



BIRDVILLE INDEPENDENT SCHOOL DISTRICT SPECIAL EDUCATION OPERATING PROCEDURES EVALUATION PROCEDURES

Birdville ISD Board Policy along with these *Special Education Operating Procedures* constitute the Policies and Procedures of Birdville ISD, designed to be consistent with the State policies and procedures developed pursuant to the IDEA. Birdville ISD *Special Education Operating Procedures* are not to be for the purpose of creating a requirement that is not otherwise imposed by the Individuals with Disabilities Education Improvement Act (“IDEA”), together with its implementing federal regulations, state statutes and rules, as they shall from time to time be amended, and shall not be construed to create a higher standard than that established by IDEA. These *Special Education Operating Procedures* will be posted on Birdville ISD’s website. These *Special Education Operating Procedures* should be interpreted consistent with the IDEA. Birdville ISD’s *Special Education Operating Procedures* are reviewed and updated, as needed, on at least an annual basis. Birdville ISD will make timely changes to policies and procedures in response to IDEA amendments, regulatory or rule changes, changes to state policy, or new legal interpretation as are necessary to bring Birdville ISD into compliance with the requirements of IDEA. Birdville ISD maintains systems to ensure that all students with disabilities residing in the District, including students with disabilities attending non-public schools, regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located, and evaluated and provided a free appropriate public education. Birdville ISD maintains systems to ensure that students with disabilities and their parents are afforded the procedural safeguards required under the IDEA (and its implementing federal regulations, state statutes and rules) including with respect to the confidentiality of records and personally identifiable information.

What is the primary purpose of a full individual and initial evaluation?

The purpose of the full individual and initial evaluation is to:

- determine if a student meets the criteria for having one of the categories of disability referenced in **the District’s Child Find Duty Operating Procedure**;
- determine if, by reason of the disability, the student needs special education and related services, and therefore qualifies for special education and related services; and¹
- determine the educational needs of the student.²

Evaluations will provide information to determine present levels of academic achievement, social and emotional performance, and related educational needs. No single evaluation tool may be used as the sole criterion for determining eligibility. Rather, a variety of assessments (both formal and informal assessments), including information provided by parents, guardians, classroom teachers,

¹ *William V. v. Copperas Cove*, 77 IDELR 92 (5th Cir., September 14, 2020) (the 5th Circuit applies this two part test—the combination of a qualifying disability and educational need)

² 34 C.F.R. § 300.301(c)(2)

and observations of the student classroom performance, work samples/portfolios, interviews, and review of the records used.

Who can provide informed written consent for a full individual and initial evaluation?

Informed written consent for an initial evaluation for special education and related services is provided by a student's parent, and that term is defined broadly.

Texas law defines ***“parent”*** as “a person standing in parental relation,” but does not “include a person as to whom the parent-student relationship has been terminated or a person not entitled to possession of or access to a child under a court order.”³

The IDEA defines the term “parent” as—

- A biological or adoptive parent of a child.
- A foster parent, unless State law, regulations, or contractual obligations with a State or local entity prohibit a foster parent from acting as a parent.
- A guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child (but not the State if the student is a ward of the State).
- An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare.
- A surrogate parent.⁴

When the parents of a student with a disability are divorced, the parental rights under the IDEA apply to both parents, unless a court order specifies the respective educational rights and duties of the parents.⁵

A foster parent may act as the parent of a student with a disability if the Texas Department of Family and Protective Services is appointed as the student's temporary or permanent managing conservator and has not been limited in its rights and duties to make educational decisions by court order, **and** if the foster parent agrees to make educational decisions on behalf of the student and complete a special education advocacy training program.⁶ The foster parent must complete the

³ Tex. Ed. Code § 26.002

⁴ 34 C.F.R. § 300.30(a)

⁵ 71 Fed. Reg. 46,568(2006); 34 C.F.R. § 300.30 (b)(1)(“If a judicial decree or order identifies a specific person or persons . . . to act as the ‘parent’ of a student or to make educational decisions on behalf of a student, then such person or persons shall be determined to be the ‘parent’ for purposes of this section”).

