conduct exit conferences with the complainant and the LEA to discuss the findings and required corrective action, if any. Within forty-eight (48) hours following the exit conference, parties may submit a written response to the findings to be included with the final written complaint decision. Submission of written responses does not guarantee any effect on the final written complaint decision.

#### ***D. Due Process Complaint and Hearing***

A request for a due process hearing may be made by a parent, adult student, an attorney representing the child/adult student, or the LEA. The reasons for filing a due process complaint by an LEA are different from the reasons a parent/adult student/attorney representing the student would request a due process hearing (Refer to Chapter 11 “Dispute Resolution”, Section 5 “Due Process Hearings Requests” (A)-(B) for more information regarding the different reasons).

There are specific rules for conducting the hearing with specific timelines. The Hearing Officer will be assigned at the time of the filing. The impartial Hearing Officer will contact both parties to make certain they are meeting their responsibilities surrounding the rules during the first thirty (30) days prior to the actual hearing process.

Upon the receipt of the request for a due process hearing, the LEA must send the parent a Written Notice, along with Parents’ Rights within ten (10) calendar days, unless Written Notice has already been sent regarding the issues in controversy. The LEA must answer each and every allegation made in the Due Process Complaint Notice within ten (10) calendar days. The LEA is obligated to pay for the due process hearing fees (e.g., Hearing Officer’s fees, transcription of the hearing, etc.), except for the parent’s attorney fees. After the conclusion of the hearing, the parent may seek attorney fees in court if they are the prevailing party. If the party on the other side of the parent is the prevailing party, a court may award them attorney fees against 1) the parent if the request was frivolous, unreasonable, or without foundation, and 2) the parent or the parent attorney if the request for a hearing was for any improper purpose, such as to harass, to cause unnecessary delay or to needlessly increase the cost of litigation.

The due process complaint must allege a violation that occurred not more than two (2) years before the date the parent or LEA knew or should have known about the alleged action that forms the basis of the complaint.

Often the subject matter of a due process complaint involves the provisions of a:

- Free and Appropriate Public Education (FAPE)
- Identification of the student for special education
- Appropriate Evaluation
- Individual Education Program (IEP) services

- Least Restrictive Environment (LRE)
- Parent/Adult Student Participation
- Procedural Safeguards/Parents' Rights

In advance of the hearing both parties are encouraged to come to resolution outside of the hearing. Free services are offered for this purpose by the Oklahoma Special Education Resolution Center (SERC) for either a resolution session or a mediation during the first thirty (30) days. Both parties have the right to enter into a mediation meeting if both parties are in agreement. If mediation is scheduled, then a resolution session is **not** required. If the issue is resolved through mediation, both parties will sign an agreement to cancel the due process hearing or withdraw the complaint.

Both parties must consider a Resolution Session, which is optional. However, to enter into a Resolution Session, both parties must agree. If the parent or LEA waives the Resolution Session, then both parties must sign a waiver. If both parties agree to the Resolution Session, then the meeting must be held immediately within fifteen (15) calendar days of the filing of the due process complaint. If all matters are resolved in the Resolution Session, then the parties enter into a legally binding agreement and the matter does not proceed to hearing. If any issue remains at the end of the resolution time period, the due process hearing time frame begins and a decision on all remaining issues must be rendered within forty-five (45) calendar days or upon the proper extension of the time by the Hearing Officer.

The due process hearing is a formal legal setting where the parent and the LEA present their side of the dispute. The process is like a legal, civil court procedure; and therefore, both sides may obtain an attorney for representation, or they have a right to represent themselves. Both parties are initially responsible for the costs of their own attorney fees.

During the hearing, both sides can call witnesses, give evidence, and make legal arguments. There is a requirement to exchange documents and witness lists five (5) business days prior to the date of the hearing. Request for subpoenas to the Hearing Officer for witnesses or documents must be issued in sufficient time to permit serving well before the five (5) business day deadline.

A hearing officer may prevent any party that fails to disclose relevant evaluations or recommendations to the other party, at least five (5) business days before the hearing, from introducing the relevant evaluation or recommendation at the hearing, without the consent of the other party (34 C.F.R. § 300.512 (a) (3) and 300.512 (b)(2)).

The Hearing Officer will weigh the merits of each party's argument, evidence, and witnesses, taking into consideration the requirements outlined by IDEA federal and other law, including State laws and policies/procedures. Upon completion of the hearing, the Hearing Officer will send both parties a written decision that is legally binding. The decision may be appealed by either party. However, if it is not appealed, then the decision made by the Hearing Officer is final.

For more information about IEP Facilitation, Mediation, Due Process Hearing, or Stakeholder Training refer to the Oklahoma Special Education Resolution Center and Chapter 11. "Dispute Resolution."

## Legal Citations

### Code of Federal Regulations, Title 34: Education

- §300.9 Consent.
- §300.30 Parent.
- §300.45 Ward of the State.
- §300.300 Parental consent.
- §300.500 Responsibility of SEA and other public agencies.
- §300.502 Independent educational evaluation.
- §300.503 Prior notice by the public agency; content of notice.
- §300.504 Procedural safeguards notice.
- §300.519 Surrogate parents.
- §300.520 Transfer of parental rights at age of majority.
- §300.610 Confidentiality.
- §300.613 Access rights.
- §300.618 Amendment of records at parent's request.
- §300.622 Consent.
- §300.624 Destruction of information.

# CHAPTER 10. BEHAVIOR

## Section 1. Multi-Tiered System of Supports (MTSS)

### OVERVIEW

A Multi-Tiered System of Supports (MTSS) is an umbrella term for a framework used to provide evidence-based intervention strategies for both academics and behavior utilizing data to progress monitor all students. It is not a program or a referral process to special education. It is a multi-level, proactive, prevention system to maximize all student achievement and reduce problem behaviors throughout the school community.

MTSS framework has key components that are the foundation; however, the implementation may look different from school to school. LEAs have discretion creating specific data decision rules and procedures when designing their own MTSS program.

The key essential components that each LEA should have within their MTSS program involve:

- Universal Screening of All Students (within specific grade levels);
- Data-Driven Decision-Making Rules and Procedures;
- High Quality Evidence-Based Interventions;
- Progress Monitoring; and
- Implementation Fidelity/Integrity (throughout the MTSS framework)

An MTSS framework has a systematic implementation of increasingly more intensive levels of interventions, which are referred to as tiers. Tier 1 represents **universal supports**, curriculum, and instruction provided to all students. The exposure of the core instruction, be it academic or behavior, must be implemented with fidelity to all students with differentiation and/or reteaching to support their learning.

Universal screening tools should provide staff with information on where a student is performing in relation to an expected benchmark. Screening tools may include curriculum-based measures (CBM), rating scales, common formative assessments (CFA), or other validated instruments that are criterion-referenced or norm-referenced. Screening measures should be predictive of future difficulties in that subject area. It is best practice to conduct the universal screening three times per year (beginning of year, middle of year, and end of year), in order to make timely decisions for individual students who may not be progressing as expected in the general curriculum. Students who do not meet benchmarks, as determined by LEA decision rules, are identified as “at-risk” and are in need of additional supports or more targeted instruction/intervention. Additionally, this data can be used at the grade, site, or district-wide level to identify where general curricular supports may not be meeting the needs of a majority of students. Students identified through universal screening measures as “at-risk” may be given additional skill diagnostic assessments to identify specific skill deficits to be targeted by Tier 2 interventions. These students are then provided with

targeted intervention and instructional supports, in addition to Tier 1 core instruction. Intervention in Tiers 2 and 3 are layered upon existing supports to supplement student learning and are not intended to replace the core instruction at Tier 1.

Interventions selected for use in Tier 2 **targeted supports** must have evidence of effectiveness in improving the targeted skill deficit. Once a high quality, evidence-based intervention has been selected to match the student's specific skill deficit, an intervention plan is developed that includes a step-by-step intervention protocol, student outcome goal and current skill baseline, as well as a plan for collecting and reviewing progress monitoring data. Progress monitoring plans should include information on the frequency of data collection and review and how many data points will be needed to determine if intensification is warranted. This plan must be clearly communicated to the interventionist(s), the personnel who will be implementing the intervention. It is best practice to graph the student's baseline data and goal target to develop an aim line; progress monitoring data is then charted on this same graph so that educational personnel can easily and efficiently visually analyze student progress toward their goal and make educational decisions (continue intervention, intensify intervention, or end intervention). When it is determined that a student is not making adequate progress toward their goal, the team may intensify supports by adding a third layer (or Tier 3) intervention.

In a well-functioning school system, we anticipate that only 5% of students should need Tier 3 **intensive supports**. These most-intensive supports are reserved for students who require intensive, strategic instruction over a prolonged period of time. Tier 3 involves more instructional time, narrower skill focus, and smaller group size, as well as an increase in explicit teaching of the targeted skills. Oftentimes, Tier 3 involves an increase in the number of opportunities the student has to respond to the intervention and receive feedback.

Treatment integrity/fidelity is a process of determining whether the interventions are accurately and consistently being provided as designed. Integrity/fidelity checks should be conducted across all tiers and should answer if the student has participated in the intended intervention dosage (frequency and duration), including accounting for student and/or staff absences; and if the interventionist provided the intervention in the appropriate and intended manner (included progress monitoring assessments), as described in the evidence-base and/or intervention protocol. Each intervention session should be clearly documented to provide evidence of the student's attendance, as well as the student's engagement behavior during the implementation of the intervention. Intervention fidelity observations should be conducted by a secondary staff member to ensure intervention procedures are followed.

Intervention fidelity observations should be conducted within the first week of Tier 2 intervention implementation to ensure the interventionist (i.e., the person implementing the intervention) has adequate support in terms of intervention instructions, training, modeling, and to ensure that the student's participation is appropriate. Observations should occur weekly until accuracy is obtained by the interventionist for both implementation of the intervention and the administration of the progress monitoring assessment. Any concerns with intervention fidelity should be immediately addressed through additional staff training support, adjusting scheduling to ensure student participation, etc. However, an intervention fidelity observation must be carried out at least once if the student performance data indicates the need for an intervention change. The intervention should not be changed unless accuracy is obtained by the interventionist as prescribed by the team. Intervention exposure (intervention dosage) should be reviewed, minimally, every 4 weeks and before an intervention change should occur. It is important for interventionists to document any

student absences during the scheduled intervention and any cancellations of scheduled intervention times.

For students referred for special education evaluation, the Review of Existing Data (RED) must document previous interventions provided to the student, as well as the integrity/fidelity of these interventions. This data will assist teams in determining if the student received the intervention(s) with a degree of fidelity sufficient to lead to growth or improvement.

### ***A. MTSS Behavior***

In the case of MTSS-Behavior, Tier 1 encompasses all of the universal supports provided to the entire student population with the intention of improving social-emotional-behavioral skills and preventing student behavior concerns. This includes explicit instruction in schoolwide behavior expectations, classroom management practices, schoolwide acknowledgement and reinforcement systems, social-emotional learning curricula, bullying prevention practices, and school climate practices. Schoolwide behavior expectations must be clearly defined and understood by all school staff and must be explicitly taught to all students. Additionally, staff should have a consistent understanding for how to reinforce expected behaviors and how to respond to inappropriate behaviors.

Universal screening for behavioral skills should occur three times per year (beginning of year, middle of year, and end of year) and should inform decision-making for individual students, as well as system improvement decisions. Screening data can be analyzed by school, grade-level, student group, etc. to develop plans for improving social-emotional-behavioral outcomes for all students. Additionally, it can be analyzed longitudinally to determine Tier 1 effectiveness over time. For more information regarding behavior screening, please see the National Center on Intensive Intervention, or the Center on PBIS.

Students identified as “at-risk” for social-emotional-behavioral difficulties through universal screening should receive additional assessment to determine specific lagging skills to be targeted through layered interventions. As mentioned in the Overview section above, school teams will develop an intervention plan for students identified as in need of Tier 2 or 3 supports. The intervention plan should include the skill(s) to be targeted, evidence-based intervention(s) and the associated step-by-step protocol, and a progress monitoring plan.

### ***B. Functional Behavioral Assessment (FBA) and Behavior Intervention Plan (BIP)***

A Functional Behavioral Assessment (FBA) is an assessment process used to collect data to assist professionals in determining a hypothesized function, or functions, of a specific behavior. Behavior teams and IEP teams then utilize this information to design a Behavior Intervention Plan (BIP) to reduce/eliminate those behaviors and increase the frequency of a functionally equivalent replacement behavior. The FBA assists teams in identifying one to three behaviors to target through direct behavioral observations and data collection that highlights behaviors that occur with the greatest frequency, duration, or at the highest intensity, or behaviors that impede learning the most. Because data is collected from direct observation of the behavior, the professional conducting the assessment also develops a clear operational definition of the behavior. Operational definitions are observable, unambiguous, measurable, and delineate the limits of the definition through examples and non-examples. For example, rather than identifying the behavior as “aggression,” the assessor might operationally define a student’s behavior as “using a hand to strike another

person anywhere on their body with an open palm from a distance of at least 6 inches; examples include slapping an adult on the face; a non-example would be when “a student gave an adult a high-five on their palm,” because it is not considered an aggressive action. During direct observations, information is also gathered about the antecedent which describes the events and/or environmental conditions leading up to the targeted behavior (e.g., time of day, peers/adults involved, what happened before the behavior occurred, etc.), as well as the consequences or outcomes of the behavior (e.g., how did the adult/peer respond to the targeted behavior, did they escape some task or environment, did they gain access to some item or activity). The data collected through the FBA process allows the team to create a hypothesized function(s) or purpose for the behavior (i.e., escape, attention, sensory, tangible). The FBA also provides a baseline of data to determine the initial frequency, duration, or intensity of the target behavior, as well as identify days, times, activities, environments, or other conditions under which the behavior is most likely to occur.

Within the MTSS-Behavior framework, the FBA could be conducted to determine services to be provided within the Tier 2 level of behavior intervention. The school team may decide to implement an evidence-based intervention first to see if it is effective at reducing the student’s targeted behavior(s) (e.g., Check-In/Check-Out intervention). However, the team should consider conducting an FBA immediately if the targeted behaviors are severe or extreme, if the targeted behaviors require greater individualization, if the targeted behaviors require a comprehensive plan of multiple interventions, or if the function of the targeted behavior is difficult to identify. Prior to conducting a Functional Behavioral Assessment (FBA), informed parental consent must be obtained. For students receiving intervention services, but who are not suspected of having a disability, the LEA should develop their own informed and active consent process that aligns with the Protection of Pupil Rights Amendment (PPRA). If the team does suspect a disability, then the school personnel would complete the Review of Existing Data (RED) and obtain the Parent Consent for an initial evaluation under IDEA using the formal special education referral process.

After conducting the FBA and developing a hypothesized function from assessment data, the team will develop a Behavior Intervention Plan (BIP) that aligns evidence-based interventions with the function of targeted behaviors. A high-quality BIP will include:

- An operational definition of the target behavior(s).
- The hypothesized function(s) of the behavior(s).
- Functionally equivalent replacement behavior(s).
- Antecedent interventions to decrease the likelihood of occurrence of the target behavior(s).
- Consequent interventions to increase the likelihood of future occurrence of the replacement behavior(s).
- Consequent interventions to respond to a continued occurrence of the target behavior(s).
- Goal for behavior improvement (reduction of targeted behavior and/or increase of replacement behavior).

- Plan for data collection and progress monitoring (what data is collected, how frequently, and when it will be reviewed).

The BIP should be explicitly written so that all team members and interventionists, including any new staff added during the school year, understand the plan. It is best practice for all interventionists to receive training on all interventions, strategies, and data collection procedures included in the BIP from an individual who has special skills or qualifications in behavior intervention (e.g., school psychologist, BCBA, behavior specialist, school counselor). All school personnel with responsibility for implementing any component of the BIP should have the necessary knowledge and skills to implement the BIP with fidelity, and implementation should be monitored by a single responsible party (i.e., whoever developed the plan and/or conducted initial training on the plan).

Progress monitoring of the effectiveness of the BIP must be conducted on a regular basis as described within the BIP. It is recommended to collect data weekly regarding the frequency and duration of the targeted behavior (e.g., how often is it occurring and how long is the targeted behavior lasting when it occurs). As the targeted behavior diminishes from the baseline data collected through the FBA and/or the replacement behavior increases from baseline, the progress monitoring frequency may be reduced (bi-weekly, monthly, etc.). However, data should continue to be collected through the school year in order to demonstrate maintenance of the replacement behavior/skill taught. The data decision rule defined within the BIP will determine when the student has met the goal and is no longer needing progress monitoring of the behavior skill.

Even with the MTSS behavioral supports in place, if the student continues to have chronic/frequent, highly disruptive, or physically aggressive/dangerous behaviors, then the school team should consider possibly referring the student for an initial evaluation under IDEA. The team should review the FBA and existing progress monitoring data to determine if the hypothesized function of the behavior had been correctly identified or if amendments are needed. If the existing FBA has correctly identified the function of the behavior, then a new FBA may not be necessary, but the team may still consider the effectiveness of interventions provided in the BIP and make adjustments/intensifications as needed. Once an initial evaluation is completed and the multidisciplinary team determines the student is eligible for special education and related services, then the IEP team should review and revise the BIP, as needed, to reflect the most effective interventions available. It is important to note that the Behavior Intervention Plan (BIP) becomes part of the IEP and should be reviewed annually and aligned to behavioral goals and accommodations/modifications outlined within the body of the IEP document.

It is incumbent on the LEA to provide ongoing professional development to staff regarding how to appropriately address student behavior to the extent that it continues to build capacity across the LEA to deal with behavior. In the event that behavior of a specific student does not improve through the LEA's targeted processes, it does not absolve the LEA from finding appropriate interventions and remediation of the behavior. At the point that the LEA has exceeded its capacity to successfully address the behavior, the LEA is expected to reach out to behavior professionals outside of the LEA to assist in improving the student behavior outcomes.

If a student is already identified as a student with a disability, then the IEP team must consider the special factors for the IEP development, which includes strategies, positive behavior interventions and supports, as appropriate, if the student's behavior impedes their learning or that of others. It is recommended to conduct an FBA and develop a BIP to effectively address the student's problem

behaviors. Refer to Section 4 “Shortened Day” when it is a requirement for an FBA and BIP, as well as Section 7. “Procedures for a Manifestation Determination” within this chapter.

## **Section 2. Behavioral Threat Assessments and Crisis Plans**

### ***A. Behavioral Threat Assessment***

Behavioral Threat Assessment is a team investigative approach that should be enacted when threats of violence have occurred, and as part of a comprehensive approach to school safety and risk mitigation.

Behavioral Threat Assessment can be applied under the following circumstances:

- Threat, aggression or violence is specific to identified target with motive and plan.
- Threat, aggression or violence is causing considerable fear or disruption to activity.
- Weapon at school or an attempt to bring a weapon.
- There is continued intent to carry out a threat.
- Staff, parent, or student intuition suggests a need to investigate threatening circumstances.
- Administrator is unable to determine if a situation poses a risk to school personnel or the community.

The objectives of a Behavioral Threat Assessment are to assess threats of potentially harmful or lethal behavior and determine the level of concern/action required. This threat assessment process also allows staff to organize resources and strategies to best manage people who have made threats of violence and helps promote a sense of psychological safety within the school community.

For students with disabilities who are at-risk for one or more of the circumstances listed above, the IEP team and the school threat assessment team should convene together to complete a Behavioral Threat Assessment. It is important to note that a threat assessment and mitigation plan do not replace a Functional Behavior Assessment (FBA) or Behavior Intervention Plan (BIP). The Behavioral Threat Assessment should be conducted to assess credibility of the threat and identify any protective factors, and this information should be incorporated into a new or updated FBA. Following assessment, a risk mitigation plan should be developed and a BIP created or amended to address interventions for these behavioral concerns. The IEP team should also determine what additional supports should be provided to the student or added to the student’s IEP (e.g., adding counseling as a related service, or adding direct instruction with specific goals to teach the student how to regulate emotions and work on learning appropriate social skills, etc.).

## **Oklahoma Statute Title 70. Section 24-100.**

- (a) As used in this section, "threatening behavior" means any verbal threat or threatening behavior, whether or not it is directed at another person, which indicates potential for future harm to students, school personnel or school property.
- (b) An officer or employee of a school district or member of a board of education shall notify law enforcement of any verbal threat or act of threatening behavior which reasonably may have the potential to endanger students, school personnel or school property.
- (c) Officers or employees of a school district or members of a board of education shall be immune from employment discipline and any civil liability for communicating information pursuant to subsection B of this section in good faith if they reasonably believe a person is making verbal threats or is exhibiting threatening behavior.
- (d) Nothing in this section shall be construed to impose a specific liability on any school district.

[OK CARES Behavioral Threat Assessment Toolkit](#) for more information on the process.

For additional training in this area, contact the Office of School Safety and Security at the Oklahoma State Department of Education at 405-291-0888.

### **B. Crisis Plans**

For students whose behavior may put them or others at imminent physical risk, a crisis plan should be developed as a component of their BIP. The crisis plan should be developed by the IEP team including individuals knowledgeable about the child and include someone trained in behavior crisis prevention and intervention. Crisis plans should be individualized and reviewed at least annually by the IEP team.

When developing a crisis plan, the IEP team should consider any school or district policies and procedures for responding to a student who is experiencing a crisis. In some cases, a child's crisis behaviors may be viewed as violation of the school's discipline policy. In these instances, the IEP team should plan on discussing whether the child's crisis may trigger a school disciplinary action and whether the behavior is a direct result of the student's disability. A crisis plan defines what a student's crisis looks like in clear and observable terms and throughout the escalation cycle. Staff responses to student behaviors within the crisis cycle should be planned in advance and consistently applied. The plan should provide information on who to contact for assistance, how to work with the student during the crisis, and how to know when the crisis is over. All school personnel working with a student prone to such escalations should be trained in these responses and crisis de-escalation.

A crisis plan is:

- Used when the student may be at risk of harm to self or others.
- Focuses on immediate response to the risk of the student's harmful behaviors or actions.

- Is more effective when developed using positive strategies, and with the input and support of the student when the student is calm and regulated.
- Identifies when parents should be notified.

While the crisis plan will include plans for staff response to de-escalate the cycle, it is possible that the student will continue to escalate until the student or others are in imminent danger. Therefore, the crisis plan should also include procedures to promote safety for the student in crisis, other students, and staff. Procedures to promote safety may include, but are not limited to, plans for clearing a classroom, plans for removal of potential weapons or dangerous objects, and/or plans to call for a crisis team to assist with the response. If a student is likely to be restrained or secluded in a crisis, it is best practice to include these procedures within the crisis plan including information on approved holds and seclusion practices, maximum hold or seclusion time, procedures for making the environment safe to release the student from a hold, and release criteria (e.g., weapons have been removed from environment, other students have been cleared, etc.). Remember the student does not need to be de-escalated in order for the team to release the student from a hold and still ensure safety.

A well-written crisis plan will address the following questions:

1. What are the student's specific behaviors or warning signs that usually precede a behavioral crisis, including dangerous behavior/physical aggression toward others or to themselves?
2. What actions should school personnel take or not take when these warning signs occur? Create a leveling of actions from presenting choices, redirection, providing a break, using nonverbal cues, to being noninvasive ignoring negative comments, to sending for another adult, etc.).
3. What is operationally defined as "dangerous behavior" or imminent harm in need of a seclusion or physical restraint?
4. Who will be called for assistance if a crisis is developing?
5. Who will be responsible for safety of other students?
6. What safety measures will be taken during the crisis?
7. Who will communicate with the student in crisis?
8. What are the criteria or release procedures?
9. Who will be notified of the crisis when it is over?

The crisis plan should include a trained school personnel to observe and monitor the student during the crisis to ensure that the student is not harmed in any way and that the crisis procedures are implemented as designed. The documentation of this observation will assist with the analysis of the student's behavior for future modification to the crisis plan by finding patterns of when the behavior occurs and under what conditions. The LEA may identify a group of school personnel to be trained

as a crisis team who will implement the individualized crisis plan. The team should include additional personnel in case of absences or availability of the various team members at the time of the incident.

The development of a crisis plan may be an important addition for students who experience mental health or behavior challenges at school. If a student is not served on an IEP or Section 504 plan, a crisis plan can still be developed. However, such repeated behaviors should trigger the child find process to evaluate if there is a disabling condition involved. The crisis plan may involve emergency safety interventions such as physical restraint or seclusion. However, there are very specific guidelines on the use of seclusion and/or restraint under OAC 210:15-13-9(b and c).

Refer to B. Minimizing the Use of Seclusion and C. Minimizing the Use of Restraint below for more information.

## Section 3. Seclusion/Restraint, and Corporal Punishment

### A. Minimizing the Use of Seclusion

In cases where a student has a history of dangerous behavior harming themselves or others for which seclusion was considered or used as a last resort, a school should implement a Behavior Intervention Plan (BIP) that includes all of the high-quality components indicated above plus:

- De-escalation techniques (e.g., nonthreatening body language and communication that includes simple one word or short phrases), and
- Evidence-based behavior interventions to prevent behavioral escalations that have previously resulted in the use of seclusion with the student.

Seclusion should **never** be used for the purposes of discipline, punishment, forcing compliance, or as a convenience for staff (OAC 210:15-13-9(b)). Seclusion may only be used under the following emergency circumstances and only if these elements exist (OAC 210:15-13-9(b)(1)):

1. A student's actions pose an imminent danger of serious physical harm to the student or others; and not merely a threat to property;
2. Evidence-based behavior intervention strategies and less restrictive measures appropriate to the behavior exhibited by the student are currently being implemented, but have not effectively de-escalated the threat of danger or harm;
3. School personnel are present who have completed appropriate training that addresses conflict de-escalation, the crisis cycle, and associated interventions, appropriate use of seclusion rooms, and possible effects of seclusion; and
4. The seclusion lasts only as long as necessary to resolve the threat of danger or harm.

If a student is placed in seclusion during an emergency situation that meets the above criteria for emergency circumstances, the following precautions must be exercised throughout the time the student is in seclusion (OAC 210:15-13-9(c)(2)):

1. The student must be continuously monitored visually and aurally by an appropriately trained school employee;
2. The student must be allowed to go to the restroom upon request;
3. The student must be permitted water to drink upon request;
4. Immediate action must be taken if the student displays any signs of medical distress; and

At least one witness, who is not involved in the seclusion incident, should be available to observe and take notes regarding what occurred prior to the seclusion, what happened during and after the seclusion incident (e.g., time seclusion began/ended, de-escalation techniques, etc.). It is suggested that the school personnel review the notes taken during the incident to conduct an analysis of what worked or did not work to modify the crisis plan, if necessary, for future incidents. The special education teacher of record is responsible for entering the information into the online special education program to formally document the seclusion incident to send to the parent.

Seclusion training should be recurrent with periodic updates and result in some form of certification or credential. School personnel may only utilize seclusion procedures if they have completed training in:

- Conflict de-escalation;
- The crisis cycle and interventions at each stage;
- Possible effects of seclusion;
- Appropriate use of seclusion rooms (including escorting and placing a student in a seclusion room);
- CPR and First Aid, must hold current certification in both; and
- Monitoring the wellbeing of the student.

A building administrator should be informed immediately of any incident of seclusion. If unavailable, the building administrator must be informed as soon as possible following each incident and prior to any extended breaks from school. Each incident of seclusion must be documented on the required OSDE Report of Seclusion document. A copy of the documentation must be placed in the student file and provided to the parents. Parents should be informed immediately but must be informed within 24 hours of each seclusion incident, and prior to any extended breaks from school. An IEP meeting may be needed to review the student's BIP and placement for any changes to services or placement.

### *i. Definitions*

The terms “**imminent danger of serious physical harm**” and “**dangerous behavior**” refer to an immediate and impending threat of a person causing serious physical injury to self or others.

“**Seclusion**” means the involuntary confinement of a student alone in a room or area from which the student is physically prevented from leaving. Seclusion does not include short-term separation in a monitored and non-locked timeout setting. Timeout is a behavior management technique that is part of an approved program for the purpose of calming, which involves the separation of the student from others in a non-locked setting and is monitored by a district employee.

“**Seclusion room**” refers to a room or other confined area in which a student is involuntarily placed in isolation from other persons and which the student is physically prevented from leaving. A room or area where a student is placed in seclusion must meet the following criteria (OAC 210:15-13-9(b)(3)):

- The student must be continuously monitored visually and aurally by an appropriately trained school employee. The room must have means by which the trained employee can view the student at all times and hear the student speak throughout the duration of the seclusion.
- There must be adequate space for the student to sit or lie down;
- There must be adequate lighting;
- The room must be equipped with heating, cooling, ventilation, and lighting systems comparable to those in the rest of the building where the seclusion room or area is located;
- The room or area used for seclusion must be free of any objects that pose a potential risk of harm to a student with disabilities, or a student in distress; and
- If equipped with a door that locks, the lock must automatically disengage in case of an emergency, such as a fire or severe weather.

### *B. Minimizing the Use of Physical Restraint*

In cases where a student has a history of dangerous behavior harming themselves or others for which physical restraint was considered or used as a last resort, the school should have a Behavior Intervention Plan that includes all of the high-quality components indicated in Section 1(B) within this chapter, plus:

- De-escalation techniques (e.g., nonthreatening body language and simple one word or short phrases), and
- Evidence-based behavior interventions to prevent behavioral escalations that have previously resulted in the consideration or use of physical restraint with the student.

Physical restraint should never be used for the purposes of discipline, punishment, forcing compliance, or as a convenience for staff or to prevent property damage. The use of chemical and/or mechanical restraint is prohibited in Oklahoma public schools (OAC 210:15-13-9(c)).

Physical restraint must only be used under the following emergency circumstances (OAC 210:15-13-9(c)(1)):

1. The student's actions pose an imminent danger of serious physical harm to the student or other individuals; and not merely a threat to property;
2. Positive behavior interventions and less restrictive measures appropriate to the behavior exhibited by the student are currently being implemented, but have not effectively de-escalated the threat of danger or harm;
3. The physical restraint is applied by school personnel who have completed appropriate training that addresses conflict de-escalation, the crisis cycle and associated interventions, CPR and First Aid (including certifications), possible effects of physical restraint, and monitoring the wellbeing of a student while being restrained; and
4. The physical restraint lasts only as long as necessary to resolve the threat of danger or harm.

If a student is placed in a physical restraint during an emergency situation that meets the above criteria for emergency circumstances, the following precautions must be exercised throughout the time the student is restrained (OAC 210:15-13-9(c)(2)):

1. Under no circumstances may a student be restrained using a prone (facedown) restraint, restraint that prevents the student from breathing or speaking, or any maneuver that places pressure or weight on the chest, sternum, lungs, diaphragm, neck, throat, or back;
2. The degree of restriction of the student's freedom of movement may not exceed what is necessary to protect the student or other individuals from the threat of serious physical harm; and
3. The restraint of the student is continuously witnessed by at least one school employee who is not involved in the physical restraint.

It is important to note that school personnel should make efforts to remove safety hazards, other students, and non-essential personnel from the environment, while the student is being restrained. In this way, the personnel mitigate or reduce the threat of danger or harm and can release a student from restraint more quickly. At least one witness, who is not involved in the restraint incident, should be available to observe and take notes regarding what occurred prior to the restraint, what happened during and after the restraint incident (e.g., time the restraint began/ended, de-escalation techniques, etc.). It is suggested that the school personnel review the notes taken during the incident to conduct an analysis of what worked or did not work to modify the crisis plan, if necessary, for future incidents. The special education teacher of record is responsible for entering

the information into the online special education program to formally document the restraint incident to send to the parent.

Physical restraint training should be recurrent with periodic updates and result in some form of certification or credential. School personnel may only utilize physical restraint if they have completed training in:

- Conflict de-escalation;
- The crisis cycle and interventions at each stage;
- Possible effects of physical restraint;
- CPR and First Aid, must hold current certification in both; and
- Monitoring the wellbeing of the student.

A building administrator should be informed immediately of any incident of a physical restraint. If unavailable, the building administrator must be informed as soon as possible following each incident, and prior to any extended breaks from school. Each incident of physical restraint must be documented on the required OSDE Report of Physical Restraint document. A copy of the documentation must be placed in the student file and provided to the parents. Parents should be informed immediately but must be informed within 24 hours after each physical restraint incident, and prior to any extended breaks from school. An IEP meeting may be needed to review the student's BIP and placement for any changes to services or placement.

### ***i. Definitions***

**“Physical restraint”** means a personal restriction that immobilizes or reduces the ability of a student to move their torso, arms, legs, or head freely. The term “physical restraint” does **not** include an appropriately applied temporary physical escort. The term, **“physical escort”** means a temporary touching or holding of the hand, wrist, arm, shoulder, or back for the purpose of directing a student to move to a safe location if they are in distress or acting out. (OAC 210:15-13-9(a)(6)(7)):

**“Mechanical restraint”** means the use of any device or equipment to restrict a student’s freedom of movement. The term does **not** include motor vehicle safety restraints or devices by a student, or appropriately trained school personnel, which are used as prescribed by a medical or related services professional for specific approved purposes for which such devices were designed, such as (OAC 210:15-13-9(a)(5)):

- Adaptive devices or mechanical supports used to achieve proper body position, balance, or alignment to allow greater freedom of mobility than would be possible without the use of such devices or mechanical supports;
- Vehicle safety restraints when used as intended during the transport of a student in a moving vehicle;

- Restraint for medical immobilization; or
- Orthopedically prescribed devices that permit a student to participate in activities without harm.

Items used in a therapeutic manner for a particular student in one context could be used as a mechanical restraint in a different context; the proper inquiry, therefore, to determine whether an item is a mechanical restraint is not based solely on what the item is, but also how the item is used.

**“Chemical restraint”** means a drug or medication used on a student to control behavior or restrict freedom of movement, when such substance is not administered as prescribed to the student, such as (OAC 210:15-13-9(a)(2)):

- Prescribed by a licensed physician, or other qualified health professional acting under the scope of their professional authority under state law, for standard treatment of the student’s medical condition; and
- Administered as prescribed by the licensed physician or other qualified health professional acting under the scope of their professional’s authority under state.

The terms **“Imminent danger of serious physical harm”** and **“dangerous behavior”** refers to an impending threat of a person causing serious physical injury to self or others.

For more information regarding Seclusion and Restraint, please see OAC 210:15-13-9. Guidelines for minimizing seclusion and restraint of students, and the U.S. Department of Education “Restraint and Seclusion: Resource Document.”

### **C. Corporal Punishment**

The Oklahoma State Department of Education (OSDE) has determined that any student with a disability who is entitled to special education services under the IDEA is to be considered covered by 70 O.S. 13-116. Oklahoma Administrative Code (OAC 210-15-13-9(d)) states, *“Corporal punishment of students with disabilities not authorized. For all students, the State Department of Education strongly encourages Oklahoma schools to implement disciplinary policies and practices that use evidence based, developmentally appropriate methods informed by an awareness that many students have endured Adverse Childhood Experiences (ACEs) and related trauma. As applied to students with disabilities entitled to special education services under the Individuals with Disabilities Education Act (IDEA), the use of corporal punishment by employees or agents of an Oklahoma public school is prohibited beginning in the 2020-2021 school year.”* Refer to 70 O.S. §13-116 (2020) for additional information regarding corporal punishment.

See Section 1(A) MTSS-Behavior in this chapter for more information on effective evidence-based practices.

## ***D. Reporting the Use of Seclusion, Restraint, and Corporal Punishment***

LEA's policies or procedures restricting the use of seclusion and restraint should apply to all children and youth, not just students with disabilities. The Office of Civil Rights collects data regarding the use of seclusion and restraint on all students; and therefore, LEAs are required to document incidents for both students with disabilities and students without disabilities. Additionally, under OAC 210:15-13-9(f), at the end of each school year, and no later than June 30th, each school district or charter school shall report to the State Department of Education (OSDE) Office of Special Education Services information regarding all incidents of seclusion, restraint, or corporal punishment of a student with disabilities within the district during the school year that just closed. The end-of-year summary report shall include the total number of each type of incident, as well as the number and type of incidents associated with each student to whom seclusion, physical restraint, or corporal punishment was applied. This information will be used to identify districts in need of additional support, training, and guidance in the areas of conflict de-escalation, crisis intervention, Functional Behavior Assessments, the possible effects of seclusion and restraint, and effective behavior intervention planning. Thus, it is essential that LEAs devise processes to monitor seclusion and restraint data to identify students who may need additional supports or interventions, potentially in the form of a Behavior Intervention Plan (BIP).

## **Section 4. Shortened Day**

Students with disabilities must attend school for the same number of hours and minutes as non-disabled students, unless a student's IEP team determines otherwise based on a student's unique, disability related needs. Shortening a student's day raises issues regarding the provision of a FAPE under IDEA; and therefore, careful consideration is required by the IEP team.

### ***A. Appropriate Uses of Shortened Day***

The only time it is appropriate to shorten the school day for a student with a disability is when the student's IEP team determines a shortened day is required to address the student's unique disability-related needs. For example, if because of the student's medical needs, the student does not have the physical stamina to complete a full school day, a shortened day may be appropriate. Before deciding to shorten the student's day, the IEP team must consider if there are other ways to meet the student's needs (e.g. short rest breaks, trips to the nurse).

When a student's school day is shortened, the student's IEP must include:

1. An explanation of why the student's disability-related needs require a shortened day;  
**and**
2. A plan for the student's return to school for a full day, including a plan to meet more frequently to review student data and determine whether the student is able to return to school full-time and a clear explanation of the school-provided supports to make this goal achievable.

The student should return to a full school day as soon as she or he is able, and under most circumstances, a shortened school day should be in place for only a limited amount of time. The IEP team must meet as often as necessary to review the plan and to determine when the student is able

to return to school full-time. Examples of brief, specific-purpose shortened days that may not result in less than FAPE in an LRE (this is not an exhaustive list):

- Student with a recent brain trauma, currently in recovery, needs a transitional reduced day due to cognitive fatigue associated with recovery; or
- Physician of a student transitioning to new seizure medications requests gradually increasing the length of day; or
- Recently adopted student from another country is experiencing transition difficulties. Parents and therapist request a gradual transition to school.

### ***B. Inappropriate Uses of Shortened Day***

The following are examples of **inappropriate** uses of shortening the school day for a student with a disability:

#### ***Managing Student Behavior or as a Means of Discipline***

An LEA may not reduce a student's instructional time as a form of punishment or in lieu of a suspension. Attendance may also not be conditioned upon the student's taking medication or receiving treatment, therapies, or other outside services. The IEP team must develop an IEP that addresses the student's behavioral needs. In the case of a student whose behavior impedes the student's learning or that of others there must be a FBA in place, as well as the IEP must include a BIP that provides positive behavioral interventions, supports and strategies reasonably calculated to enable the student to participate in the full school day. School removals and other exclusionary practices are not positive behavioral supports. On August 1, 2016, the U.S. Department of Education's Office of Special Education and Rehabilitative Services (OSERS) issued guidance in the form of a Dear Colleague Letter (DCL) that emphasizes the requirement that schools provide positive behavioral supports to students with disabilities who need them. It also clarifies that the repeated use of disciplinary actions may suggest that many children with disabilities may not be receiving appropriate behavioral interventions and supports. When schools fail to consider and provide for needed behavioral supports through the IEP, it is likely to result in a child not receiving the free appropriate public education to which they are entitled under federal law.

#### ***Accommodating Transportation Schedules***

An LEA may not reduce a student's instructional time by starting the student's school day later or releasing the student earlier than nondisabled peers in order to accommodate a transportation schedule. For example, it is not permissible for a school to release students with disabilities earlier than their nondisabled peers in order to schedule an earlier bus route. Any LEA that has permitted such actions up to now should take immediate steps to correct the resulting denial of equal opportunity.

#### ***Administrative Convenience***

A student's school day may not be shortened for administrative convenience including staffing shortages.

#### ***Accommodating Regularly Scheduled Outside Therapies***

IEP teams may not shorten a student's school day based solely on a parent's request to accommodate regularly scheduled non-school medical or therapeutic appointments. Parents and

schools should communicate regarding absences. When absences are frequent, the IEP team should meet to determine how to ensure the continued provision of FAPE for the child to continue to progress and meet the annual goals in the IEP. Schools must refer to their local attendance and excusal policies to determine whether absences are excused.

### ***Solely Upon Parent Request***

If a parent requests a change in the length of the student's school day, the LEA should consider the request. Any changes to the regular school schedule must be made by the student's IEP team, which includes the parent. The LEA would review any medical documents the parent brings to the IEP meeting or discuss the parent's concerns to see if there are other avenues to address this issue without shortening the student's instructional day. The only time it is appropriate to shorten the school day for a student with a disability is when the student's IEP team determines a shortened day is required to address the student's unique disability-related needs. This decision must be reflected in the student's IEP, including documenting the reasons for the shortened day and providing a plan for returning to a full day.

### ***As a Standard for All Students with Disabilities or For a Group of Students with Disabilities***

Any decision to shorten a student's school day must be made on an individual, case-by-case basis by the student's IEP team.

## ***C. General Information Involving Shortened Day by IEP Team***

IEP teams should exercise caution when placing a student on a shortened day as it may limit a student's ability to make adequate progress, to access the general education curriculum, to meet graduation requirements, and to receive a FAPE. Therefore, the IEP team should take into consideration all other options prior to making a determination to shorten the student's instructional day or week. For example, a student with physical aggression toward others, the LEA should conduct an FBA and develop a BIP to address the physical aggression. If a BIP already has been developed for the student, make certain a fidelity observation has occurred to see if the interventions are being implemented as designed. If the intervention is being implemented with fidelity, then review the BIP to determine if the behavior was defined explicitly, if the hypothesized function of the behavior had been correctly identified, or if the intervention needs to be changed to better align with the specific problematic behavior, and modify it, as necessary, to address the targeted behavior(s) (Refer to Section 1, B. "Functional Behavioral Assessment (FBA) and Behavior Intervention Plan (BIP)" of this chapter for more information). The IEP team may consider additional time in a special education setting to provide specially designed instruction in the area of social skills using a specific curriculum to teach the student the desired social behaviors.

If the LEA and parent through an IEP team process determine to shorten the student's instructional day/week, the LEA must document on the IEP:

- The total length of the student's shortened instructional day/week;
- The reason/concern for the shortened school day/week;
- The reintegration plan to increase the student's instructional week to the same length as nondisabled peers; and

- The date of the next IEP team meeting to review the progress towards the reintegration plan.

The reintegration plan must include an explicitly defined criteria that is measurable, observable, developmentally appropriate, and includes a reasonable, attainable goal for increasing the student's instructional day/week.

Note: The Oklahoma State Department of Education requires the IEP team to document that an FBA has been conducted and a BIP is currently in place in order to finalize the IEP when shortening the student's day/week due to a behavior concern.

#### ***D. Procedural Questions***

**Must an IEP team meeting be held before the school district shortens the length of a student's school day?**

- Yes. Shortening a student's school day is a decision that must be made through the IEP team process and clearly documented in IEP amendments and records.

**How should a shortened school day be documented in the student's IEP?**

- The IEP must include a clear description of the special education services, related services, and supplementary aids and services to be provided including the amount, frequency, location, and duration of services. The team would explain the total length of the school day and describe the extent that the team would meet to discuss the student's plan to return to an increased school day.

**After an IEP team has implemented a shortened school day for a student, what obligation does the LEA have to monitor the shortened day program?**

- LEAs, through the IEP team process, should continuously monitor and review the student's progress and plan frequent IEP team meetings to determine whether a shortened school day continues to be necessary to meet the student's unique, disability-related needs and to ensure shortened-day programming is still effective in improving student progress toward IEP goals. The student should return to a full day as soon as he or she is able, and under most circumstances, a shortened day should be in place for only a limited amount of time.