⁶ Tex. Ed. Code § 29.015(a); 19 TEX. ADMIN. CODE § 89.1047

training program before the student's next ARD committee meeting or by no later than 90 days after the foster parent begins to act on the student's behalf.⁷

A student's special education rights, including the right to grant or withhold consent for an evaluation or reevaluation, transfer from the parent or guardian to the adult student when the student turns 18.⁸

If the District is unable to identify or locate a parent or guardian for a student with a disability, or the foster parent of the student is unwilling or unable to serve as a parent, the District will appoint someone to serve as the student's surrogate parent.⁹ The individual appointed as surrogate parent may not be employed by the District or any other agency involved in the education or care of the student.¹⁰

Additionally, the surrogate parent must:

- Be willing to serve in that capacity.
- Exercise independent judgment in pursuing the student's interests.
- Ensure that the student's due process rights are not violated.
- Complete a training program.
- Visit the student and the school where the student is enrolled to review the student's educational records and consult with any person involved in the student's education.
- Attend meetings of the student's ARD committee.¹¹

The District will also provide notice of the surrogate parent's appointment to the District's homeless student liaison.¹²

What will be included in a prior written notice (Notice of Proposed Evaluation) for a full individual and initial evaluation?

Before conducting an evaluation, the District will provide the student's parent or guardian Prior Written Notice (*Notice of Proposed Evaluation*) that—

- describes the areas of evaluation that have been proposed, and descriptions of any evaluation procedures that the District proposes to conduct;

⁷ Tex. Ed. Code § 29.015(b)

⁸ 19 TEX. ADMIN. CODE § 89.1049(a)

⁹ Tex. Ed. Code § 29.0151(b)

¹⁰ Tex. Ed. Code § 29.0151(c)

¹¹ Tex. Ed. Code § 29.0151(d)

¹² Tex. Ed. Code § 25.007

- explains why the District wants to conduct the evaluation; the options considered and why rejected; a description of each evaluation procedure, assessment, record, or report the District used as a basis for proposing to evaluate; other options to an evaluation that were considered and why those options were rejected; other factors relevant to the decision to evaluate;
- informs the parent or guardian of her or his right to refuse consent for the evaluation, together with a copy of the [TEA's Notice of Procedural Safeguards](#);
- is written in a form that the general public can understand. It must also be provided in the parent or guardian's native language (or the language that they normally use, like Braille or large print type-face) unless it is clearly not feasible to do so. If the parent's or guardian's native language or other mode of communication is not a written language, the District will take steps to ensure—
 - that the notice is translated orally or via other means to the parent or guardian in her or his native language or other mode of communication;
 - that the parent or guardian understands the contents of the District's *Notice of Proposed Evaluation*, and
 - that there is written evidence of the District's efforts to ensure these two steps have been taken.¹³

Also, concerning the administration of psychological assessment or tests, on request of a student's parent or guardian, and before obtaining the parent or guardian's consent for the administration of any psychological examination or test to the student that is included as part of the evaluation of the student's need for special education and related services, the District will provide to the student's parent or guardian: (1) the name and type of the examination or test; and (2) an explanation of how the examination or test will be used to develop an appropriate Individualized Education Program (IEP) for the student.¹⁴

The District's *Notice of Proposed Evaluation* should specify that the District plans to evaluate in each area of suspected disability. Requests by parents or guardians to limit the scope of the evaluation (such as when based on the parent or guardian's preferences for seeking or avoiding consideration of specific eligibility categories) may not be honored when the parent or guardian's limits on the scope of evaluation might prevent the District from completing an evaluation that complies with these Operating Procedures.

What additional information must the District provide when initiating a referral for a full individual and initial evaluation?

¹³ 34 C.F.R. § 300.503

¹⁴ Tex. Ed. Code § 29.0041

The Educational Diagnostician shall ensure that along with the Notice of Procedural Safeguards, the parent or guardian receive from the District a copy of the “Overview of Special Education for Parents” document created by TEA.¹⁵

What is the timeline for the completion of a full individual and initial evaluation?

Within 45 school days of receiving written consent for the evaluation, the Educational Diagnostician will complete a written report of the student’s full individual and initial evaluation.¹⁶ Likewise, if a student is not enrolled in the District, including students who are under the age of 5 or attending private schools within the District or are homeschooled, the District will complete the student’s evaluation report within 45 school days of the date the District receives written consent for the evaluation from the student's parent or guardian.¹⁷

A school day does not include a day that falls after the last instructional day of the spring school term and before the first instructional day of the subsequent fall school term.