**What can a parent do if they disagree with an IEP team's decision to implement a shortened school day?**

- If a parent disagrees with the decision to implement a shortened school day, the OSDE recommends that the parent request an additional IEP meeting to discuss their concerns. In some cases, parents may wish to reach out to Special Education Directors or other district special education contacts to resolve any disagreement. Parents may also contact the OSDE to facilitate the resolution of any disagreements. In addition, parents may elect to participate in formal dispute resolution procedures, such as mediation, state complaints, or due process hearing. Mediation is a voluntary process conducted by a

trained, neutral mediator who helps facilitate discussion and assists parties in reaching a resolution. The parent may also file a special education complaint with the OSDE. The complaint must be in writing, signed, and submitted within one year of the decision to shorten the school day. Additionally, the parent may file a request for a due process hearing challenging the IEP team's decision. The request must be filed within two years of the decision to shorten the school day. For more information on dispute resolution options under the IDEA please visit (See Chapter 11 "Dispute Resolution" for more information).

## Section 5. General Discipline Guidelines

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 their 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.

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 their 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 Behavioral 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 be implemented as prescribed.

Conducting FBAs and developing BIPs are best practices when students with disabilities are displaying problem behaviors. IDEA regulations require an FBA to be conducted and a BIP to be developed for a student with disabilities when the LEA, the parent, and any other relevant members of the IEP team make the determination that a behavior incident was a manifestation of the child's disability (IDEA Section 300.530(f)). The Oklahoma State Department of Education also requires an FBA and BIP be in place prior to shortening the student's instructional day/week. See manifestation determination in Section 7 of this chapter.

### A. Informal Removals

Students with disabilities removed from school as a result of behavior incident(s) without a formal suspension and without the rights extended to them under IDEA have been labeled as an "informal removal" by the National Disability Rights Network (NDRN). The following are examples of informal removals due to a behavior incident:

- Repeatedly sending a student home during the instructional day based on an administrative decision.

- Long-term use of a shortened day without an IEP team decision nor a reintegration plan.
- Mandatory virtual or remote instruction for an individual student without an IEP team decision.
- Mandatory homebound instruction for an individual student without an IEP team decision regarding a change in placement.
- Preventing a student from attending school unless the parent accompanies them.
- Requiring a student to stay home on a given day(s) because the LEA does not have a teacher and/or paraprofessional to support the student's unique behavioral needs.
- Removing a student from the classroom to the principal's office for an extended period of time and not counting it as an in-school suspension.

LEAs must **not** engage in informal removals but must handle all behavior incidents for students with disabilities that comply with IDEA and Section 504 utilizing the formal removal procedures discussed below. LEAs who engage in informal removals deprive students and parents of procedural safeguards provided under IDEA.

## ***B. Formal Removals***

### ***i. Disciplinary Actions Resulting in Removal for 10 or Fewer School Days***

Students with disabilities are expected to follow the LEA's student code of conduct. A student with a disability who has an IEP in effect can be removed from school through an out-of-school suspension or removed to another setting or to an appropriate Interim Alternative Educational Setting (IAES), just as any other student without a disability. These removals can extend 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 required for the IEP team to meet when this occurs. Likewise, it is not required for a manifestation determination to be completed, a FBA to be conducted, including the BIP 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 FBA or to develop, review and make changes to the student's current BIP. 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 every student with an education plan designed for the eventual reintegration of the student into school.

### ***ii. 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. The LEA must provide procedural safeguards notice that includes a full explanation of the special education rights afforded to the parent and/or adult student when a decision is made to take a disciplinary action that constitutes a change of placement.

LEA personnel must consider unique circumstances when determining whether a change in placement is appropriate for a student with a disability. These unique circumstances are best determined at the local level by LEA personnel who know the student and the specific facts of the incident, 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.

### **iii. 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 including the current BIP, if applicable. These steps are referred to as a "manifestation determination." Please see the [IDEA Discipline Flow Chart Example](#) for a visual representation of the aforementioned steps.

#### **LEA Actions Resulting in a Change of Placement**

##### **34 C.F.R. § 300.536 Change of placement because of disciplinary removals.**

- a. *"For purposes of removals of a child with a disability from the child's current educational placement under [34 CFR §§ 300.530 through 300.535](#), a change of placement occurs if -*
  1. *The removal is for more than 10 consecutive school days; or*
  2. *The child has been subjected to a series of removals that constitute a pattern -*
    - (i) *Because the series of removals total more than 10 school [days](#) in a school year;*
    - (ii) *Because the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and*
    - (iii) *Because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.*
- b.
  1. *The public agency determines on a case-by-case basis whether a pattern of removals constitutes a change of placement.*
  2. *This determination is subject to review through due process and judicial proceedings. "*

#### **iv. LEA Actions When There is a Change of Placement**

Whenever disciplinary action results in a change in placement, the LEA must:

1. Notify the parent or adult student of the disciplinary action to be taken on the date of the decision and provide a copy of the *Parents Rights in Special Education: Notice of Procedural Safeguards*; and
2. Conduct a manifestation determination no later than 10 school days after the date on which the decision to take the disciplinary action is made.

#### **C. Interim Alternative Educational Settings**

LEA personnel may remove a student to an IAES for no more than 45 school days without regard to whether the behavior is determined to be a manifestation of the student's disability if one or more of the following special circumstances exist. The student:

- Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of an LEA;
- Knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school, on school premises, or at a school function under the jurisdiction of an LEA; or
- Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of an LEA, defined as bodily injury that involves:
  - A substantial risk of death;
  - Extreme physical pain;
  - Protracted and obvious disfigurement; or
  - Protracted loss or impairment of the function of the bodily member, organ, or mental faculty.

#### ***Serious Bodily Injury* [18 U.S.C. §1365\(h\)\(3\)](#):**

**Serious bodily injury** A bodily injury that involves a substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ or faculty.

#### ***Dangerous Weapon* [18 U.S.C. §930\(g\)\(2\)](#):**

The term "dangerous weapon" means 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 pocketknife with a blade of less than 2½ inches in length.

The LEA may take disciplinary action for a student who brought a pocketknife less than 2 ½ inches in length to school; however, a pocketknife of this length does not fall under the "special

circumstances” criteria under IDEA for the LEA to remove the student to an IAES for not more than 45 school days regardless of a manifestation of the student’s disability.

***Controlled substance*** [21 U.S.C. § 812\(c\)](#):

The term “controlled substance” means a drug or other substances identified under the Controlled Substance Act (known as schedules I, II, III, IV, and V). Examples of such controlled substances are narcotics, stimulants, depressants, hallucinogens, and marijuana. The definition does **not** include a substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under the Act or under any other provision or federal law.

Students who need to take controlled substances at school must maintain their medication in the school office and locked in a safe area, to be administered by a trained school employee at the prescribed time.

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 to determine what additional behavioral supports (e.g., add counseling as a related service, or add a social skills goal, etc.), if any, are needed, and conduct a manifestation determination.

***D. Hearing Officer Actions Resulting in a Change of Placement***

If necessary, in appropriate circumstances, through an expedited due process hearing, the LEA may ask a hearing officer to place a student with a disability in an appropriate IAES.

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

1. Demonstrate by substantial evidence that maintaining the current placement is substantially likely to result in injury to the student or others; and
2. Indicate whether the request is for an initial period of not more than 45 school days or an additional period of not more than 45 school days.

***E. Court Actions Resulting in a Change of Placement***

LEA administrators may seek a court order to remove a student with a disability from school or the current placement at any time. FAPE [educational services] must not cease during the period of time an injunction is in place. Although not directly addressed in the IDEA, the U.S. Department of Education has stated that a school district need not exhaust the administrative due process hearing system before seeking such court relief.

## Section 6. FAPE Considerations

Services may not cease, and the LEA must consistently provide FAPE to the student with a disability:

- After the student is removed for 10 school days in the same school year and subsequent days of removal
- When there is a disciplinary change of placement.

### A. FAPE Requirements in an IAES

If the student's placement will change to an IAES, the IEP team must select an IAES that enables the student to:

- Continue to participate in the general education curriculum;
- Progress toward meeting the goals set out in their IEP; and
- Receive, as appropriate, a FBA and to address the behavior violation so that it does not recur.

## Section 7. 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 the incident surrounding the violation of the student code of conduct and all relevant information, including:

- The student's IEP;
- Any relevant teacher observations; and
- Any other information provided by the parents or adult student.

If the IEP team finds that the student's behavior was caused by or had a direct and substantial relationship to the student's disability, or that the behavior was a direct result of the LEA's failure to implement the IEP, then the behavior must be found to be a manifestation of the student's disability. If the team determines that the conduct in question was the direct result of the LEA's failure to implement the IEP, the LEA must take immediate steps to remedy those deficiencies. The team must also either:

- Seek parent or adult student consent to conduct a Functional Behavioral Assessment (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,

- Develop and implement a Behavior Intervention Plan (BIP) for the student; or
- If a BIP has already been developed, review the BIP and modify it, as necessary, to address the behavior.

When the conduct is determined to be a manifestation of the student's disability, the LEA will not implement the disciplinary removal, unless special circumstances exist for placement in an IAES, as discussed above in Section 5, (C) "Actions Involving a Disciplinary Removal that Results in a Change of Placement", (3) "Interim Alternative Educational Settings" of this chapter. 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 IEP.

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 them 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 an 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 8. 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.

The parent or adult student may request an expedited due process hearing if they:

- Disagree with any decision of the IEP team regarding a change of placement under 34 C.F.R. §§ 300.530 and 300.531, or
- Disagree with the manifestation determination under § 300.530(e), or
- Disagree with the LEA which believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others.

The hearing is requested by filing a complaint pursuant to §§ 300.507 and 300.508(a)(b). When an expedited hearing is requested (either by the parent or adult student to challenge an 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.

Resolution meeting requirements apply but are shortened from 15 to 7 days. No challenge to the sufficiency of the request is available.

See [Chapter 13, Section 5, “Due Process Hearings Requests”](#) and [Section 6, “Expedited Due Process Hearings.”](#) for an explanation of a standard and an expedited due process hearing rights and procedures.

### ***B. Referrals to and Action by Law Enforcement and Judicial Authorities***

LEAs are permitted to report a crime that a student with a disability may have committed to appropriate law enforcement authorities. However, under the Family Educational Rights and Privacy Act (FERPA), the LEA must obtain parent or adult student signed consent to transmit a student's special education records to the authorities. FERPA exceptions to the parent consent requirement may allow for disclosure in these circumstances:

- Student records may be disclosed in compliance with a lawfully issued subpoena. However, parents or adult students must be notified in writing that the records have been subpoenaed before they are forwarded, unless the court has ordered that the existence of the subpoena or the contents of the subpoena not be disclosed.
- Student records may be disclosed in emergency situations where the disclosure is necessary to protect the health or safety of themselves or others.
- Student records may be disclosed under limited circumstances pursuant to State laws concerning the juvenile justice system.
- When records are provided to law enforcement or judicial authorities, the disclosure must be on the condition that the record will not be further disclosed without the written consent of the student's parents, or the student if the student is 18 or older.

Although it is easy for an LEA to determine to whom the crime should be reported, it is less clear to whom copies of special education and disciplinary records should be forwarded. Parent consent to release the records to certain individuals or a subpoena for the records will eliminate the confusion and should ensure that the appropriate parties receive the records. Unless the authority to release the records under FERPA is clear, schools should not forward student records to any law enforcement officer who comes into contact with the student. [Sample letter to law enforcement regarding special education student records.](#)

The letter notifies law enforcement that the LEA is willing to release the student's confidential records once the district receives one of the following:

- Signed parent consent to release confidential information; or
- Court Order; or
- Subpoena; or
- Applicable exception of parent consent requirement under FERPA

### ***C. Transportation***

If bus transportation is identified as a related service on the IEP, a suspension from the bus is treated as a suspension from school (unless the LEA provides transportation services in some other way, such as "transportation in lieu of") because transportation is necessary for the student to be provided a FAPE.

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

If the student's behavior on a school bus violates a school code of conduct, whether or not the transportation is a related service, the IEP team must consider whether the behavior should be addressed in a Behavioral Intervention Plan (BIP).

### ***D. In-School Suspension***

Students with disabilities who are placed in an in-school intervention or in-school suspension program must have the opportunity to continue to 1.) progress appropriately in the general curriculum, 2.) to receive the services in the IEP, and 3.) to participate with nondisabled students to the extent they would have in the current placement, in order for the LEA to avoid counting those days as days of disciplinary removal. If any of the criteria are not met, the in-school suspension will count towards the 10 cumulative school day limit before the IDEA disciplinary provisions are applied. For example, if an elementary student is placed in the office for half-day or all day isolated from nondisabled peers and are not receiving their special education services, but provided general education curriculum, then this time would count as in-school suspension and count toward the 10 cumulative school day definition.

### ***E. Transfer of Discipline Records***

The forwarding and disclosure of disciplinary records or other educational records to an 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 sending district initiates disciplinary proceedings applicable to all students, the special education and disciplinary records of students with disabilities must be given to authorized LEA personnel of the receiving district for their consideration. The

receiving district may uphold the sending district's determination of the number of suspension days for a student's behavior incident or may alter the suspension days.

## **Section 9. Protections for Students Not Yet Eligible for Special Education**

A student who has not been determined eligible for special education and who has violated any rule or code of conduct of the LEA may assert the protections of the IDEA if the LEA had knowledge that the student was a student with a disability before the behavior that precipitated the disciplinary action.

### ***A. Parent Request for Evaluation of a Disciplined Student***

If a request for an evaluation of a student who is not currently eligible for special education is made during the period in which the student is subject to disciplinary measures, the LEA will conduct the evaluation in an expeditious manner. Pending the results of the evaluation, the student will remain in the educational placement determined by LEA officials, which can include suspension without educational services.

1. If the student is subsequently determined eligible for special education, the LEA will:
  - Convene an IEP team meeting to develop an IEP; and
  - Conduct a manifestation determination.
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). The IEP Team should also conduct an FBA and develop a BIP to address these behavioral concerns.
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 their IEP.
4. If the evaluation group determines that the student is not eligible for special education, they will be subject to the same disciplinary actions as all other students.

#### ***i. Basis of knowledge***

With limited exceptions, which are described in item 4 below, the LEA will be deemed to have knowledge that an individual is a student with a disability if one or more of the following is true:

- The parent or adult student has expressed concern to supervisory or administrative LEA personnel or a teacher of the student that the student is in need of special education and related services. The concern must be expressed in writing unless the parent or adult student is unable to write or has a disability that prevents a written statement.

- The parent or adult student has requested that the student be evaluated for special education.
- The student's teacher or other LEA personnel have expressed specific concerns about a pattern of behavior demonstrated by the student directly to the director of special education or to other LEA supervisory personnel in accordance with the LEA's established Child Find system or special education referral system.

## **ii. No basis of knowledge**

The LEA will be deemed not to have knowledge that an individual is a student with a disability if one or more of the following is true:

1. An evaluation was conducted and a determination was made that the student did not have a disability.
2. The parent or adult student refused to give written consent for an evaluation.
3. The parent or adult student refused special education services.
4. If the LEA did not have a basis of knowledge that a student was a student with a disability prior to taking disciplinary measures, the student is subject to the same disciplinary measures applied to all other students who engage in comparable behaviors.

## **B. Parents Revoking Consent**

If a parent chooses to revoke consent for special education and related services, the LEA should inform the parents in the written notice that the student will be treated as a nondisabled student for disciplinary purposes.

### **Legal Citations**

#### **Code of Federal Regulations, Title 34: Education**

- §300.9 Consent.
- §300.229 Disciplinary information.
- §300.300 Parental consent.
- §300.530 Authority of school personnel.
- §300.531 Determination of setting.
- §300.532 Appeal.
- §300.533 Placement during appeals.
- §300.534 Protections for children not determined eligible for special education and related services.
- §300.535 Referral to and action by law enforcement and judicial authorities.
- §300.536 Change of placement because of disciplinary removals.

# CHAPTER 11. DISPUTE RESOLUTION

## Section 1. Dispute Resolution

On occasion, conflicts arise between Local Education Agencies (LEA) and parents and/or adult students. Several mechanisms are available through the Oklahoma State Department of Education (OSDE) to assist in resolving disputes. The processes are individualized education program (IEP) facilitation, mediation, formal State complaints, due process hearings, facilitated resolution sessions, and expedited due process hearings. This chapter contains information on each of these processes.

The OSDE accepts formal State complaints and requests for due process hearings via fax, mail, and personal delivery. Additionally, requests for IEP facilitation and mediation may be requested through the resolution center.

### **A. 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.

### **B. Contact Information**

[Oklahoma State Department of Education,  
Special Education Services](#)  
Dispute Resolution Director  
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: 918-270-1849  
Facsimile: 918-270-2062

For further assistance in matters relating to dispute resolution, you may contact:

[Oklahoma Disability Law Center](#)  
5600 N. May Ave., Ste. 260  
Oklahoma City, Oklahoma 73112  
Oklahoma City, OK  
Toll Free: 800-880-7755  
Local: 405-525-7755  
Facsimile: 405-525-7759 **OR**  
5555 E. 71<sup>st</sup> St. Ste. 9100  
Tulsa, OK 74136  
Toll Free: 800-880-7755

Local: 918-743-6220  
Facsimile: 918-743-7157

[Oklahoma Parents Center](#)  
223 N. Broadway Street or P.O. Box 512  
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 SERC.

IEP facilitation is a voluntary process for which a facilitator is appointed to facilitate an IEP team meeting. Both parties must agree to the use of IEP facilitation. 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.

### A. IEP Facilitation Process

Following a request for IEP Facilitation, SERC will contact the other party and ask whether they are willing to participate in IEP Facilitation. IEP Facilitation may not be used to deny or delay the right to a due process hearing or any other rights afforded to students and parents.

IEP Facilitation is:

- Voluntary for parents and school personnel;
- Offered when disputes arise;
- 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.

## 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 The ultimate goal of mediation is to obtain a written agreement that is acceptable to both parties. Mediation agreements are legally binding. Even if a written agreement is not achieved, mediation may be helpful in clarifying issues.

Mediation is a structured, voluntary process in which an impartial third party (a mediator) assists parents and/or adult students and LEA personnel resolve disputes. Mediation builds positive working relationships, encourages mutual understanding, and helps the parties focus on their common interest—the student. Both parties must agree to the use of mediation.

### **A. Mediation Process**

Following a request for mediation, SERC will contact the other party and ask whether they are willing to participate in mediation. Mediation may not be used to deny or delay the right to a due process hearing or any other rights afforded to students and parents.

Mediation is:

- Voluntary for parents and school personnel;
- Offered when disputes arise, including, but not limited to, formal complaints and due process hearing requests;
- Confidential, thus encouraging all participants to speak freely;
- A No-Cost Service to parents and LEAs; and
- An Alternative that does not delay the status of a due process hearing or formal complaint.

## **Section 4. Formal State Complaints**

A formal State 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 email, mail, fax or hand delivery.

### **A. Filing State 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:

- Determine whether the complaint meets all of the required criteria. The OSDE will notify the complainant if their submission is insufficient as listed in Section A, above.
- Notify the LEA that a complaint has been received and the timeline to submit documentation.
- Give the complainant the opportunity to provide additional information about the allegations, either orally or in writing.
- Investigate and resolve the complaint and issue a Final Report that includes the findings of fact, conclusions, and resolution for each violation within 60 calendar days of receipt of the complaint. This time period may be extended, but only under exceptional circumstances, which must be documented by the OSDE. The resolution will state:
  - How to remedy any denial of services, which may include the award of compensatory services, or other corrective action as appropriate to the needs of the student; and
  - The future provision of services for a student with a disability, if such clarification is needed.
- Ensure the LEA takes corrective action if it is determined that the LEA was out of compliance. All corrective actions must be completed no later than one year from issuance of the finding of violation. The OSDE may require a timeline for correction at a date earlier than one year.

## **Section 5. Due Process Hearings Requests**

A request for a due process hearing may be made by a parent, adult student, 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, emailed, faxed, or hand delivered.

When the request is filed, the requesting party must send copies to the Dispute Resolution Director at the OSDE.

All applicable timelines for due process hearing and resolution sessions will start when the request has been filed with the other party and the OSDE.

Oklahoma maintains a two-tiered due process system. In tier one, there are 2 types of hearings, a regular due process hearing and an expedited due process hearing:

- A **regular** due process hearing is an administrative hearing to resolve disputes on any matter related to the identification, evaluation, educational placement, and the provision of a FAPE.
- An **expedited** due process hearing is an administrative hearing to resolve disputes concerning:
  - A manifestation determination or an interim education placement during a long-term suspension.
  - Removing a student to an Interim Alternative Education Setting (IAES) for 45 school days when there is substantial evidence that maintaining the current educational placement is likely to result in injury to the student or others.

The expedited hearing will occur within 20 school days of the request, with a decision rendered within 10 school days of the hearing.

### ***A. Due Process Hearing Request from Parent and/or Adult Student***

A due process hearing may be requested on behalf of a student by a parent, by the adult student, or by an attorney representing the student.

- A due process hearing must be initiated within 2 years of the date the parent and/or adult student knew or should have known of the dispute. The 2 year timeline will not apply if the parent and/or adult student were prevented from requesting a hearing due to misrepresentations that the issues had been resolved or the withholding of information by the LEA required to be provided under the IDEA.
- A due process hearing can be initiated regarding issues pertaining to identification, evaluation, educational placement, or the provision of a FAPE if:
  - The LEA proposes to initiate or change any of these matters; or
  - The LEA refuses the parent's and/or adult student's request to initiate or change any of these matters.

### ***B. Due Process Hearing Request from Parent and/or Adult Student***

An LEA may initiate a due process hearing within 2 years of the dispute in an attempt to accomplish one or more of the following:

- Override a parent's and/or adult student's refusal of consent for an initial evaluation, or a reevaluation;
- Request that a hearing officer determine whether an evaluation conducted by the LEA was appropriate or whether, after an LEA refuses the request by the parent for a publicly funded independent educational evaluation, an evaluation obtained by a parent and/or adult student meets the criteria for a publicly funded independent educational evaluation (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 provide a copy to the parent and/or adult student and the OSDE.

### **C. Contents of a Request for a Due Process Hearing**

A request for a due process hearing must be made in writing and must include the following information:

- The current date;
- The student's name, address (or available contact information in the case of a homeless student), and LEA;
- The signature of the individual making the request for a due process hearing;
- A description of the nature of the problem, including supporting facts; and
- A proposed resolution of the problem or the relief sought to the extent known and available at the time to the party.

### **D. Actions for Due Process Hearings**

#### **1. A Due Process Request is Filed**

- A request may be filed by either party.
  - Either party may challenge the sufficiency of the due process hearing request within 15 days of the receipt of the hearing request by filing a sufficiency objection with the hearing officer. The hearing officer must render a decision regarding the sufficiency challenge within 5 calendar days and immediately notify the parties of the decision in writing. If the decision is found to be insufficient, then the party who filed the due process request will be given time to amend prior to the hearing officer dismissing the complaint.

- The LEA must inform a parent and/or adult student of any free or low-cost legal or other relevant services available to him or her and provide a copy of the Procedural Safeguards if a due process hearing is requested or if the parent and/or adult student requests such information.

## **2. A Hearing Officer is Assigned**

- A hearing officer may not be an employee of the LEA or the OSDE, an individual having any personal or professional interest that would conflict with their objectivity in the hearing, or a member of the board of education of the LEA.
- The LEA will pay for all actual prehearing and hearing expenses incurred in conducting the hearing, including a court reporter, the hearing officer, and the verbatim transcript of the hearing.

## **3. A Due Process Request is Filed**

- A third-party neutral facilitator will be provided at the resolution session, if both parties agree. The OSDE offers mediation through SERC as an alternative dispute resolution mechanism to the parties. A trained mediator will be provided if the parties choose to waive the resolution session and participate in mediation rather than a resolution session.

## **4. Response to a Due Process Request**

- The receiving party must file a response to every issue of the due process request within 10 calendar days.
- If the LEA has not sent a written notice to the parent and/or adult student regarding the subject matter contained in the due process request, the LEA will, within 10 calendar days of receiving the request, send the parent and/or adult student a response that includes all the components of a written notice.
- Either party may amend the request, upon obtaining written consent from the other party or as granted by the hearing officer, at least 5 calendar days prior to the hearing. If the request is amended, timelines for the resolution period begin again as of the date of the amended request. A new resolution session is required.

## **5. Pre-hearing Resolution Session**

- The LEA must hold a resolution session within 15 calendar days of a request for a due process hearing unless:
  - Both parties agree in writing to waive the resolution meeting;
  - Both parties agree to go to mediation; or

- The LEA initiates the hearing. The IDEA requires the resolution session only if the parent has requested the due process hearing.
- The LEA must convene 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 may not attend the resolution session unless the parent and/or adult student will be accompanied by an attorney. If the parent cannot attend on the date offered by the LEA, then the team should meet without them, but invite and reschedule another date for the resolution session to occur.
- 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 achieve a prompt and early solution of the dispute.
- If a resolution is reached regarding the issues raised in the request for a due process hearing, the LEA representative and parent and/or adult student will sign a legally binding document containing the provisions of the agreement that is enforceable in State or federal court. Either party may void this agreement within 3 business days of signing the agreement.
- If the LEA has not resolved the due process complaint to the satisfaction of the parent within 30 days, the due process hearing may occur.

If the LEA is unable to obtain the participation of the parent(s) or adult student after reasonable efforts have been made and documented, at the conclusion of the 30-calendar day period, the LEA may request that the hearing officer dismiss the due process hearing request.

A parent or adult student may request that the hearing officer begin the 45-day hearing timeline if the LEA has not scheduled or participated in a resolution session within 15 days of the request.

#### **6. The 45-calendar day timeline**

The 45-calendar day timeline for the due process hearing request starts the day after one of the following events:

- Both parties agree in writing to waive the resolution meeting and proceed with the hearing;
- After either the mediation or resolution meeting starts, but before the end of the 30-day period, the parties agree in writing that no agreement is possible;
- Both parties agree in writing to continue the mediation at the end of the 30-day resolution period, but later, the parent or LEA withdraws from the mediation process.

No resolution process applies when an LEA files the hearing request.

## **7. Hearing Preparation**

- A parent and/or adult student has the right to and should request to inspect and review reports, files, and records pertaining to the student upon request, as soon as possible after requesting a due process hearing. An LEA may charge a fee for copies of records if the fee does not effectively present a parent and/or adult student from exercising their right to inspect and review those documents. The LEA may not charge a fee to search for or retrieve records.
- Not less than 5 business days prior to a due process hearing, each party will disclose to all other parties:
  - Evaluations completed by that date;
  - Recommendations based on those evaluations intended to be used at the hearing; and
  - Copies of exhibits which will be introduced and a list of witnesses each party intends to call at the hearing.
- A hearing officer may bar any party that fails to comply with the 5 business day requirements above from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.
- The LEA will provide notification as to the time and place of the due process hearing to the parent and/or adult student, and the hearing officer, and the OSDE. The hearing must be conducted at a time and place reasonably convenient to the parent and/or adult student.

## **8. The Due Process Hearing**

- The hearing officer will preside over and conduct the proceedings in a fair and impartial manner, permitting all parties an opportunity to present their information and opinions pursuant the IDEA requirements.
- A parent and/or adult student and LEA personnel may be accompanied and advised by legal counsel and other persons with special knowledge or training about students with disabilities. The Oklahoma Attorney General has opined that lay advocates cannot represent parents and/or adult students at due process hearings.
- A parent and/or adult student has the right to open the hearing to the public and to have the student who is the subject of the hearing present.
- Only a parent and/or adult student, an LEA, and their respective attorneys have the right to present evidence, to compel the attendance of witnesses, and to confront and cross examine witnesses.

- New issues (issues not in the original due process request) may not be raised at the hearing unless agreed to by the other party. Any party may prohibit the introduction of any evidence at the hearing that was disclosed fewer than 5 business days before the hearing.
- During the hearing the LEA will provide reasonable accommodations as required by federal regulations. Disputes will be referred to the OSDE for resolution.
- A record of the hearing will be made. The record will be a written verbatim transcript. The parent and/or adult student may choose an electronic verbatim record. The LEA will pay the transcript costs, and a copy of the transcript will remain with the OSDE. The LEA will provide a copy of the transcript to the parent and/or adult student, the hearing officer, and to the OSDE.
- The party requesting the hearing has the burden of proof in the due process hearing.

#### 9. Decision of the Hearing Officer

- The decision of the hearing officer will be based solely on evidence introduced at the due process hearing.
- The decision made by the hearing officer will be made on substantive grounds based on a determination of whether a student received a FAPE. In matters alleging a procedural violation, a hearing officer may find that a student did not receive a FAPE only if the procedural inadequacies:
  - Impeded the student's right to a FAPE;
  - Caused a deprivation of educational benefit.
- The decision will include findings of fact, and conclusions of law, and an order, if appropriate.
- The hearing officer's written decision must be available within 45 calendar days from the date of the request for a hearing after the resolution period ends or as adjusted by the IDEA provisions. The hearing officer may grant an extension of the timeline if requested by a party. If granted, the extension will be for a specific period of time.
- The decision must be sent to the parent and/or adult student at no cost. Copies will also be mailed to the LEA Superintendent, and other representatives of the LEA, and the OSDE. [**Note:** The IDEA gives the parent the right to ask for an electronic copy]
- After deleting personally identifiable information, the OSDE will make the decision available to the State Advisory Council (IDEA B Advisory Panel) and to the public.
- A hearing officer's decision is final.

- Either party, that is aggrieved by the decision, may appeal the decision to the OSDE (This appeal is the second tier of the Oklahoma Due Process System).

**Note:** Nothing in this section should be interpreted to prevent a parent or adult student from filing a separate due process hearing request on an issue separate from the request already filed. The OSDE may consolidate multiple hearing requests involving the same IEP.

## 10. Stay Put

- During the pendency of any a due process hearing, the student must remain, or “stay put,” in their current educational placement unless the LEA and parent and/or adult student agree otherwise. However, if the change of placement is in response to the student’s misconduct, the “stay put” placement is the new setting, unless the LEA and the parent and/or student agree otherwise.
- The stay put placement continues during any subsequent appeals, unless a hearing officer agrees with a parent and/or adult student that a change of placement is appropriate, in which case, the placement identified in the hearing officer’s decision becomes the stay put placement.
- If the dispute involves an application for initial admission to an LEA in Oklahoma, the student, with the written consent of their parent, must be placed in the LEA program until the proceedings are completed.
- “Stay put” does not apply when a student is transitioning from Part C (the Infant/Toddler Program) to Part B services in Oklahoma. Following the development of an IEP or an Individual Family Service Plan (IFSP), if an educational placement dispute arises involving a student transitioning from Part C to Part B, the student cannot “stay put” in Part C:
  - With written consent of the parent, the student must be placed in the LEA until completion of all the hearing proceedings.
  - If the parent does not give written consent, the student will not receive services until completion of the hearing proceedings.
  - If the student is eligible for special education services, and the parent consents, then the LEA must provide those special education and related services which are not in dispute.

## Section 6. Expedited Due Process Hearings

A request for an expedited due process hearing may be made by a parent and/or adult student or the LEA. The request should be mailed, sent via facsimile, email, or hand delivered to the Dispute Resolution Director at the OSDE. Contact information is listed in the introduction to this chapter.

An expedited due process hearing is defined as an administrative hearing occurring within 20 school days of the request, with a decision rendered within 10 school days of the hearing.

### **A. Expedited Hearing Requests**

The parent of a child with a disability who disagrees with any decision regarding placement under 34 C.F.R. §§ 300.530 and 300.531, or the manifestation determination under 34 C.F.R. § 300.530(e), or an LEA that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others, may appeal the decision by requesting a hearing. The hearing is requested by filing a complaint pursuant to 34 C.F.R. §§ 300.507 and 300.508(a)(b).

### **B. The Expedited Hearing Process and Decisions**

An expedited hearing will be conducted by the hearing officer 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:

- SERC will appoint a hearing officer within 4 business days of a request.
- A resolution session must occur within 7 days of receiving a due process hearing request unless the parties agree in writing to waive the resolution session or go to mediation.
- A due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of receipt of the expedited due process hearing request.
- 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 or emailed to both parties.

A party may appeal the decision in an expedited due process hearing in the same way as they may for decisions in other due process hearings and any party may prohibit the introduction of any evidence at the hearing that was not disclosed at least 5 business days before the hearing.

### **C. Placement During an Expedited Hearing**

When a hearing has been requested by the parent and/or adult student or the LEA regarding placement decisions, the student must “stay put” during the pendency of the hearing. In relation to disciplinary proceedings, stay put means:

- The student will remain in the interim alternate educational setting (IAES) until the timeline for the disciplinary action expires or the hearing officer renders a decision, whichever occurs first.
- Upon expiration of the IAES placement, the student will be placed in the setting they were 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 34 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, as it uses for any other student, except that a FAPE must be as described in the previous section on services for students who are suspended.

## **Section 7. Appeals and Civil Action**

- An appeal to OSDE must be filed within 30 calendar days from the date of issuance of the hearing officer’s decision.
- An appeal to State or federal court must be filed within 90 calendar days from the date of the issuance of the appeal officer’s decision.
- Either party must generally exhaust administrative remedies (administrative due process hearing and administrative appeal to the OSDE) 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 administrative party may have remedies available under these laws that overlap with the IDEA.

## **Section 8. Attorney Fees**

A district court will have jurisdiction in the awarding, determination, or prohibition of attorney fees. The court may in its discretion:

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

- Determine the amount of attorney fees, using prevailing rates in the community in which the action occurred, for the kind and quality of services provided. No bonus or multiplier may be used in calculating the amount of fees awarded.

Funds under IDEA Part B cannot be used by the LEA to pay any attorney fees or costs of a party related to an action or proceeding, such as deposition, expert witnesses, settlements, and other related costs. However, Part B funds may be used to pay hearing or appeal officer fees or the costs of a meeting room to conduct the hearing.

### ***A. Prohibition of Attorney Fees***

Attorney fees may **not** be awarded for legal representation at an IEP meeting, unless such a meeting is convened as a result of an administrative hearing or a judicial action. Attorney fees may **not** be awarded for attending resolution meetings or any mediation.

Attorney fees may **not** be awarded and related costs may not be reimbursed in any action or proceeding for services performed subsequent to the time of a written offer of settlement to a parent and/or adult student if:

- The LEA makes an offer at least 10 calendar days before a due process hearing or a civil proceeding begins;
- The offer is not accepted by the parent and/or adult student within 10 calendar days after it is made; and
- A court or due process hearing officer finds that the relief obtained by the parent and/or adult student is not more favorable to the parent and/or adult student than the offer of settlement.

### ***B. Exception to the Prohibition of Attorney Fees***

An award of attorney fees and related costs may be made to a parent and/or adult student who is a prevailing party and who was substantially justified in rejecting the LEA's settlement offer.

### ***C. Reduction in the Amount of Attorney Fees***

A court may reduce an award for attorney fees under any of the following circumstances:

- During the course of the action or proceeding, the parent and/or adult student or their attorney unreasonably extended the final resolution.
- The amount of the award unreasonably exceeds the prevailing rate in the community for similar services by attorneys of reasonably comparable skills, reputation, and experience.
- The time spent and legal services rendered were excessive considering the nature of the action.

- The attorney representing the parent and/or adult student did not provide the information required in a due process hearing request.

#### ***D. Exception to the Reduction of Attorney Fees***

The amount of attorney fees will not be reduced if the court finds that the LEA unreasonably extended the final resolution of the action or proceeding.

#### ***E. Special Provisions Regarding Attorney Fees***

An LEA that prevails may seek attorney fees from a court against the parent's and/or adult student's attorney if the action is deemed frivolous, unreasonable, without foundation, or prolongs the litigation.

An LEA that prevails may seek attorney fees from a court against the parent's/adult student's attorney or the parent and/or adult student if the hearing request was presented for improper purposes such as to harass the LEA, cause unnecessary delay, or needlessly increase the cost of litigation.

## *Legal Citations*

### **Code of Federal Regulations, Title 34: Education**

- §300.151 Adoption of State complaint procedures.
- §300.152 Minimum State complaint procedures.
- §300.153 Filing a complaint.
- §300.506 Mediation.
- §300.507 Filing a due process complaint.
- §300.508 Due process complaint.
- §300.510 Resolution process.
- §300.515 Timelines and convenience of hearings and reviews.
- §300.516 Civil action.
- §300.517 Attorneys' fees.
- §300.532 Appeal.
- §300.533 Placement during appeals.

## CHAPTER 12. TRANSFERS & MOVE-IN STUDENTS

### Section 1. Transfers

Each Oklahoma school district has a duty to provide special education and related services in accordance with the Individuals with Disabilities Education Act (IDEA) for all students with disabilities who reside in that district. A student's residence for educational purposes is determined by State law. Students with disabilities who attend Oklahoma public schools may receive special education services directly in their school district of residence or by another method permitted by State or federal law as discussed below.

#### *A. Transfers*

Transfers for students with disabilities shall not be considered under the Open Transfer Act but shall be governed by different Oklahoma laws (70 O.S. §§ 13-101, et seq. and 18-110 and OAC 210:10-1-18). See below Section 1, C. IEP Service Agreement for more information.

Specifically, in all transfers of a student with a disability, the following requirements and processes shall apply:

1. The receiving district shall establish availability of the appropriate program, staff, and services prior to approval of the transfer; and
2. The receiving district shall consult the resident school district and the parents of the student to determine how FAPE will be provided to the student; and then determine if the receiving school district is able to approve the transfer.
3. Upon approval of the transfer, the receiving district shall claim the child in the Average Daily Membership (ADM) for state and federal funding purposes and shall assume all responsibility for education of the child.
4. Services comparable to those described in the IEP from the resident district shall be provided to the student until the receiving school district either accepts the child's IEP from the resident district as written or develops, adopts, and implements a new Subsequent IEP that meets IDEA requirements (70 O.S. § 13-103, OAC 210:10-1-19).

Except for students served under an IEP Service Agreement, pursuant to OAC 210:10-1-19(c), in the event of such a transfer, the receiving school district is responsible for providing transportation to a student with a disability on a transfer. The need for transportation must be determined on an individualized basis by the IEP team. If the IEP team determines that transportation is a related service the child needs in order to access FAPE, then the service will be provided regardless of the distance the child resides from the school. The need for, frequency, and duration of these services must **not** be determined by the category of disability, the availability of services, or the distance the child lives from the school where the special education program is to be delivered. If the child requires transportation to receive, benefit from, or obtain access to a special education program, the district shall provide it at no cost to the student or parent (OAC 210-10-1-19).

## ***B. Emergency Transfers***

SB 783 (2021) changed the transfer laws in Oklahoma, effectively eliminating Emergency Transfers.

## ***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.

This written agreement is an IEP Service Agreement, entered into solely for the purpose of providing special education and related services (FAPE) to an eligible student with a disability. In this case, all funds remain with the resident school district, which agrees to pay tuition to the receiving district. Further the Average Daily Membership (ADM) of the student is credited to the resident district. The resident district has the responsibility to provide FAPE, special education and related services, including transportation for students serviced pursuant to this provision. Representatives of the resident school district are responsible for the development and implementation of the IEP and must be provided the opportunity to participate in all IEP meetings. In the event of a due process complaint, the resident district retains responsibility.

- IEP Service Agreements entered into pursuant to this section for three (3) consecutive years to the same school district shall lead to automatic renewal of the agreement. In these cases, the resident district shall continue to pay tuition as provided by law.
- IEP Service Agreements are granted by approval of both the resident and receiving school districts. Such agreements shall be memorialized in writing and documented in State Department of Education's student information system. This agreement should not be documented as a transfer pursuant to the Education Open Transfer Act. (OAC 210:10-1-19(a)(4)(A)(B)).

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	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
IEP Service Agreement	Resident District	Resident District	Resident District	Resident District	Resident District	Yes
Residents who move out of the district during the school year, but choose to finish in the original district	Original resident district	Original resident district	Original resident district	Original resident district	Original resident district	No

## Section 2. IEPs for Move-In Students

### A. Within Oklahoma

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 providing services on the first day the student attends school that are comparable to those described in the previously held IEP, in consultation with the parent, until such time as the LEA reviews and adopts the previously held IEP as written or develops, adopts, and implements a new Subsequent IEP. Per Oklahoma Policy, an IEP for move-in students must be in place **within 10 school days** from the student’s first day of attendance.

To facilitate the transition for a student, the new receiving school district must make reasonable efforts 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.

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 three (3) business days upon receipt of the request.

If the parents are satisfied with the existing IEP from the previous school district, and the LEA determines that the existing IEP is appropriate and can be implemented as written, then no IEP meeting is necessary. The LEA must document the parent agreement to implement the existing IEP

as written from the previous district and send the parents a Written Notice documenting this agreement. The LEA must save and continue while reviewing each page of the online IEP system, then update the service provider, as well as change the start date of the services to the date the LEA and parent agreed to accept the previous district's IEP as written. The LEA must finalize the IEP as an **In-State Transfer** in the special education online system for the meeting purpose.

If the parents are not satisfied with the existing IEP and/or the LEA determined the existing IEP is not appropriate, then an IEP team meeting must occur to develop a new Subsequent IEP within ten (10) school days of enrollment.

In the event that a student who begins the school year as a resident of one school district (original school district) moves to another district before the school term ends that student is entitled to continue to attend school in the original school district through the end of the school term. If a student with a disability makes that choice, the original school district of residence remains the student's resident district until the school term ends (70 O.S. §18-111). In this scenario, the student would not need a transfer to finish the school year in the original school district. However, for the following school years, the student would have to apply for a transfer.

## ***B. From Out-of-State***

When a student with a disability moves in from out-of-state to an Oklahoma school district with a current IEP from another state, the receiving Oklahoma school district, in consultation with the parents, must provide the student with FAPE. This includes implementing services, comparable to those described in the previously held or existing IEP from out-of-state, upon the first day the student attends the receiving Oklahoma district until such actions described below can take place.

Within ten (10) school days of the student's first day of attendance, the LEA will:

1. Conduct an "Out-of-State Transfer" Review of Existing Data (RED) as part of an "initial" evaluation (e.g., review documents provided by parent, contact previous out-of-state district to obtain evaluation and eligibility information, etc.). Indicate on the RED by checking "Child has entered our district with Eligibility from outside Oklahoma." The LEA may determine some of the existing evaluation components meet the eligibility requirements; however, the date of the evaluation/assessment may not be considered current. The team should consider obtaining parent consent to conduct additional assessments to obtain the student's present levels of performance. This review can occur without conducting a formal meeting, as well as parental consent is not required for the review of existing evaluation data regarding the student. 34 C.F.R. §§ 300.305(c) and 300.300(c)(1)(i)
2. On the basis of the final review of existing data, and input from the child's parents, there must be a formal eligibility meeting held for an initial evaluation within ten (10) school days of the student's first day of attendance. The team will determine what, if any, additional assessments/evaluations are needed to meet the Oklahoma Eligibility Standard requirements of a comprehensive evaluation for the given area(s) of disability (See Chapter 4 "Evaluation and Eligibility").

## ***No Additional Data Needed***

If no additional assessments are needed, and the group selects to conduct the “initial” evaluation based solely on existing data, then the existing data must meet all the required components for a comprehensive evaluation based on the suspected category of disability(ies) and key eligibility criteria determined by the Oklahoma State Department of Education (OSDE), Special Education Services (See Chapter 4 “Evaluation and Eligibility”, Section 10 “Disability Categories and Evaluation Components” for more information).

1. After the RED form is completed, then the existing evaluation components must be documented on the Multidisciplinary Evaluation and Eligibility Group Summary (MEEGS) OSDE Form. If the student is eligible using the existing data, then document on the “Initial” MEEGS form *“This student is eligible for Special Education because they meet the State of Oklahoma eligibility standard for the disability/disabilities indicated below.”*
2. An Oklahoma “Initial” IEP will be developed, along with the parent, to meet the unique needs of the student (See Chapter 5 “Individualized Education Program” for more information).
3. The MEEGS and IEP must be completed within 10 school days of the student’s first day of attendance.