If, during the course of the student’s evaluation, the student has been absent from school 3 or more school days, the time to complete the evaluation may be extended by a number of school days equal to the number of school days the student was absent during the evaluation process.¹⁸

The student is considered absent for the school day if the student is not in attendance at the school's official attendance taking time or, if applicable, at the alternate attendance taking time set for that student. The student is considered in attendance if the student is off campus participating in an extracurricular or other activity approved by the District and under the supervision of a District teacher or other professional staff member or an adjunct staff member who has a minimum of a bachelor's degree and is eligible for participation in the Teacher Retirement System of Texas.¹⁹

If the District receives the written consent described above at least 35, but less than 45 school days, before the last instructional day of the school year, the written evaluation of the student will be provided to the student's parent or guardian no later than June 30 of that year. However, the time for completion of the evaluation may be extended as described above, if the student is absent from school 3 or more days between the date the District received written consent and the last instructional day of the school year.²⁰

If an initial evaluation completed by June 30 in the manner above indicates that the student will need Extended School Year (ESY) services during the summer the evaluation is completed, the ARD committee will meet as promptly as possible to consider eligibility and ESY services.²¹ Otherwise, the student's ARD committee will meet no later than 15 days after the start of the

¹⁵ 19 TEX. ADMIN. CODE § 89.1011(b)(2)

¹⁶ 19 TEX. ADMIN. CODE § 89.1011(c)

¹⁷ *Id.*

¹⁸ 19 TEX. ADMIN. CODE § 89.1011(c)(1)

¹⁹ 19 TEX. ADMIN. CODE § 89.1011(h)

²⁰ 19 TEX. ADMIN. CODE § 89.1011(e)

²¹ *Id.*

following school year to consider the evaluation and the student's eligibility for special education and related services.²²

If a student was in the process of being evaluated for special education eligibility by another school district in Texas and enrolls in the District prior to the completion of the student's evaluation, the District will coordinate with the previous school district as necessary and as expeditiously as possible to ensure a prompt completion of the evaluation.²³

The 45-school day timeline and its exceptions do not apply if the District is making sufficient progress to ensure a prompt completion of the evaluation, and the student's parent or guardian and the District agree to a specific time by which the evaluation will be completed.²⁴

The District will ensure that an IEP is in effect for a student by the student's 3rd birthday. If a student's 3rd birthday occurs during the summer, the student's ARD committee shall determine the date when services will begin.²⁵ **Please see the District's FAPE Composite Operating Procedure.**

How does the District provide notice of evaluation and seek consent?

The District's multidisciplinary evaluation team, comprised of personnel qualified to evaluate the student in the areas specified in the referral and/or notice or by the Educational Diagnostician will prepare a *Notice of Proposed Evaluation* as described in **the District's Evaluation Procedure Operating Procedure.**

The Educational Diagnostician will then provide the parent or guardian with a copy of the written *Notice of Proposed Evaluation* and the District's *Consent for Evaluation* Form. The parent or guardian will then indicate whether the parent or guardian provides consent by marking "yes" to all of the following:

- the parent or guardian has been fully informed of all information relevant to the initial evaluation in the parent or guardian's native language or other mode of communication;
- the parent or guardian understands and agrees in writing to the District carrying out the initial evaluation;
- the parent or guardian understands that the granting of consent is voluntary on the part of the parent or guardian and may be revoked at any time; and
- if the parent or guardian revokes consent, that revocation is not retroactive; therefore, it does not negate an action that has occurred after the consent was given and before the consent was revoked.

²² 19 TEX. ADMIN. CODE § 89.1011(g)

²³ *Id.*

²⁴ *Id.*

²⁵ 34 CFR § 300.101

The date on which the District receives the form with each of these items marked “yes” will be day zero for calculating the timeline for completing the evaluation.

In the event the parent or guardian requested information about certain psychological examinations, before providing consent as discussed in **the District’s Evaluation Procedure Operating Procedure**, and the District later determines that an additional examination or test is required for the evaluation of the student’s need for special education, the Educational Diagnostician shall provide to the parent or guardian (1) the name of the examination or test and (2) an explanation of the additional examination or test that will be used to develop an appropriate IEP, and shall obtain additional consent for the examination or test. The time required for the District to provide information and seek consent concerning the additional examination or test may not be counted toward the timeline for completion of an evaluation. If a parent or guardian does not give consent for the additional examination or test within 20 calendar days after the date the District provided to the parent the information required here, the parent or guardian's consent is considered denied.²⁶

The District has the right to conduct an evaluation or reevaluation if the District has reason to suspect that a student has a disability and that by virtue of the suspected disability needs specially designed instruction.²⁷ If the parent or guardian refuses consent for the District-proposed evaluation or reevaluation, the District may seek to override parental or guardian refusal to consent by filing for a special education due process hearing.²⁸

How do we proceed when students who are new to the District are in the process of being evaluated for special education by another public school but transfer before the previous school’s evaluation is complete?