## ***Additional Data Needed***

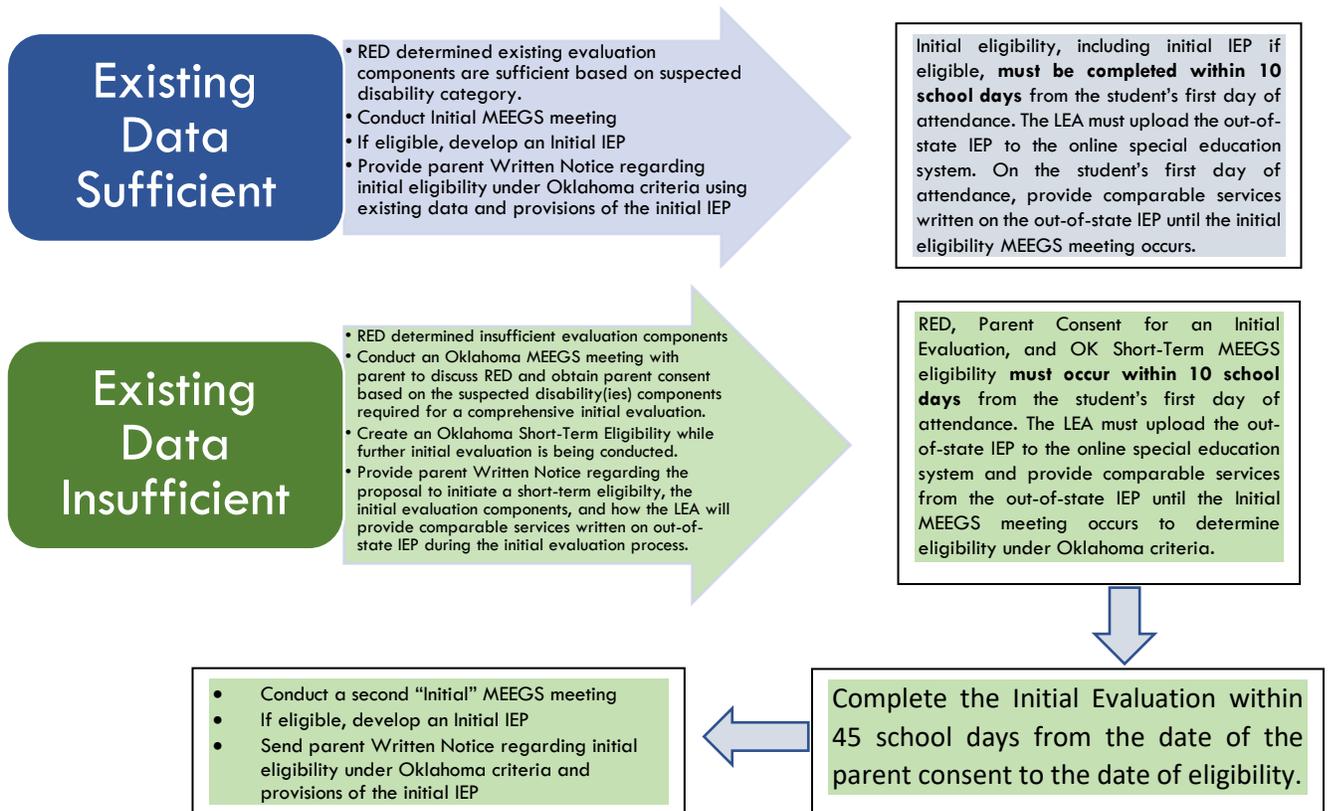
If additional assessments are needed to meet the required components for a comprehensive evaluation under the Oklahoma Eligibility Standards for the suspected disability(ies), the LEA must meet within ten (10) school days of student’s first day of attendance to determine an Oklahoma “short-term eligibility”.

1. After documenting on the RED that “additional assessments are necessary for an Out of State Transfer”, obtain the parent’s written consent on the Special Education Parent Consent form for the additional components needed. Document the date of the parent consent for initial evaluation on the RED form.
2. Complete an “Initial” MEEGS eligibility form by transferring all the current existing data from the RED to the MEEGS form leaving blank the components that are still needed.
  - a. If evaluation records from the previous state are not yet available; however, the parent provided a copy of the IEP, then it is suggested to document at least one evaluation component on the MEEGS from data on the IEP or data reports provided by the parent. On the summary of eligibility determination, indicate that the student enrolled with a current IEP from out-of-state with no evaluation eligibility documents, and the team is conducting a full comprehensive initial evaluation to meet the components for the suspected disability(ies).
3. The LEA, along with the parent, must make a determination of “initial” eligibility to provide comparable services written on the IEP from the previous district out-of-state until a comprehensive evaluation can be completed. Therefore, the team will select, *“The student is considered eligible so that services can be provided while further evaluation*

*is conducted to determine eligibility under Oklahoma eligibility standards” on the initial MEEGS team determination section. The evaluation is considered an initial evaluation and not a reevaluation. Until the initial evaluation is completed, the student will be listed as an Oklahoma (OK) Short-Term Eligibility.*

- a. Throughout the process of determining eligibility in Oklahoma, FAPE must continue to be provided to the student by providing services comparable to those described in the child’s IEP from the previous public school from out-of-state (OSEP Letter to Champagne, 2008 and OSEP letter to Anonymous 2018 by Ruth E. Ryder, Acting Director).
4. The group of qualified professionals must ensure all evaluation/assessment data will be collected within the 45 school day “initial” evaluation timeline.
5. Upon completion of the additional assessments, as well as if additional evaluation documents arrived later from the previous district from out-of-state, school personnel will document these assessment component results on a newly dated second “Initial” MEEGS and schedule an eligibility meeting with the parent.
6. The group of qualified professionals, along with the parent, will conduct a second “initial” eligibility determination meeting that will document:
  - Whether the student is a student with a disability, based on Oklahoma’s eligibility standards and meets the criteria for one or more specific categories of disabilities;
  - Whether the student’s disability adversely impacts the student’s education;
  - Whether the student requires special education services and/or related services; and
  - Whether the student’s educational performance is not based primarily on a lack of instruction in reading, math or limited English proficiency.
7. If the student is determined eligible under Oklahoma’s standards, then the team will develop an “initial” IEP. The IEP team will want to determine whether any additions or modifications to the special education and related services are needed.
8. If the student is determined not eligible under Oklahoma’s standards, then the team may want to consider a referral for a Section 504 initial evaluation. The team could utilize the existing data to make the 504 eligibility determination or may obtain parent consent for a 504 evaluation, if the team determined additional data was necessary.

## Out-of-State Transfer Process



If an Oklahoma school district has formally received a request for records from an out-of-state school, the district must forward copies or the original documents within three (3) business days of receipt of the request. If originals are sent, the district must maintain a copy for audit purposes.

### Section 3. Transfers for Students in Foster Care

Children in foster care often and inadvertently change schools, which along with enrollment delays and record transfers can have a significant disruptive impact on their academic progress. Studies have shown that children in foster care face an increased risk of grade retention, gaps in academic achievement, low high school graduation rates, and postsecondary enrollment.

Recognizing these adverse educational outcomes, the new foster care provisions under Title I of ESSA require State Educational Agencies (SEAs) and LEAs to collaborate with Child Welfare Agencies (CWAs) to ensure educational stability and minimize educational disruptions for children in foster care.

Among other provisions, the educational stability includes assurances that (1) a child in foster care will remain in the child's school of origin, unless a determination is made that it is not in the child's best interest to remain in that school and (2) if a determination is made that it is not in the child's

best interest to remain in the school of origin, the child will be immediately enrolled in the new school of residence, even if the child is unable to produce records normally required for enrollment. These assurances will help ensure that children in foster care experience minimal disruption to their education during moves and placement changes. Additionally, consideration must be made regarding the provision of special education and related services, including transportation, when making these determinations. See Chapter 8 “Private, Charter, Residential and Other Settings”, Part 3, Section 2 for additional information on Foster Care students.

In implementing these provisions, SEAs, LEAs, and CWAs must ensure compliance with other applicable laws, such as Title VI of the Civil Rights Act of 1964 (Title VI), the Individuals with Disabilities Education Act (IDEA) and Section 504 of the Rehabilitation Act of 1973 (Section 504), among others. Students with disabilities must be afforded the right to a FAPE regardless of any change to which LEA they are enrolled. Coordinated efforts between LEAs and CWAs to ensure special education and related services are provided in a timely manner and in accordance with a student’s IEP is critical.

Taken in totality, these provisions promote greater stability for children in foster care so that they can continue their education without disruption, maintain important relationships with peers and adults, and have the opportunity to achieve college and career readiness.

## *Legal Citations*

### Code of Federal Regulations, Title 34: Education

- §300.19 Homeless children.
- §300.111 Child find.
- §300.229 Disciplinary information.
- §300.323 When IEPs must be in effect.
- §300.519 Surrogate parents.

## CHAPTER 13. SPECIAL EDUCATION STAFFING

### Section 1. How to Become a Certified Special Education Teacher

To serve as the Special Education Teacher of Record, the special education teacher must be certified in either the area of the student's disability, as listed on the Eligibility Determination document (MEEGS), or in one or more of the special education certifications such as Mild/Moderate or Severe/Profound or Special Education Comprehensive. Older certifications are category specific (e.g., Specific Learning Disability, Other Health Impaired, etc.), whereas more recent certifications are indicated as Mild/Moderate, Severe/Profound, Special Education Comprehensive, Visually Impaired/Blind, Deaf/Hard of Hearing, or Speech /Language. Holding the corresponding special education certification allows the individual to carry a special education caseload, write the IEP, and sign as the special education teacher on the IEP. To provide instruction and assign grades, the special education teacher must also hold certification in a corresponding content area. For more information on certification go to [Teacher Certification](#) on the OSDE website.

Except as otherwise provided for in 70 O.S. §6-187(C)(1) a teacher may be certified in as many areas as the teacher meets the necessary requirements provided by law and has successfully completed the Oklahoma Subject Area Test (OSAT). Except as otherwise provided for in 70 O.S. §6-187(C)(2) certification in early childhood, elementary, or special education shall require completion of an appropriate teacher education program approved by the Commission.

However, HB 1206 became effective in November of 2017 (an amendment to 70 O.S. § 6-187(C)(2)), allowing certified special education teachers, who did not complete an appropriate teacher education program/traditional regular early childhood/elementary education degree program approved by the Commission, to take and pass the OSAT for early childhood and/or elementary education in order to demonstrate content knowledge. Passing the OSAT in these core areas allows the special education teacher to teach **only** in a special education setting a core subject and meet the requirements to serve as the teacher of record for grading purposes (70 O.S. § 6-187(C)(2)). As an example, certification will be listed "Elementary Special Education" on the teacher certificate.

Note: The Oklahoma Professional Teaching Examination (OPTE) was discontinued as of September, 2021. The OPTE will be replaced by the Praxis Performance Assessment for Teachers (PPAT). The PPAT assessment offers a comprehensive picture of a teacher candidate's potential for classroom success. In addition to measuring a candidate's success, it provides the opportunity to learn and improve one's practice through the completion of formative and summative tasks.

There are [multiple pathways](#) to become a certified special education teacher. Below is a pathway chart for special education certification.

Pathway	Initial Certification	Post-Certification Requirements	Final Certificate Type
<p><b>Traditional Route for Special Education</b></p> <p>Complete a special education degree program from an accredited college/university including special education as a minor for the undergraduate degree in Education.</p> <ul style="list-style-type: none"> <li>● Pass the PPAT</li> <li>● Pass the OGET, and</li> <li>● Pass the OSAT in either               <ul style="list-style-type: none"> <li>○ Mild/Moderate <b>OR</b></li> <li>○ Severe/Profound <b>OR</b></li> <li>○ Blind/Visual Impairment <b>OR</b></li> <li>○ Deaf/Hard of Hearing <b>OR</b></li> <li>○ Special Education Comprehensive Assessment (NEW as of 2022: Covers both Mild/Moderate <b>AND</b> Severe/Profound. It does <b>NOT</b> cover Blind/Visual Impairment or Deaf/Hard of Hearing)</li> </ul> </li> </ul> <p>Once passing scores for the PPAT, OGET, and OSAT are received, then submit to OSDE the “<b>Application for Oklahoma School Certificate</b>” along with an official transcript(s) and payment for the application fee.</p> <ul style="list-style-type: none"> <li>● Fingerprinting/Background Check is required as part of the first-time application process but a separate fee</li> </ul>	<p><b>Standard</b></p> <p>Teacher Certificate for Special Education</p> <p>Listed for the OSAT area passed:</p> <ul style="list-style-type: none"> <li>● Mild/Moderate <b>OR</b></li> <li>● Severe/Profound <b>OR</b></li> <li>● Blind/Visual Impairment <b>OR</b></li> <li>● Deaf/Hard of Hearing <b>OR</b></li> <li>● Special Education Comprehensive Assessment (NEW as of 2022 and covers both Mild/Moderate AND Severe/Profound. It does NOT cover Blind/Visual Impairment or Deaf/Hard of Hearing.)</li> </ul>	<p><b>TOR for Instruction and Assigning Grades</b></p> <p>Pass the OSAT in a regular education subject area.</p> <p><b>Teaching Alternate Standards:</b> Teaching students with cognitive delays taught to alternate standards requires:</p> <p>Elementary Education covers grades 1<sup>st</sup>-12<sup>th</sup> OR Early Childhood Covers Pre-K to 3<sup>rd</sup></p> <p><b>Teaching Oklahoma Academic Standards:</b> Teaching students with mild disabilities or basics is dependent on the grade level and/or subject area assigned.</p> <p>For example: Assignment is a high school, Special Education English class, then the candidate would need to pass the OSAT for English.</p> <p>Once a passing score has been received, then submit to OSDE the “<b>Application for Adding Areas to Existing Certificate</b>” and payment for the application fee.</p> <p><b>NOTE:</b> Additional OSAT subject areas are not added automatically---must complete an application, along with payment for the application fee.</p>	<p><b>Standard</b></p> <p>Teacher Certificate that corresponds to the OSAT passed.</p> <p>Exception: For the Elementary and Early Childhood OSATs, unless the transcript demonstrates appropriate coursework in Early Childhood or Elementary Education, the certificate will denote “Early Childhood Special Education” or “Elementary Special Education.” Use of this certification is expressly limited to only a special education setting.</p> <p>Renew every 5 years.</p>

Pathway	Initial Certification	Post-Certification Requirements	Final Certificate Type
<p><b>Traditional Route for Regular Education</b></p> <p>Complete an education degree program from an accredited college/university in one of the following:</p> <ul style="list-style-type: none"> <li>• Early Childhood</li> <li>• Elementary Education</li> <li>• Secondary Education (any)</li> <li>• Pass the PPAT</li> <li>• Pass the OGET</li> <li>• And</li> <li>• Pass the OSAT in subject area</li> </ul> <p>Once passing scores for the PPAT, OGET, and OSAT are received, then submit to OSDE the “<b>Application for Oklahoma School Certificate</b>” along with an official transcript(s) and payment for the application fee.</p> <ul style="list-style-type: none"> <li>• Fingerprinting/Background Check is required as part of the first-time application process but a separate fee</li> </ul>	<p><b>Standard</b></p> <p>Teacher Certificate for OSAT area passed</p> <p><b>NOTE:</b> Once a regular education teacher is certified through the traditional education degree route, they are allowed to add additional subject areas by taking the OSAT in an area they are interested in teaching, including special education.</p> <p>Renew every 5 years.</p>	<p><b>TOR for IEPs</b></p> <p>Pass the OSAT in either</p> <ul style="list-style-type: none"> <li>• Mild/Moderate <b>OR</b></li> <li>• Severe/Profound <b>OR</b></li> <li>• Blind/Visual Impairment <b>OR</b></li> <li>• Deaf/Hard of Hearing <b>OR</b></li> <li>• Special Education Comprehensive Assessment (NEW as of 2022: Covers both Mild/Moderate AND Severe/Profound. It does NOT cover Blind/Visual Impairment or Deaf/Hard of Hearing)</li> </ul> <p>Once a passing score has been received, then submit to OSDE the “<b>Application for Adding Areas to Existing Certificate</b>” and payment for the application fee.</p> <p><b>NOTE:</b> Additional OSAT subject areas are not added automatically---must complete an application, along with payment for the application fee.</p>	<p><b>Standard</b></p> <p>Teacher Certificate Special Education OSAT area passed:</p> <ul style="list-style-type: none"> <li>• Mild/Moderate <b>OR</b></li> <li>• Severe/Profound <b>OR</b></li> <li>• Blind/Visual Impairment <b>OR</b></li> <li>• Deaf/Hard of Hearing <b>OR</b></li> </ul> <p>Special Education Comprehensive Assessment (NEW as of 2022: Covers both Mild/Moderate AND Severe/Profound. It does NOT cover Blind/Visual Impairment or Deaf/Hard of Hearing)</p> <p>Renew every 5 years.</p>

Pathway	Initial Certification	Post-Certification Requirements	Final Certificate Type
<p><b>Speech-Language Pathologist Or Speech-Language Pathologist Assistant (SLPA) with Teacher Certification</b></p> <p><b>Take and pass:</b></p> <ul style="list-style-type: none"> <li>• <b>OGET</b></li> <li>• <b>OSAT for special education certification in either:</b> <ul style="list-style-type: none"> <li>○ Mild/Moderate <b>OR</b></li> <li>○ Severe/Profound <b>OR</b></li> <li>○ Blind/Visual Impairment <b>OR</b></li> <li>○ Deaf/Hard of Hearing <b>OR</b></li> <li>○ Special Education Comprehensive Assessment (NEW as of 2022: Covers both Mild/Moderate <b>AND</b> Severe/Profound. It does <b>NOT</b> cover Blind/Visual Impairment or Deaf/Hard of Hearing)</li> </ul> </li> </ul> <p>Once passing scores for the PPAT, OGET, and OSAT are received, then submit to OSDE the “<b>Application for Oklahoma School Certificate</b>” along with an official transcript(s) and payment for the application fee.</p> <ul style="list-style-type: none"> <li>• Fingerprinting/Background Check is required as part of the first-time application process but a separate fee</li> </ul>	<p><b>Initial</b></p> <p>Valid up to 3 years OR until the PPAT is passed, whichever comes first</p> <p>Pass the PPAT within 3 years.</p>	<p><b>TOR for Instruction and Assigning Grades</b></p> <p>Pass the OSAT in a regular education subject area to be TOR for placing grades on a report card.</p> <p><b>Teaching Alternate Standards:</b> Teaching students with cognitive delays taught to alternate standards requires:  Elementary Education covers grades 1<sup>st</sup>-12<sup>th</sup> <b>OR</b> Early Childhood Covers Pre-K to 3<sup>rd</sup></p> <p><b>Teaching Oklahoma Academic Standards:</b> Teaching students with mild disabilities or basics is dependent on the grade level and/or subject area assigned.</p> <p>For example: Assignment is a high school, Special Education English class, then the candidate would need to pass the OSAT for English.</p> <p>Once a passing score has been received, then submit to OSDE the “<b>Application for Adding Areas to Existing Certificate</b>” and payment for the application fee.</p> <p><b>NOTE:</b> Additional OSAT subject areas are not added automatically---must complete an application, along with payment for the application fee.</p>	<p><b>Standard</b></p> <p>Teacher Certificate that corresponds to the OSAT passed.</p> <p>Exception: For the Elementary and Early Childhood OSATs, unless the transcript demonstrates appropriate coursework in Early Childhood or Elementary Education, the certificate will denote “Early Childhood Special Education” <b>Or</b> “Elementary Special Education.” Use of this certification is expressly limited to only a special education setting.</p> <p>Renew every 5 years.</p>

Pathway	Initial Certification	Post-Certification Requirements	Final Certificate Type
<p align="center"><b>Alternative Standard Teacher Certificate</b></p> <p>Bachelor’s degree from an accredited college or university or university with 2.5 or higher <b>OR</b>            Bachelor’s degree from an institution accredited by the Oklahoma Regents of Higher Education (OSRHE) plus 2 years of qualified work experience in w field corresponding to subject area or certification <b>OR</b>            Terminal Degree (e.g., doctorate) in any field from an institution accredited by a national or regional accreditation agency by the U.S. Department of Education</p> <p>In addition to the degree requirement, applicants must demonstrate competency in a field that corresponds to the area of certification they are seeking (see <a href="#">Guidelines and Eligibility for the Alternative Placement Program</a> for more details).</p> <p>Submit to OSDE the “<b>Oklahoma Alternative Placement Program Evaluation Application</b>” along with official transcript(s), current resume, and payment for the application fee</p> <ul style="list-style-type: none"> <li>Fingerprinting/Background Check is required as part of the first-time application process but a separate fee</li> </ul> <p>The applicant will receive a letter notifying of the approval to seek certification through the alternative program. If approved, then take and pass the OGET and OSET in subject area.</p> <p>Once the OGET and OSAT passing scores are received, then submit to OSDE the “<b>Initial Alternative Certification Application</b>” and payment for the application fee.</p>	<p align="center"><b>Initial</b></p> <p>Valid for up to 3 years or until additional college/university hours or PD hours are completed.            Certificate is <b>Non-renewable</b> after the third (3<sup>rd</sup>) year if:</p> <ul style="list-style-type: none"> <li>The coursework or PD hours are <b>not</b> completed within the three (3) years</li> </ul> <p><b>AND</b></p> <ul style="list-style-type: none"> <li>The PPAT is <b>not</b> passed within the 3<sup>rd</sup> year.</li> <li>Applicants must complete the following:</li> <li>Complete 6 to 18 college/university credit hours of professional teacher education coursework. <b>OR</b></li> <li>90-270 clock hours of professional development approved by an Oklahoma school district.</li> </ul> <p>NOTE: All participants will be required to complete a college credit course addressing classroom management and a college credit course addressing general or subject-specific pedagogical principles, or approved equivalents            Anyone who has enrolled in and subsequently failed required teacher education courses necessary to meet the minimum requirements of a teacher education program is not eligible for the alternative placement program. (Oklahoma Law 70 O. S. Section 6- 122.3)            Once coursework is completed</p> <ul style="list-style-type: none"> <li>Pass the PPAT</li> </ul> <p>Once the passing score for the PPAT has been received, then submit to OSDE the “Application for Oklahoma School Certificate” along with official transcript(s)/ PD documentation and payment for the application fee.</p>	<p align="center"><b>TOR for IEPs</b></p> <p>Must have a standard teacher certificate in a core subject area prior to taking and passing the OSAT for a special education area.</p> <ul style="list-style-type: none"> <li>Pass the OSAT in either           <ul style="list-style-type: none"> <li>Mild/Moderate <b>OR</b></li> <li>Severe/Profound <b>OR</b></li> <li>Blind/Visual Impairment <b>OR</b></li> <li>Deaf/Hard of Hearing <b>OR</b></li> <li>Special Education Comprehensive Assessment (NEW as of 2022: Covers both Mild/Moderate <b>AND</b> Severe/Profound. It does <b>NOT</b> cover Blind/Visual Impairment or Deaf/Hard of Hearing</li> </ul> </li> </ul> <p>Once a passing score has been received, then submit to OSDE the “<b>Application for Adding Areas to Existing Certificate</b>” and payment for the application fee.</p> <p><b>NOTE:</b> Additional OSAT subject areas are not added automatically---must complete an application, along with payment for the application fee.</p>	<p align="center"><b>Standard</b></p> <p>Teacher Certificate            Special Education            OSAT area passed:</p> <ul style="list-style-type: none"> <li>Mild/Moderate <b>OR</b></li> <li>Severe/Profound <b>OR</b></li> <li>lind/Visual Impairment <b>OR</b></li> <li>Deaf/Hard of Hearing <b>OR</b></li> <li>Special Education Comprehensive Assessment (NEW as of 2022: Covers both Mild/Moderate <b>AND</b> Severe/Profound. It does <b>NOT</b> cover Blind/Visual Impairment or Deaf/Hard of Hearing</li> </ul> <p>Renew every 5 years</p>

Pathway	Initial Certification	Post-Certification Requirements	Final Certificate Type
<p><b>Paraprofessional to Special Education Teacher Program</b></p> <ul style="list-style-type: none"> <li>• Bachelor’s degree from an accredited college/university with a GPA of 2.5 or higher</li> <li>• At least one (1) year of continuous employment as a paraprofessional in a public school, special education setting (Letterhead from school district is required)</li> <li>• Pass the OGET, and</li> <li>• Pass the OSAT – must be in the area of Para experience earned at the public school district in either: <ul style="list-style-type: none"> <li>○ Mild/Moderate <b>OR</b></li> <li>○ Severe/Profound <b>OR</b></li> <li>○ Blind/Visual Impairment <b>OR</b></li> <li>○ Deaf/Hard of Hearing <b>OR</b></li> <li>○ Special Education Comprehensive Assessment (NEW as of 2022: Covers both Mild/Moderate <b>AND</b> Severe/Profound. It does <b>NOT</b> cover Blind/Visual Impairment or Deaf/Hard of Hearing.)</li> </ul> </li> </ul> <p>Once passing scores for the OGET, and OSAT are received, then submit to OSDE the “<b>Application for Oklahoma Paraprofessional to Apply for Teaching Certificate</b>” along with an official transcript(s) and payment for the application fee.</p> <ul style="list-style-type: none"> <li>• Fingerprinting/Background Check is required as part of the first-time application process but a separate fee.</li> </ul>	<p><b>Initial</b></p> <p>Valid for up to 3 Years Or until additional college/university hours are completed and PPAT is passed, whichever comes first–</p> <p>Certificate is <b>Non-renewable</b> after the third (3<sup>rd</sup>) year if:</p> <ul style="list-style-type: none"> <li>• The coursework is <b>not</b> completed within the three (3) years</li> </ul> <p><b>AND</b></p> <ul style="list-style-type: none"> <li>• The PPAT is <b>not</b> passed within the 3<sup>rd</sup> year.</li> </ul> <p>Teachers with this provisional certificate may also take the Early Childhood and Elementary Education OSAT. These areas will be listed on the certificate as Elementary Special Education or Early Childhood Special Education. They are for use only in a special education setting.</p> <p>Upon passing the additional OSAT, submit to OSDE the “<b>Application for Adding Areas to Existing Certificate</b>” and payment for the application fee.</p> <p><b>NOTE:</b> Additional OSAT subject areas are not added automatically---must complete an application, along with payment for the application fee.</p>	<p><b>TOR for IEPs</b></p> <p>Within three (3) years, complete twelve (12) semester hours of professional education coursework from a higher education institution accredited by the Oklahoma Commission for Teacher Preparation with an approved program in the certification area held.</p> <ul style="list-style-type: none"> <li>• The twelve (12) semester hours <b>must include</b> a minimum of three (3) hours in reading instruction; <b>AND</b></li> <li>• Within three years, successfully complete at least one full school year of teaching service in a public or private school accredited by the State Board of Education. Recommendation letter comes from either the school principal or superintendent, and college recommendation/credit verification; <b>AND</b></li> <li>• Pass the PPAT</li> </ul> <p>Once a passing score for the PPAT has been received, then submit to the OSDE the “<b>Application for Oklahoma School Certificate</b>” along with an official transcript(s), recommendation letters, and payment for the application fee.</p>	<p><b>Standard</b></p> <p>Teacher Certificate Special Education OSAT area passed:</p> <ul style="list-style-type: none"> <li>• Mild/Moderate <b>OR</b></li> <li>• Severe/Profound <b>OR</b></li> <li>• Blind/Visual Impairment <b>OR</b></li> <li>• Deaf/Hard of Hearing <b>OR</b></li> <li>• Special Education Comprehensive Assessment (NEW as of 2022: Covers both Mild/Moderate <b>AND</b> Severe/Profound. It does <b>NOT</b> cover Blind/Visual Impairment or Deaf/Hard of Hearing</li> </ul> <p>Must also be certified in a Core Subject Area to teach in a content area and place grades on a report card – See Section 2 below for more information. Renew every 5 years.</p>

Pathway	Initial Certification	Post-Certification Requirements	Final Certificate Type
<p style="text-align: center;"><b>Non-Traditional Route to Special Education Certification Program (Boot Camp)</b></p> <p>Requirements</p> <ul style="list-style-type: none"> <li>• 4-year degree with 2.75 or higher GPA (Note: some universities will <b>not</b> accept a “General Studies” degree as part of the requirements for admission to the graduate program)</li> <li>• Apply and be accepted into a master’s degree Special Education program from an accredited university or college.</li> <li>• Obtain a recommendation letter from either a school district or an institute of higher education.</li> <li>• Complete a 150- clock hour boot camp, including 120 hours of training and 30 hours of field experience in special education.</li> <li>• Submit a certificate of completion of an “approved” boot camp.</li> <li>• Also submit to OSDE “<b>Non-Traditional Special Education Provisional Certificate Application</b>” along with an official transcript of at least the bachelor’s degree and pay the application fee.</li> <li>• Fingerprinting/Background Check is required as part of the application process but a separate fee.</li> </ul>	<p style="text-align: center;"><b>Provisional</b></p> <p>Good for only one year. Renewable for up to two additional years.</p> <p><b>Must renew annually</b> with proof from an accredited college or university of at least six (6) credit hours completed toward the master’s degree each year.</p> <p><b>OR</b> until the required master’s degree hours are completed, whichever comes first.</p>	<p style="text-align: center;"><b>TOR for IEPs</b></p> <p>Within three years, pass the</p> <ul style="list-style-type: none"> <li>• PPAT,</li> <li>• OGET, and OSAT in a special education area in either: <ul style="list-style-type: none"> <li>○ Mild/Moderate <b>OR</b></li> <li>○ Severe/Profound <b>OR</b></li> <li>○ Blind/Visual Impairment <b>OR</b></li> <li>○ Deaf/Hard of Hearing <b>OR</b></li> <li>○ Special Education Comprehensive Assessment (NEW as of 2022: Covers both Mild/Moderate AND Severe/Profound. It does NOT cover Blind/Visual Impairment or Deaf/Hard of Hearing</li> </ul> </li> <li>• Complete 18 hours toward a master’s degree in special education from an accredited college or university.</li> </ul> <p>After the completion of master’s level prescribed coursework and passing the PPAT, OGET, and OSAT, then Submit to OSDE the “<b>Application for Oklahoma School Certificate</b>” along with an official transcript(s) of master’s level coursework, and payment for the application fee for a standard certificate.</p>	<p style="text-align: center;"><b>Standard</b></p> <p>Teacher Certificate Special Education OSAT area passed:</p> <ul style="list-style-type: none"> <li>• Mild/Moderate <b>OR</b></li> <li>• Severe/Profound <b>OR</b></li> <li>• Blind/Visual Impairment <b>OR</b></li> <li>• Deaf/Hard of Hearing <b>OR</b></li> <li>• Special Education Comprehensive Assessment (NEW as of 2022: Covers both Mild/Moderate AND Severe/Profound. It does <b>NOT</b> cover Blind/Visual Impairment or Deaf/Hard of Hearing</li> </ul> <p>Must also be certified in a Core Subject Area to teach in a content area and place grades on a report card – See Section 2 below for more information.</p> <p>Renew every 5 years.</p>

Pathway	Initial Certification	Post-Certification Requirements	Final Certificate Type
<p align="center"><b>Earn a master’s degree in Special Education</b></p> <p>Take and pass:</p> <ul style="list-style-type: none"> <li>• OGET</li> <li>• OSAT for special education certification in either: <ul style="list-style-type: none"> <li>○ Mild/Moderate <b>OR</b></li> <li>○ Severe/Profound <b>OR</b></li> <li>○ Blind/Visual Impairment <b>OR</b></li> <li>○ Deaf/Hard of Hearing <b>OR</b></li> <li>○ Special Education Comprehensive Assessment (NEW as of 2022: Covers both Mild/Moderate <b>AND</b> Severe/Profound. It does <b>NOT</b> cover Blind/Visual Impairment or Deaf/Hard of Hearing</li> </ul> </li> </ul> <p>NOTE: A candidate with a master’s degree in special education is eligible to forego taking the special education OSAT by submitting a transcript, university degree plan and course descriptions to the Office of Educational Quality and Accountability (OEQA). If approved, the candidate may be certified without taking the special education OSAT.</p> <p><a href="#">Request for Advanced Degree/OSAT Comparability</a></p> <p>Submit to the OSDE the “<b>Application for Oklahoma School Certificate</b>” along with an official transcript(s), recommendation letters, and payment for the application fee.</p> <ul style="list-style-type: none"> <li>• Fingerprinting/Background Check is required as part of the first-time application process but a separate fee</li> </ul>	<p align="center"><b>Initial</b></p> <p>Valid for up to 3 years or until the PPAT is passed, whichever comes first.</p> <p>Pass the PPAT within 3 years.</p>	<p align="center"><b>TOR for Grades</b></p> <p>Pass the OSAT in a regular education subject area to be TOR for placing grades on a report card.</p> <p><b>Teaching Alternate Standards:</b> Teaching students with cognitive delays with alternate standards or concepts requires: Elementary Education Covers Grades 1st - 12<sup>th</sup></p> <p align="center"><b>OR</b></p> <p>Early Childhood Grades Pre-K to 3rd</p> <p><b>Teaching Oklahoma Academic Standards:</b> Teaching students with mild disabilities or basics is dependent on the grade level and/or subject area assigned</p> <p>For example: Assignment is a high school, Special Education English class, then the candidate would need to pass the OSAT for English</p> <p>Once a passing score on the OSAT has been received, then submit to OSDE the “<b>Application for Adding Areas to Existing Certificate</b>” and payment for the application fee</p> <p><b>NOTE:</b> Additional OSAT areas are not added automatically—must complete an application, along with payment for the application fee</p>	<p align="center"><b>Standard</b></p> <p>Teacher Certificate that corresponds to the OSAT passed.</p> <p><i>Exception: For the Elementary and Early Childhood OSATs, unless the transcript demonstrates appropriate coursework in Early Childhood or Elementary Education, the certificate will denote “Early Childhood Special Education” or “Elementary Special Education”. Use of this certification is expressly limited to only a special education setting.</i></p> <p>Renew every 5 years</p>

For more information about the PPAT go to the [ETS Performance Assessments](#) website. Deadlines for task submissions can also be found at the same website under [“Dates and Deadlines for the PPAT Assessments.”](#)

**Above information is a summary ONLY and is not meant to replace or supersede information from the Oklahoma State Department of Education Office of Certification. For specific guidance, click here <https://sde.ok.gov/teacher-certification>**

## Section 2. How to Become Certified To Teach a Content Area in a Special Education Setting

Special Education teachers who teach a content area in a special education setting must be dually certified. Teachers who are certified in special education are approved to provide content instruction in a special education setting **if** they hold a valid certificate in Elementary, Early Childhood, or a Secondary content area that matches the subject and grade level of the teaching assignment, or demonstrates competency by passing an appropriate Oklahoma Subject Area Test (e.g., Elementary Special Education), or demonstrates competency through Oklahoma’s High Objective Uniform State Standard of Evaluation (HOUSSE) for the required subject area. These teachers are qualified to be the “teacher of record” for instructional/grading purposes.

Special education teachers who hold no other subject content area certification or qualification (e.g. HOUSSE) may still serve as co-teachers or teach non-core subject areas (e.g., life skills, study skills, an elementary direct instruction special education class teaching supplementary basic reading skills but not as the core reading instruction nor providing a grade for reading on the report card).

\*\* A paper copy of the HOUSSE form accompanied by proper documentation must be available for review by OSDE, upon request.

### ***A. Elementary/Early Childhood***

Teachers wanting to teach special education at the pre-school/elementary level must be certified in special education **and** hold appropriate Early Childhood or Elementary certification or fulfill HOUSSE requirements to be the teacher of record for instructional grading purposes. Teachers who do not possess the elementary/early childhood certification may provide supplementary instruction within the special education setting but may not assign grades. If traditionally certified special education teachers pass the Elementary Education or Early Childhood OSAT, it may be added to their certificate. [House Bill 1206](#), effective November 1, 2017, allows any special education certified to add Elementary or Early Childhood to a certificate, upon passing the appropriate OSAT, provided they will be teaching that content only in a special education setting. These teachers will NOT be certified to teach Elementary or Early Childhood in a general education environment. Special education teachers who cannot serve as a teacher of record for instructional/grading purposes may still serve as co-teachers.

## B. Secondary

For secondary grades, special education teachers must be certified in special education **and** hold appropriate subject area certification or fulfill HOUSSE requirements to be the teacher of record, for instructional and grading purposes. Secondary teachers who provide instruction to students who are taught to alternate standards and assessed by OAAP may be certified in special education **and** Elementary Education or Early Childhood or fulfill HOUSSE requirements in Elementary Education or Early Childhood. Special education teachers who cannot serve as a teacher of record for instructional/ grade grading purposes may still serve as co-teachers.

## C. Unique

Unique programs such as an alternative school, an alternative education program, residential or treatment facility (such as juvenile detention centers, group homes, inpatient treatment facilities and emergency youth shelters) must ensure that teachers are qualified to provide appropriate educational instruction in accordance with OAC 210:35-29-6 and OAC 210:10-1-13.

(OAC 210:10-1-13 (d)(3)(A)) states, “Teachers shall be appropriately certified by the Oklahoma State Department of Education. A certified teacher who is qualified to teach in an accredited school district’s educational service for a residential care or treatment facility may teach subjects in which the teacher does not hold certification. This shall only be valid upon application of a school district offering on-site educational services in a residential or treatment facility and approved by OSDE only for those purposes.”

## Section 3. Emergency Certification and Long-Term Substitutes

**NOTE:** There are **NO** emergency certificates for special education. It is expressly prohibited under IDEA.

### Emergency Certification in “Regular” Education Content Areas:

In order to be certified in a **core content** area, superintendents may request an emergency certification under certain conditions:

- A suitable certificate candidate cannot be located.
- The district has supporting documentation of a job posting.
- Teacher candidate must apply for the emergency request.
- Submit a request to the Oklahoma School Board of Education at least 14 days prior to that month’s State Board of Education Meeting.
- Have a cleared certification background check on file at the OSDE at least 7 days prior to that month’s State Board of Education Meeting.

Above information is a summary only and is not meant to replace or supersede information from the Oklahoma State Department of Education Office of Certification. For specific guidance click here <https://sde.ok.gov/emergency-certification-administrator-use-only>

### ***Long-Term Substitute Teacher:***

In the event a suitable special education certified candidate is not available, the district may choose to utilize a non-certified candidate as a long-term substitute. Some circumstances may apply a limit for the number of days a long-term substitute may serve (see link below). If a district elects to fill a vacant special education position in this way, the candidate must complete the long-term sub modules, as assigned by the State Department of Education, Office of Special Education Services. Completion of these modules will allow the candidate to provide instruction and assign grades for any subject area in a special education setting. However, this will **not** allow the candidate to serve as the Special Education Teacher of Record, carry a special education caseload, write an IEP or sign an IEP as the special education teacher. These functions must be carried out by a certified special education teacher.

Above information is a summary only and is not meant to replace or supersede information from the Oklahoma State Department of Education Office of Teacher Certification. For specific guidance click here <https://sde.ok.gov/long-term-substitues-special-education>

## **Section 4. How to Become a Special Education Paraprofessional**

In order to become a Special Education Paraprofessional, candidates must apply for a paraprofessional certificate through the State Department of Education, Office of Certification. Candidates must have a high school diploma or GED and meet tier one and tier two requirements within 120 days of employment.

### ***Tier 1 (Federal Programs – Title 1 Paraprofessionals)***

Meet one of the following:

- Two years of study at an institution of higher education (48 semester hours of college coursework), **OR**
- An associate's degree (or higher), **OR**
- Pass the [WorkKeys Test](#) (Bronze +), [ParaPro Assessment](#) (455 +) or the [OGET](#).

### ***Tier 2 (Special Education)***

**In addition to Tier 1, a special education paraprofessional must complete the following requirements:**

- OSDE Special Education Paraprofessional training through Pepper, [career technology centers](#), or other state-approved training providers

- Cardiovascular Pulmonary Resuscitation (CPR)/First Aid training, maintaining current certification
- Universal Precautions/Bloodborne Pathogens yearly training, AND
- Six (6) hours of professional development **each year**.

Once all requirements have been met, administrators must initiate a paraprofessional credential recommendation through Single Sign On. Directions may be found on the OSDE website for initiating a [Paraprofessional credential](#).

Paraprofessional certificates do **not** require renewal. It does, however, require ongoing annual professional development of six (6) hours.

## Section 5. Related Services Personnel Qualifications

<b>Profession/ Discipline</b>	<b>Services Provided</b>	<b>State Licensure or Credential</b>	<b>Requirements for Professional Licensure or Credential</b>	<b>Oklahoma Teaching Certification</b>	<b>Requirements for OSDE Certification</b>
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		
Audiologist *300	Audiology Services	Yes	OBESPA <sup>11</sup> 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 III/III, EIPA 3.5, ESSE 3.5, RID, NIC, or NAD.		
Intervener Services Deaf-Blind *418	1:1 student support to access instruction, social, environmental information. Supervision by special ed teacher			No, but paraprofessional certification is required.	Paraprofessional, plus specialized training in deaf-blindness and the process of intervention
Licensed Professional Counselor (LPC)	Counseling services	Yes	Master's degree; state licensure as LPC, LMFT, or LBP		
Occupational Therapist *334	Occupational therapy services	Yes	Bachelor's degree; state licensure		
Orientation and Mobility Specialist	Orientation and Mobility	Yes, O&M Credential	Bachelor's or Master's degree; ACVREP <sup>7</sup> Certification or NOMC Certification		

Profession/ Discipline	Services Provided	State Licensure or Credential	Requirements for Professional Licensure or Credential	Oklahoma Teaching Certification	Requirements for OSDE Certification
Physical Therapist *338	Physical therapy services	Yes	Doctoral degree; state licensure		
Physician	Medical Services	Yes	MD or DO; state licensure		
Psychological Clinician	Psychological and counseling services while working in state agencies		Master's degree; OPM <sup>15</sup> requirements		
Recreational Therapist *345	Medically related conditions based on a referral from a physician or may provide wellness education, adaptive sports, recreation without referral from a physician	Yes	Bachelor's degree or higher Must have state license CRTS/L contingent upon maintenance of the NCTRC national certification		
Rehabilitation Counselor	Rehabilitation Counseling services		Master's degree; OPM 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; <b>Cannot</b> add other areas to certification	Associate's (must complete 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		
Certified School Psychologist *343	Psychological, educational and counseling services	Required if working in a clinical setting	Master's degree; state licensure or Education Specialist Degree (Ed.S.) and state licensure.	Yes	Master's degree/ Ed.S.; special course of study; State Certification test; or NCSP <sup>16</sup> certification
Certified School Psychometrist *510	Psycho- educational assessments		Master's degree	Yes	Master's degree; state certification test
Social Worker *352	School social work services	Yes	Master's degree; state licensure; OPM requirements		

<b>Profession/ Discipline</b>	<b>Services Provided</b>	<b>State Licensure or Credential</b>	<b>Requirements for Professional Licensure or Credential</b>	<b>Oklahoma Teaching Certification</b>	<b>Requirements for OSDE Certification</b>
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 Bachelor's degree in Communication Sciences or Speech- Language Pathology, Includes appropriate coursework and clinical hours; OBESPA state licensure	Yes, required to carry a caseload and develop IEPs under supervision; Optional to provide therapy under supervision. See Section 6 Certification Requirements below.	Bachelor's degree
Speech- Language Therapist Assistant *215	Speech and Language Therapy Services under the general direction of a licensed SLP	Yes	Bachelor's degree in Speech Pathology or Communication Sciences and Disorders; OBESPA 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;
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 or Communication Sciences and Disorders; and OBESPA state licensure in Speech- Language Pathology (if billing for Medicaid reimbursement or supervising an SLTA or SLPA) recommended ASHA certification	Yes, required to carry a caseload and develop IEPs; Optional to provide therapy.  May add additional areas to certificate	Master's degree in SLP or Communication Sciences and Disorders;
Physical Therapy Assistant *417	Physical Therapy Services under the general direction of a licensed Physical Therapist	Yes	Associate's degree; state licensure		

<b>Profession/ Discipline</b>	<b>Services Provided</b>	<b>State Licensure or Credential</b>	<b>Requirements for Professional Licensure or Credential</b>	<b>Oklahoma Teaching Certification</b>	<b>Requirements for OSDE Certification</b>
Occupational Therapy Assistant *416	Occupational therapy services under the general direction and supervision of a licensed Occupational Therapist	Yes	Associate's degree; state licensure		
Special Education Paraprofessional *418	Special education and related services under the general direction and supervision of a certified or licensed professional staff			No, but Oklahoma special education paraprofession al certification is required.	High School diploma or GED; Meets requirements for Tier 1 and Tier 2 Paraprofessional
Special Education Personal Care Assistant *419	Daily living, health-related functions, redirection of behavior and other tasks Supervised by a certified special education teacher or related service personnel				High school diploma or GED; CPR/First Aid Certification OSDE Para Modules

\*See the Oklahoma Cost Accounting System (OCAS) Job Classification Dimension Definitions for more information regarding services provided and other requirements. Please note that some codes are “best fit”.

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.

## Section 6. Certification Requirements

For clarification, it should be noted that the Oklahoma State Department of Education, Office of Certification uses the term “Teacher of Record” to define who can provide instruction and assign grades for a given subject area. It is not to be confused with the Special Education Teacher of Record indicating who can serve as the special education teacher, carry a caseload, and sign as the special education teacher. The following are examples:

Primary Category of Disability	Placement Example	Levels of Performance Examples	State Assessment OTSP or OAAP	Teaching Certification Requirement TOR for IEP	Regular Education Certification TOR for Transcript/Guide
Autism	<p>Special Education Class Full-Time</p> <p><b>Or</b></p> <p>Special Education Class Part-Time</p>	<p>Student has a significant cognitive delay (<b>AND</b> significant adaptive behavior deficits (two standard deviations below the mean). Requires alternate achievement standards taught in <b>ALL</b> content areas through intensive/extensive direct instruction including skill areas such as daily living, functional academics, communication, etc.</p>	OAAP	<p>Severe/ Profound (2558)</p> <p><b>Or</b></p> <p>Mild/ Moderate (2556)</p> <p><b>Or</b></p> <p>Special Education Comprehensive</p> <p>*Any area of Special Education (categorical certification, except Speech-Language Pathology)</p> <p><b>And</b></p> <p>*Multiple Disabilities Registry Training (9803)</p> <p><b>And</b></p> <p>*Autism Registry Training (9801)</p>	<p>Core Content Area</p> <p>Early Childhood (1003)</p> <p><b>Or</b></p> <p>Elementary Education (1501 or 1600)</p> <p><b>NOTE:</b> When students require alternate achievement standards and are assessed under the OAAP Early Childhood or Elementary Education is required Pre-K through 12<sup>th</sup></p>

Primary Category of Disability	Placement Example	Levels of Performance Examples	State Assessment OTSP or OAAP	Teaching Certification Requirement TOR for IEP	Regular Education Certification TOR for Transcript/Guide
Autism	Regular Class Full-Time  <b>Or</b>  Special Education Class Part-Time	Requires instruction under the Oklahoma Academic Standards (OAS) for <b>ALL</b> content areas either in a regular education classroom and/or a special education classroom	OSTP	Mild/Moderate (2556)  <b>Or</b>  Special Education Comprehensive  <b>Or</b>  *Any area of Special Education (categorical certification, except Speech-Language Pathology)  <b>And</b>  *Autism Registry Training (9801)	Core Content Area  Early Childhood (1003)  <b>Or</b>  Elementary Ed (1501 or 1600)  Secondary Subject Area Taught Example: English; or Middle Level/Intermediate Mathematics

Primary Category of Disability	Placement Example	Levels of Performance Examples	State Assessment OTSP or OAAP	Teaching Certification Requirement TOR for IEP	Regular Education Certification TOR for Transcript/Guide
Deaf-Blindness	Special Education Class Full-Time	Student has a significant cognitive delay ( <b>AND</b> significant adaptive behavior deficits (two standard deviations below the mean). Requires alternate achievement standards taught in <b>ALL</b> content areas through intensive/extensive direct instruction including skill areas such as daily living, functional academics, communication, etc.	OAAP	Blind/Visual Impairment (2550) <b>And</b> Deaf/Hard-of-Hearing (2552) <b>Or</b> *Certification in at least one sensory area *Hearing Impaired (2503) <b>Or</b> *Visually Handicapped (2511) <b>And</b> *Deaf-Blindness Registry Training (9802)  Note: Student with a category of Deaf-Blindness <b>cannot</b> have a TOR solely with Mild/Moderate or Severe/Profound certification	Core Content Area  Early Childhood (1003)  <b>Or</b>  Elementary Ed (1501 or 1600)  <b>NOTE:</b> When students require alternate achievement standards and are assessed under the OAAP Early Childhood or Elementary Education is required Pre-K through 12th ed
Developmental Delay (DD)  (Ages 3-9)  NOTE: Children with sensory impairments (e.g., Blind/Visual Impairment or Hearing Impairment) cannot be categorized as DD	Special Education Class Full-Time	Student has a significant cognitive delay ( <b>AND</b> significant adaptive behavior deficits (two standard deviations below the mean). Requires alternate achievement standards taught in <b>ALL</b> content areas through intensive/extensive direct instruction including skill areas such as daily living, functional academics, communication, etc.	OAAP	Severe/Profound (2558) <b>Or</b> Special Education Comprehensive <b>Or</b> *Any area of Special Education (categorical certification, except Speech-Language Pathology) And *Multiple Disabilities Registry Training (9803)	Core Content Area  Early Childhood (1003)  <b>Or</b>  Elementary Education (1501 or 1600)

Primary Category of Disability	Placement Example	Levels of Performance Examples	State Assessment OTSP or OAAP	Teaching Certification Requirement TOR for IEP	Regular Education Certification TOR for Transcript/Guide
Emotional Disturbance	Regular Class Full-Time <b>Or</b> Special Education Class Part-time <b>Or</b> Special Education Class Full-Time	Requires instruction under the Oklahoma Academic Standards (OAS) for <b>ALL</b> content areas either in a regular education classroom and/or a special education classroom	OSTP	Mild/Moderate (2556)  <b>Or</b> Special Education Comprehensive  <b>Or</b> Severe/Profound (2558)  <b>Or</b> *Emotionally Disturbed (2501)	Core Content Area  Early Childhood (1003) <b>Or</b> Elementary Education (1501 or 1600)  <b>Or</b> Secondary Subject Area Taught Example: English; or Middle Level /Intermediate Mathematics
Hearing Impairment (Including Deafness)	Regular Class Full-Time <b>Or</b> Special Education Class Part Time	Requires instruction under the Oklahoma Academic Standards (OAS) for <b>ALL</b> content areas either in a regular education classroom and/or a special education classroom	OSTP	Deaf/Hard-of-Hearing (2552)  <b>Or</b> *Hearing Impaired (2503)  <b>NOTE:</b> Student with Hearing Impairment <b>Cannot</b> have a TOR solely with Mild/Moderate or Severe/Profound certification	Core Content Area  Early Childhood (1003)  <b>Or</b> Elementary Ed (1501 or 1600)  <b>Or</b> Secondary Subject Area Taught Example: English; or Middle Level/Intermediate Mathematics

Primary Category of Disability	Placement Example	Levels of Performance Examples	State Assessment OTSP or OAAP	Teaching Certification Requirement TOR for IEP	Regular Education Certification TOR for Transcript/Guide
Intellectual Disabilities	Special Education Classroom Full-Time  <b>Or</b>  Special Education Class Part-Time	Student has a significant cognitive delay ( <b>AND</b> significant adaptive behavior deficits (two standard deviations below the mean). Requires alternate achievement standards taught in <b>ALL</b> content areas through intensive/extensive direct instruction including skill areas such as daily living, functional academics, communication, etc.	OAAP	Severe/Profound (2558) Or Special Education Comprehensive Or Mild/Moderate (2556) Or *Any area of Special Education (categorical certification, except Speech-Language Pathology) And *Multiple Disabilities Registry Training (9803) Or *Mentally Handicapped (2507)	Core Content Area  Early Childhood (1003) Or Elementary Education (1501 or 1600)  <b>NOTE:</b> When students require alternate achievement standards and are assessed under the OAAP Early Childhood or Elementary Education is required Pre-K through 12th
Intellectual Disabilities	Regular Class Full-Time  <b>Or</b>  Special Education Class Part Time	Requires instruction under the Oklahoma Academic Standards (OAS) for <b>ALL</b> content areas either in a regular education classroom and/or a special education classroom	OSTP	Mild/Moderate (2556) <b>Or</b> Special Education Comprehensive <b>Or</b> *Mentally Handicapped (2507)	Core Content Area  Early Childhood (1003) <b>Or</b> Elementary Education (1501 or 1600) <b>Or</b> Secondary Subject Area Taught Example: English; or Middle Level/ Intermediate Mathematics

Primary Category of Disability	Placement Example	Levels of Performance Examples	State Assessment OTSP or OAAP	Teaching Certification Requirement TOR for IEP	Regular Education Certification TOR for Transcript/Guide
Multiple Disabilities	Special Education Class Full-Time	Student has a significant cognitive delay ( <b>AND</b> significant adaptive behavior deficits (two standard deviations below the mean). Requires alternate achievement standards taught in <b>ALL</b> content areas through intensive/extensive direct instruction including skill areas such as daily living, functional academics, communication, etc.	OAAP	Severe/ Profound (2558) <b>Or</b> Special Education Comprehensive <b>Or</b> *Any area of Special Education (categorical certification, except Speech-Language Pathology) <b>And</b> *Multiple Disabilities Registry Training (9803)	Core Content Area  Early Childhood (1003) <b>Or</b> Elementary Education (1501 or 1600)  NOTE: When students require alternate achievement standards and are assessed under the OAAP Early Childhood or Elementary Education is required Pre-K through 12 <sup>th</sup>
Orthopedic Impairment	Regular Class Full-Time <b>Or</b> Special Education Class Part-Time	Requires instruction under the Oklahoma Academic Standards (OAS) for <b>ALL</b> content areas either in a regular education classroom and/or a special education classroom	OSTP	Mild/ Moderate (2556) <b>Or</b> Special Education Comprehensive <b>Or</b> *Physically Handicapped (2509)	Core Content Area  Early Childhood (1003) <b>Or</b> Elementary Ed (1501 or 1600) <b>Or</b> Secondary Subject Area Taught Example: English; or Middle Level/ Intermediate Mathematics

<b>Primary Category of Disability</b>	<b>Placement Example</b>	<b>Levels of Performance Examples</b>	<b>State Assessment OTSP or OAAP</b>	<b>Teaching Certification Requirement TOR for IEP</b>	<b>Regular Education Certification TOR for Transcript/Guide</b>
Other Health Impairment	Special Education Classroom Full-Time	Student has a significant cognitive delay ( <b>AND</b> significant adaptive behavior deficits (two standard deviations below the mean). Requires alternate achievement standards taught in <b>ALL</b> content areas through intensive/extensive direct instruction including skill areas such as daily living, functional academics, communication, etc.	OAAP	Severe/ Profound (2558) <b>Or</b> Special Education Comprehensive <b>Or</b> *Any area of Special Education (categorical certification, except Speech-Language Pathology) <b>And</b> *Multiple Disabilities Registry Training (9803) <b>And</b> *Other Health Impairment Registry Training (9804)	Core Content Area  Early Childhood (1003) <b>Or</b> Elementary Education (1501 or 1600) NOTE: When students require alternate achievement standards and are assessed under the OAAP Early Childhood or Elementary Education is required Pre-K through 12 <sup>th</sup>
Other Health Impairment	Regular Classroom Full-Time  <b>Or</b> Special Education Classroom Part-Time	Requires instruction under the Oklahoma Academic Standards (OAS) for <b>ALL</b> content areas either in a regular education classroom and/or a special education classroom	OSTP	Mild/ Moderate (2556)  <b>Or</b>  Special Education Comprehensive  <b>Or</b>  *Any area of Special Education (categorical certification except Speech-Language Pathology) <b>And</b> *Other Health Impairment Registry Training (9804)	Core Content Area  Early Childhood (1003)  <b>Or</b>  Elementary Ed (1501 or 1600)  <b>Or</b>  Secondary Subject Area Taught Example: English I; or Middle Level/ Intermediate Mathematics

<b>Primary Category of Disability</b>	<b>Placement Example</b>	<b>Levels of Performance Examples</b>	<b>State Assessment OTSP or OAAP</b>	<b>Teaching Certification Requirement TOR for IEP</b>	<b>Regular Education Certification TOR for Transcript/Guide</b>
Specific Learning Disabilities	Regular Class Full-Time  <b>Or</b>  Special Education Class Part-Time	Requires instruction under the Oklahoma Academic Standards (OAS) for <b>ALL</b> content areas either in a regular education classroom and/or a special education classroom	OSTP	Mild/Moderate (2556)  <b>Or</b>  Special Education Comprehensive  <b>Or</b>  Learning Disability (2505)	Core Content Area  Early Childhood (1003)  <b>Or</b>  Elementary Ed (1501 or 1600)  <b>Or</b>  Secondary Subject Area Taught Example: English I; or Middle Level/Intermediate Mathematics
Speech or Language Impairment	Regular Classroom Full-Time	Requires instruction under the Oklahoma Academic Standards (OAS) for <b>ALL</b> content areas either in a regular education classroom and/or a special education	OSTP	Speech-Language Pathologist (0521)  <b>Or</b>  Speech-Language Pathology Assistant **See below	None required

Primary Category of Disability	Placement Example	Levels of Performance Examples	State Assessment OTSP or OAAP	Teaching Certification Requirement TOR for IEP	Regular Education Certification TOR for Transcript/Guide
Traumatic Brain Injury	Special Education Classroom Full-Time	Student has a significant cognitive delay ( <b>AND</b> significant adaptive behavior deficits (two standard deviations below the mean). Requires alternate achievement standards taught in <b>ALL</b> content areas through intensive/extensive direct instruction including skill areas such as daily living, functional academics, communication, etc.	OAAP	Severe/ Profound (2558) <b>Or</b> Special Education Comprehensive <b>Or</b> *Any area of Special Education (categorical certification, except Speech- Language Pathology) And *Multiple Disabilities Registry Training (9803) And *Traumatic Brain Injury Registry Training (9805)	Core Content Area Early Childhood (1003) <b>Or</b> Elementary Education (1501 or 1600) NOTE: When students require alternate achievement standards and are assessed under the OAAP Early Childhood or Elementary Education is required Pre-K through 12 <sup>th</sup>
Traumatic Brain Injury	Regular Classroom Full-Time <b>Or</b> Special Education Classroom Part-Time	Requires instruction under the Oklahoma Academic Standards (OAS) for <b>ALL</b> content areas either in a regular education classroom and/or a special education classroom	OSTP	Mild/ Moderate (2556) <b>Or</b> Special Education Comprehensive <b>Or</b> *Any area of Special Education (categorical certification except Speech- Language Pathology) And *Traumatic Brain Injury Registry Training (9805)	Core Content Area Early Childhood (1003) <b>Or</b> Elementary Ed (1501 or 1600) <b>Or</b> Secondary Subject Area Taught Example: English I; or Middle Level/ Intermediate Mathematics
Visual Impairment (Including Blindness)	Regular Class Full-Time <b>Or</b> Special Education Class Part-Time	Requires instruction under the Oklahoma Academic Standards (OAS) for <b>ALL</b> content areas either in a regular education classroom and/or a special education classroom	OSTP	Blind/Visual Impairment (2550) <b>Or</b> *Visually Handicapped (2511)  <b>NOTE:</b> A student with a category of Visual Impairment <b>Cannot</b> have a TOR solely with Mild/Moderate or Severe/Profound Certification	Core Content Area Early Childhood (1003) <b>Or</b> Elementary Ed (1501 or 1600) <b>Or</b> Secondary Subject Area Taught Example: English; or Middle Level Intermediate Mathematics

\*Allowable due to old certification; however, no longer being issued as a new certificate.

**\*\*Speech-Language Pathology Assistant (SLPA) Teacher Certification**

SLPAs who hold a bachelor's degree, may choose to take the Oklahoma Speech-Language Pathology Assistant Teacher's Certification Test. LEAs have the option of offering a certified contract for SLPAs who hold a current Oklahoma SLPA Teaching Certificate. SLPAs who hold a current Oklahoma SLPA Teaching Certificate may also carry a caseload of students who have a primary eligibility in the DD/SLI or SLI categories and serve as the Teacher of Record. Speech-Language Pathology Assistants who do not hold a current Oklahoma SLPA Teacher Certificate should be on a support staff contract and may not serve as the teacher of record for students.

**Supervision [OAC 690:10-7-3](#)**

The responsibility of the SLPA is to implement the treatment plan created by supervising SLP. The SLPA can only perform tasks prescribed by the SLP. However, SLPAs **cannot** conduct evaluations. Supervision of the SLPA occurs both directly and indirectly, given time in the field and the level of competence as determined by the SLP supervisor.

For more information on roles and responsibilities of the SLPA, [OAC Title 690:10-7-10 Board of Examiners of Speech-Language Pathology and Audiology](#). See Roles and Responsibilities of the SLPA.

## Section 7. Caseload and Class Size Requirement

### A. Class Size Requirements

<b>Full Day Self-contained</b>	Maximum of ten (10) students per classroom	These classrooms are designed predominantly for the support of students with significant, moderate, or multiple disabilities. Multiple courses are taught to the same students for the majority of the day. For example, students who are served inside the general education classroom for less than 40% of the day.
<b>Direct Support/Resource</b>	<u>Grades K-4:</u> Maximum of ten (10) students per classroom <u>Grades 5-12:</u> Maximum of fifteen (15) students per classroom	These classrooms are designed to provide a higher level of support than what is provided in the regular classroom. Students receive direct support services for specific subjects. They are also available for students seeking extra help to complement regular classroom instruction.

## B. Caseload Requirements

Caseload: The following chart details maximum full-time equivalent (FTE) caseload based on each student's placement.

Placement	Caseload	
	Percentage (FTE)	Total
<b>Regular Class Full-time</b> (inside the regular class more than 80% of the day) - Consultation and Monitoring Only	.025	40
<b>Regular Class Full-time</b> (inside the regular class more than 80% of the day) Collaboration, Co-teaching, or Direct Instruction	.04	25
<b>Special Class Part-time</b> (inside the regular class 40% to 80% of the day)	.05	20
<b>Special Class Full-time</b> (inside the regular class less than 40% of the day)	.067	15
<b>Special Class Full-time</b> (inside the regular class less than 10% of the day)	.1	10
<b>Outside of Public School Setting</b> (home instruction, hospitals, institutions public/private residential facilities, public/private separate day school facilities, correctional facilities, parentally placed in private schools)	.025	40
<b>Half-day preschool continuum</b>	.05	20 (10 students per .5 day)
<b>Speech/Language</b> 60 minutes or less per week	.020	
More than 60 minutes per week	.0250	

## C. 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 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 A.

## Comparison Flow Chart for Initial Evaluation and Reevaluation

Initial	Reevaluation
<p style="text-align: center;"><b>Review of Existing Data (RED)</b></p> <ul style="list-style-type: none"> <li>• RED required:               <ul style="list-style-type: none"> <li>➤ Marked as an Initial; or</li> <li>➤ Out of State Transfer</li> </ul> </li> <li>• No formal meeting required to review existing data. However, the LEA may choose to hold a meeting.               <ul style="list-style-type: none"> <li>➤ Parent consent <b>not</b> required to review existing data which may include:</li> </ul> </li> </ul> <p>Screening data:</p> <ul style="list-style-type: none"> <li>• Screening all children within a grade; or</li> <li>• Screening an individual child for instructional/ intervention strategies.</li> </ul> <p>Evaluation:</p> <ul style="list-style-type: none"> <li>• Evaluation/testing data <b>must</b> be one year old or less (i.e., data used to determine performance) to be considered existing data for eligibility.</li> <li>• Gather background information (e.g., history of development, school attendance, academic performance, discipline referrals, etc.) may be documented as many years back as applicable.</li> <li>• After reviewing RED, with the parent, the group will recommend an action:               <ul style="list-style-type: none"> <li>➤ No Additional Assessments Needed.</li> </ul> </li> </ul> <p><b>OR</b></p> <ul style="list-style-type: none"> <li>➤ Additional Assessments are Necessary for Initial Evaluation.</li> </ul>	<p style="text-align: center;"><b>Review of Existing Data (RED)</b></p> <ul style="list-style-type: none"> <li>• RED required:               <ul style="list-style-type: none"> <li>➤ Marked as a Reevaluation</li> </ul> </li> <li>• No formal meeting required to review existing data. However, the LEA may choose to hold a meeting.               <ul style="list-style-type: none"> <li>➤ Parent consent <b>not</b> required to review existing data which may include:</li> </ul> </li> </ul> <p>Screening data:</p> <ul style="list-style-type: none"> <li>• Screening all children within a grade; or</li> <li>• Screening an individual child for instructional/ intervention strategies.</li> </ul> <p>Evaluation:</p> <ul style="list-style-type: none"> <li>• Evaluation/testing data may be older than one year (i.e., previous evaluation) to be considered existing data for eligibility.</li> <li>• Gather background information (e.g., history of development, school attendance, academic performance, discipline referrals, etc.) may be documented as many years back as applicable.</li> <li>• After reviewing RED, with the parent, the group will recommend an action:               <ul style="list-style-type: none"> <li>➤ No Additional Assessments Needed.</li> </ul> </li> </ul> <p><b>OR</b></p> <ul style="list-style-type: none"> <li>➤ Additional Assessments are Necessary for Reevaluation.</li> </ul>

Initial	Reevaluation
<p data-bbox="164 254 704 285"><b>If Additional Assessments are Necessary</b></p> <ul data-bbox="82 312 730 590" style="list-style-type: none"> <li data-bbox="82 312 730 384">• <i>Special Education Parent Consent</i>, signature is required (electronic signatures are allowed). <ul data-bbox="131 411 730 590" style="list-style-type: none"> <li data-bbox="131 411 730 590">➤ Informed consent (parent has been fully informed in their mode of communication or native language regarding all information encompassing the additional components needed for the evaluation).</li> </ul> </li> </ul> <p data-bbox="82 621 126 653"><b>OR</b></p> <ul data-bbox="131 680 730 858" style="list-style-type: none"> <li data-bbox="131 680 730 858">➤ If parent fails to respond to LEA's request for consent for initial evaluation, document attempts to contact parent and results of the contact. LEA must <b>not</b> evaluate without the parent's signature for consent to evaluate.</li> </ul> <p data-bbox="82 1005 126 1037"><b>OR</b></p> <ul data-bbox="131 1064 730 1167" style="list-style-type: none"> <li data-bbox="131 1064 730 1167">➤ If parent declines to sign consent, the LEA must <b>not</b> evaluate without parent's signature for consent.</li> </ul> <p data-bbox="82 1268 769 1333">NOTE: Parent failing to respond is not the same as the parent declining to sign consent.</p> <p data-bbox="82 1398 751 1539">LEAs may (but are not required to) pursue consent override procedures involving mediation and/or due process; however, LEAs do not violate its Child Find obligation if they chose not to pursue it.</p>	<p data-bbox="865 254 1406 285"><b>If Additional Assessments are Necessary</b></p> <ul data-bbox="784 312 1432 590" style="list-style-type: none"> <li data-bbox="784 312 1432 384">• <i>Special Education Parent Consent</i>, signature is required (electronic signatures are allowed). <ul data-bbox="833 411 1432 590" style="list-style-type: none"> <li data-bbox="833 411 1432 590">➤ Informed consent (parent has been fully informed in their mode of communication or native language regarding all information encompassing the additional components needed for the evaluation).</li> </ul> </li> </ul> <p data-bbox="784 621 828 653"><b>OR</b></p> <ul data-bbox="833 680 1484 1010" style="list-style-type: none"> <li data-bbox="833 680 1484 1010">➤ If Parent fails to respond to LEA's request for consent for reevaluation, LEA may pursue the reevaluation by either using all existing data, or by documenting reasonable efforts to obtain consent AND sending a Written Notice for the proposal to conduct additional assessments. After Written Notice is sent to the parent, the LEA may conduct the additional assessments if the parent fails to respond. *</li> </ul> <p data-bbox="784 1041 828 1073"><b>OR</b></p> <ul data-bbox="833 1100 1484 1203" style="list-style-type: none"> <li data-bbox="833 1100 1484 1203">➤ If parent declines to sign consent, then the LEA must <b>not</b> reevaluate without parent's signature for consent.</li> </ul> <p data-bbox="784 1268 1472 1333">NOTE: Parent failing to respond is not the same as the parent declining to sign consent.</p> <p data-bbox="784 1398 1455 1539">LEAs may (but are not required to) pursue consent override procedures involving mediation and/or due process; however, LEAs do not violate its Child Find obligation if they chose not to pursue it.</p>

Initial	Reevaluation
<p style="text-align: center;"><i>Written Notice to Parents required</i></p> <ul style="list-style-type: none"> <li>➤ If parent signed the <i>Special Education Parent Consent</i> for the initial evaluation, document the evaluation procedures to be utilized in assessing these additional components in the Written Notice.</li> </ul> <p><b>OR</b></p> <ul style="list-style-type: none"> <li>➤ If parent did not respond, then describe the proposal to initiate an initial evaluation explaining the reasons why and other options considered</li> </ul> <p><b>OR</b></p> <ul style="list-style-type: none"> <li>➤ If parent declined to sign consent for the initial evaluation, explain the reasons for the proposal to initiate the initial evaluation and document the parent declined the proposal.</li> </ul> <p><i>Parents Rights in Special Education: Notice of Procedural Safeguards must be provided to the parent along with the Written Notice.</i></p>	<p style="text-align: center;"><i>Written Notice to Parents required</i></p> <ul style="list-style-type: none"> <li>➤ If parent signed the <i>Special Education Parent Consent</i> for the reevaluation, document the procedures to be utilized in assessing these additional components in the Written Notice.</li> </ul> <p><b>OR</b></p> <ul style="list-style-type: none"> <li>➤ If parent did not respond, then the LEA will describe the proposal to initiate the reevaluation explaining the reasons why and other options considered.</li> </ul> <p><b>OR</b></p> <ul style="list-style-type: none"> <li>➤ If parent declined to sign consent for the reevaluation, explain the reasons for the proposal to initiate the reevaluation and document the parent declined the proposal.</li> </ul> <p><i>Parents Rights in Special Education: Notice of Procedural Safeguards must be provided to the parent along with the Written Notice.</i></p>
Initial	Reevaluation
<p style="text-align: center;"><b>If No Additional Assessments Needed</b></p> <ul style="list-style-type: none"> <li>• Multidisciplinary Evaluation and Eligibility Group Summary (MEEGS) required <ul style="list-style-type: none"> <li>➤ Must have existing data that meets ALL the required components that make up a comprehensive evaluation for the suspected disability(ies) and document the assessment data/information on the MEEGS.</li> </ul> </li> <li>• If parent and LEA are in agreement with conducting the initial evaluation without additional assessments, then a Written Notice will document the LEA's proposal.</li> </ul>	<p style="text-align: center;"><b>If No Additional Assessments Needed</b></p> <ul style="list-style-type: none"> <li>• Multidisciplinary Evaluation and Eligibility Group Summary (MEEGS) required <ul style="list-style-type: none"> <li>➤ Must have existing data that meets ALL the required components that make up a comprehensive reevaluation for the suspected disability(ies) and document the assessment data/information on the MEEGS.</li> </ul> </li> <li>• If parent and LEA are in agreement with conducting the reevaluation without additional assessments, then a Written Notice will document the LEA's proposal.</li> </ul>

Initial	Reevaluation
<p style="text-align: center;"><b>Timeline</b></p> <p>The initial eligibility determination must be completed within 45 school days beginning on the date the parent signs the Special Education Parent Consent form and ending on the date the team signs the eligibility determination on the MEEGS form.</p>	<p style="text-align: center;"><b>Timeline</b></p> <p>The 45-school day timeline does <b>not</b> apply to the reevaluation (Section 300.300.).</p> <p>The timeline for reevaluation is from the date of signatures on the previous eligibility determination on the MEEGS to the triannual (3 year) date of the next MEEGS.</p> <p>The reevaluation must occur not more than once a year, unless the parent and LEA agree otherwise. The reevaluation must occur at least once every 3 years, unless the parent and LEA agree that a reevaluation with additional assessments is not necessary. In this case, a reevaluation MEEGS form will be completed using existing data for all components required for the specific category of disability.</p>
Initial	Reevaluation
<p style="text-align: center;"><b>Eligibility Determination</b></p> <ul style="list-style-type: none"> <li>• Must provide parents a draft summary of the evaluation results at least two (2) school days prior to the eligibility team meeting.</li> <li>• <i>Multidisciplinary Evaluation and Eligibility Group Summary (MEEGS)</i> required. <ul style="list-style-type: none"> <li>➢ All required components based upon the suspected disability(ies) must be documented on the MEEGS.</li> </ul> </li> <li>• If parent does <b>not</b> participate in the MEEGS meeting: <ul style="list-style-type: none"> <li>➢ The LEA may meet to complete the eligibility determination (MEEGS) without the parent <b>IF</b> the LEA documented at least two (2) methods of contact, one of the two must be an Invitation of Meeting form: <ol style="list-style-type: none"> <li>1. Detailed records of email, phone calls</li> </ol> </li> </ul> </li> </ul>	<p style="text-align: center;"><b>Eligibility Determination</b></p> <ul style="list-style-type: none"> <li>• Must provide parents a draft summary of the evaluation results at least two (2) school days prior to the eligibility team meeting.</li> <li>• <i>Multidisciplinary Evaluation and Eligibility Group Summary (MEEGS)</i> required. <ul style="list-style-type: none"> <li>➢ All required components based upon the suspected disability(ies) must be documented on the MEEGS.</li> </ul> </li> <li>• If parent does <b>not</b> participate in the MEEGS meeting: <ul style="list-style-type: none"> <li>➢ The LEA may meet to complete the eligibility determination (MEEGS) without the parent <b>IF</b> the LEA documented at least two (2) methods of contact, one of the two must be an Invitation of Meeting form: <ol style="list-style-type: none"> <li>1. Detailed records of email, phone calls</li> </ol> </li> </ul> </li> </ul>

Initial	Reevaluation
<p>made, virtual meeting, home visits, etc., offering multiple options for date/time of meeting.</p> <p><b>AND</b></p> <p>2. Sent the parent an “<i>Invitation of Meeting</i>” form.</p> <p>NOTE: The LEA must meet the 45-school day timeline.</p> <p>NOTE: Parent failing to respond is not the same as the parent disagreeing with eligibility. Refer to Chapter 4 Section 14.</p>	<p>made, virtual meeting, home visits, etc., offering multiple options for date/time of meeting.</p> <p><b>AND</b></p> <p>2. Sent the parent an “<i>Invitation of Meeting</i>” form.</p> <p>NOTE: The LEA must meet the 3-year anniversary from the previous MEEGS date.</p> <p>NOTE: Parent failing to respond is not the same as the parent disagreeing with eligibility.</p>
Initial	Reevaluation
<p><i>Written Notice to Parents</i> is provided to the parent after the MEEGS meeting.</p> <p><b>AND</b></p> <p><i>Parents Rights in Special Education: Notice of Procedural Safeguards</i> is required to be provided to the parent along with <i>Written Notice</i>.</p>	<p><i>Written Notice to Parents</i> is provided to the parent after the MEEGS meeting.</p> <p><b>AND</b></p> <p><i>Parents Rights in Special Education: Notice of Procedural Safeguards</i> is required to be provided to the parent along with <i>Written Notice</i>.</p>

\* (Section 300.300(c)(2).

(c) Parental consent for reevaluations

(1) Subject to paragraph (c)(2) of this section, each public agency—

(i) Must obtain informed parental consent, in accordance with §300.300(a)(1), prior to conducting any reevaluation of a child with a disability.

(ii) If the parent refuses to consent to the reevaluation, the public agency may, but is not required to, pursue the reevaluation by using the consent override procedures described in paragraph (a)(3) of this section.

(iii) The public agency does not violate its obligation under §300.111 and §§300.301 through 300.311 if it declines to pursue the evaluation or reevaluation.

(2) The informed parental consent described in paragraph (c)(1) of this section need not be obtained if the public agency can demonstrate that—

(i) It made reasonable efforts to obtain such consent; and

(ii) The child’s parent has failed to respond.

# APPENDIX B

## Team Members Needed to Participate in Special Education Decision-Making

Under IDEA, two groups play a role in making special education decisions. These decisions must be made by a multidisciplinary team of qualified professionals and the parent of the child.

1. **Multidisciplinary Evaluation and Eligibility Group** (34 C.F.R. § 300.306). This group is formed once consent is obtained from the parent. This group is formed to carry out the evaluation process, to make the determination of whether the child is a child with a disability as defined in IDEA (34 C.F.R. § 300.8) and determine the educational needs of the child. The members of this group are made up of a team of qualified professionals and the parent. While each evaluation group may differ, there are specific members and skills that must be represented in the decision-making process.
  
2. IEP Team (20 U.S.C. § 1414(a)(4)(A) and (34 C.F.R. § 300.321). This group is formed to make decisions regarding the development, review and revision of the student’s IEP. While each IEP team/group may differ, there are specific members and skills that must be represented in the decision-making process.

The chart below indicates which members of the group will participate in making various special education decisions, including the Review of Existing Data (RED), Multidisciplinary Evaluation and Eligibility Group Summary (MEEGS), and Individualized Education Program (IEP).

Team Members Needed to Participate in Special Education Decision-Making			
TEAM MEMBER QUALIFICATIONS	RED *	MEEGS	IEP
<p><b>Parents or Adult Student (if Rights Have Transferred).</b> A “parent” includes:</p> <ul style="list-style-type: none"> <li>• Biological or adoptive parent(s).</li> <li>• Judicially decreed guardian (does not include State agency personnel if the student is a ward of the state).</li> <li>• Surrogate parent appointed by the LEA.</li> <li>• 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).</li> <li>• Foster parent only when natural parent’s authority to make educational decisions for their child has been suspended/terminated by law) who has</li> </ul>	<p>Required Review and Signature</p>	<p>Required Attendance and Signature</p>	<p>Required Attendance and Signature</p>

**Team Members Needed to Participate in Special Education Decision-Making**

TEAM MEMBER QUALIFICATIONS	RED *	MEEGS	IEP
<p>no interest (i.e., financial) that would conflict with the interests of the student.</p> <ul style="list-style-type: none"> <li>If more than one biological or adoptive parent meets the definition of parent, the biological or adoptive parent may serve as the parent in the IEP process unless a judicial decree identifies a single person to make educational decisions for the student.</li> <li>Adult student: student with a disability who is 18 years of age or older whose special education rights have transferred under the Individuals with Disabilities Education Act (IDEA). (The parent may attend the IEP meeting at the invitation of the adult student or the LEA. The LEA must notify the adult student prior to the meeting).</li> <li>Special circumstances must be considered for children in foster care (See Chapter 11, Section 2 for definition of a parent and Chapter 10, Part 3, Section 2 for more information about foster parent).</li> </ul>			
<p><b>Student</b></p> <ul style="list-style-type: none"> <li>Included as a member of the IEP team beginning with the first IEP that includes a transition plan.</li> <li>The student must be invited upon turning 14 years of age or during the 8th grade year, whichever comes first. This will ensure that transition services are in effect before the beginning of the student’s ninth-grade year or on or before the student’s 15<sup>th</sup> birthday. If the student does not attend, the team must take steps to ensure that the student’s preferences and interests are considered.</li> <li>Has knowledge and insight of self-interests and motivations to assist in IEP development.</li> <li>Provides input regarding postsecondary goals and transition services needed to assist in reaching those goals.</li> </ul>	As Indicated	As Indicated	As Indicated

**Team Members Needed to Participate in Special Education Decision-Making**

TEAM MEMBER QUALIFICATIONS	RED *	MEEGS	IEP
<p><b>Local Education Agency (LEA) Administrator</b></p> <ul style="list-style-type: none"> <li>• Qualified to provide or supervise the provision of special education services;</li> <li>• Knowledgeable about the general education curriculum; and</li> <li>• Knowledgeable about the availability of the LEA’s resources.</li> </ul>	Required Review and Signature	Required Attendance and Signature	Required Attendance and Signature
<p><b>Regular Education Teacher of the Student</b></p> <ul style="list-style-type: none"> <li>• Oklahoma Teacher Certificate in a content area.</li> <li>• Must serve as a member of the student’s IEP team, if the student is, or may be, participating in the general education environment.</li> <li>• Responsible for implementing a portion of the IEP if the student is, or may be, participating in the general education environment.</li> <li>• 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 non-disabled preschool students.</li> <li>• 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.</li> </ul>	Required Review and Signature	Required Attendance and Signature	Required Attendance and Signature
<p><b>Special Education Teacher</b></p> <ul style="list-style-type: none"> <li>• Oklahoma Teacher Certificate in the area of Special Education qualified for the development of the IEP and implementation of services.</li> <li>• Knowledge about the student’s present level of academic and/or functional performance.</li> <li>• At least one special education teacher.</li> </ul>	Required Review and Signature	Required Attendance and Signature	Required Attendance and Signature

**Team Members Needed to Participate in Special Education Decision-Making**

TEAM MEMBER QUALIFICATIONS	RED *	MEEGS	IEP
<p><b>Related Service Provider</b></p> <ul style="list-style-type: none"> <li>Provider is either licensed by the State of Oklahoma or has an Oklahoma Teacher Certificate in the area of need for the evaluation and/or related services provided on the IEP or has the appropriate required certification set by OSDE.</li> </ul>	<p>As Needed</p>	<p>As Needed</p>	<p>As Needed</p>
<p><b>Qualified Professional (as appropriate)</b></p> <ul style="list-style-type: none"> <li>Interprets the results, the instructional implications, and the recommendations of an evaluation.</li> <li>At least one person qualified to conduct individual diagnostic evaluations. Qualifications must align with the types of assessment(s) administered.</li> <li>Related service provider (i.e., occupational therapists, physical therapists, SLPs, etc.) may be excused from MEEGS meetings. If they are unable to attend, arrangements should be made for an explanation of evaluation results to be provided to parents in writing. However, best practices indicate that all qualified professionals who administered evaluations should participate in the MEEGS meetings.</li> </ul>	<p>Required Review and Signature</p>	<p>Required Attendance and Signature</p> <p>**May be optional for reevaluation</p>	<p>As Needed</p>
<p><b>Representative of Transition Agency(s)</b></p> <ul style="list-style-type: none"> <li>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.</li> <li>Steps should be taken to obtain participation from the agency in transition planning, even if a representative does not attend.</li> <li>Requires parent consent prior to the agency representative participating in the meeting.</li> </ul>	<p>As Needed</p>	<p>As Needed</p>	<p>As Needed</p>
<p><b>Part C Coordinator (SoonerStart Representative)</b></p> <ul style="list-style-type: none"> <li>May participate at the request of the parent.</li> <li>The student previously was served under Part C and transitioning to Part B.</li> </ul>	<p>As Needed</p>	<p>As Needed</p>	<p>As Needed</p>

Team Members Needed to Participate in Special Education Decision-Making			
TEAM MEMBER QUALIFICATIONS	RED *	MEEGS	IEP
<b>Other Representatives</b> 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.	As Needed	As Needed	As Needed

\*While team members listed above are required to review the existing data, reviewing existing data does not require a formal meeting (34 C.F.R. § 300.305(b)). It is recommended to meet with the parent to review the RED with the special education teacher, at least one qualified professional (e.g., certified school psychologist, certified school psychometrist, speech-language pathologist, remedial reading specialist, etc.), general education teacher, and an administrator to provide the parents an opportunity to ask questions as they review the data and possibly revise the information if inaccurate. The LEA is still responsible to fully inform the parent of the components that make up a comprehensive evaluation and all relevant information/activity(ies) for which consent is sought. Information must in their native language, or mode of communication. In the case of a reevaluation, it is recommended to review the existing data as part of an IEP meeting.

\*\*See Chapter 4 “Evaluation and Eligibility”, Section 3. “Review of Existing Data”, Section 8. Evaluation(F) Group of Qualified Professionals, and Section 16. “Determining Continued Eligibility” for specific guidelines on participation of the Qualified Professional at reevaluations with no additional assessments. However, individual LEAs may require attendance of the Qualified Professional(s) at all eligibility meetings.

Determination of Eligibility: 34 C.F.R. § 300.306(a)(1)

IEP Team and Attendance: 34 C.F.R. § 300.321

## APPENDIX C. FOUR (4) DAY SCHOOL WEEK

Many local education agencies (LEAs) have opted to change their school-week from the traditional 5-day scheduled to an amended 4-day school week. Those LEAs that have not made that change continue to explore options as a response to budget cuts within education. Under Oklahoma School Law [[70 O.S. § 109\(A\)](#)], a “school shall actually be in session and classroom instruction offered, for not less than one thousand eighty (1,080) hours each school year, if a district board of education adopts a school-hours policy and notifies the State Board of Education prior to October 15 of the applicable school year.”

LEAs within Oklahoma must consider how a school-hour policy impacts all students, including students with disabilities. LEAs must ensure the educational standards and expectations from State and Federal policies are intact. Under the Individuals with Disabilities Education Act (IDEA), Part B, students with disabilities are afforded the right to a free appropriate public education (FAPE) that emphasizes special education and related services designed to meet their unique needs.

The Oklahoma State Department of Education (OSDE), Special Education Services division is committed to ensuring all schools that are affected by this change are appropriately providing services to students with disabilities in accordance with Individualized Education Programs (IEPs). IEP services may be modified, but should not be reduced, when a school moves to a 4-day school week. LEAs must ensure that IEPs are reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances. The OSDE-SES has developed guidance to assist LEAs in making the transition. LEAs should consider the following requirements of the IDEA, Part B, as they move forward:

1. FAPE and the Definition of IEP ([34 CFR § 300.101](#) and [34 CFR § 300.320 - 300.324](#))
2. Parent Participation and the IEP Team ([34 CFR § 300.321 - § 300.322](#))
3. Extended School Year Services ([34 CFR § 300.106](#))

### Section 1. FAPE and the Definition of IEP

All students with an IEP are entitled to a “free, appropriate public education” (FAPE). This includes students who are eligible for special education from the ages of 3 through the school year in which they turn 22. FAPE is individually determined for each student with a disability and provided at no cost to the parent. An IEP describes the special education and related services, including supplementary aids and services that are provided to the student. These services are designed to enable the student to make progress toward annual IEP goals and in the general education curriculum. LEAs are accountable for providing services in accordance with an IEP and cannot unilaterally change the frequency and duration of services.

If an LEA chooses to implement a 4-day school week, documentation regarding a student’s special education and related services may need to be amended to reflect such a change. If a new 4-day school week is implemented district-wide, the frequency and duration of services in a student’s IEP

should be modified—not reduced—to reflect the change. Currently, a student’s IEP may reflect that a particular service is provided 5 times per week. The amount of services could be provided 4 times per week instead of 5 if instructional time in the school day is the same as their non-disabled peers. To make such a change, the student’s IEP team, including the parent, must convene a meeting to address how services will be delivered in the new 4-day school week format.

An IEP addendum would be appropriate to reflect this change. If a student’s IEP reflects a particular service in minutes or hours per week only, a change to the IEP would only be necessary if the IEP team feels that amount of service is inappropriate in a 4-day school week.

To make a change to a student’s IEP, the LEA must ensure appropriate steps are taken, including convening an IEP team meeting, if necessary. If no changes are made to the current IEP, the LEA will be responsible for providing the services stated in the current IEP.