If a student is in the process of being evaluated for special education eligibility by another public school district and enrolls in the District before the previous school’s evaluation is completed, the District will coordinate with the student’s previous school district to ensure prompt completion of the initial evaluation. If the student transfers from another public school district when an initial evaluation is pending, the timelines for conducting the evaluation apply to Birdville ISD unless:

- the District is making sufficient progress to ensure a prompt completion of the evaluation; and
- the parent and the District agree to a specific time when the evaluation will be completed.

How does the District conduct a full individual and initial evaluation?

When conducting a student’s full individual and initial evaluation, the District will—

²⁶ Tex. Ed. Code § 29.0041

²⁷ *Shelby S v Conroe ISD*, 454 F.3d 450 (5th Cir. 2006); *Andress v. Cleveland ISD*, 64 F.3d 176 (5th Cir. 1995)

²⁸ 34 C.F.R. § 300.507

- use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student to assist in determining the student's eligibility and developing the content of the student's IEP (discussed in **the District's Evaluation Procedure Operating Procedure**);
- not use any single measure or assessment as the sole criterion for its eligibility determination;
- use technically sound instruments that may assess the relative contribution of cognitive, behavioral, physical or developmental factors;²⁹
- select and administer assessments, particularly to a student with impaired sensory, manual or speaking skills, that will best ensure those assessments 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 targets of the test).³⁰

The student will be evaluated in all areas related to the student's suspected disabilities in order to assess the student's eligibility for special education and related services, including, if appropriate health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.³¹ Consequently, the assessments and evaluative instruments should be tailored to the student's suspected disabilities and conducted in all areas related to the student's suspected disabilities. However, the District will ensure that the evaluation is sufficiently comprehensive to identify all of the student's special education and related services needs, whether or not the assessments used are commonly linked to the student's suspected disability categories.³²

Additionally, the District will ensure that the assessments and other evaluation materials used to conduct a full individual and initial evaluation—

- are selected and administered in a way that is not racially or culturally discriminatory;
- are provided and administered in the student's native language or other mode of communication and in the form most likely to yield accurate information on what the student knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to so provide or administer;
- are used for the purposes for which the assessments or measures are valid and reliable;

²⁹ 34 C.F.R. § 300.304(b)

³⁰ 34 C.F.R. § 300.304(c)(3)

³¹ 34 C.F.R. § 300.304(c)(4)

³² 34 C.F.R. § 300.304(c)(6)

- are administered by trained and knowledgeable personnel; and
- are administered in accordance with any instructions provided by the producer of the assessments.³³

When does the District provide a Parent or Guardian with a copy of the full and individual and initial evaluation?

The Educational Diagnostician shall ensure that the parent or guardian receives a copy of the written FIIE report as soon as possible after completion of the report but no later than 5 school days prior to the initial ARD committee meeting, which will determine a student's initial eligibility, or not later than June 30 if the District received consent for evaluation at least 35 school days but less than 45 school days before the end of the school year.

How is eligibility determined following a full individual and initial evaluation?

To be eligible for special education and related services, a student will (1) have a qualifying disability and (2) by reason thereof need special education and related services.³⁴

- Special education means “specially designed instruction, at no cost to the parents, to meet the unique needs of a [student] with a disability.”³⁵ Specially designed instruction means—
 - “adapting, as appropriate to the needs of an eligible [student] under this part, the content, methodology, or delivery of instruction-
 - To address the unique needs of the student that result from the student's disability; and
 - To ensure access of the student to *the general curriculum*, so that the student can meet *the educational standards within the jurisdiction of the public agency that apply to all students.*”³⁶

The general curriculum and educational standards that “apply to all [students]” in Birdville ISD are the **Texas Essential Knowledge and Skills (TEKS)** as

³³ 34 C.F.R. § 300.304(c)

³⁴ *D.L. v. Clear Creek Independent School District*, 695 F. App'x 733 (5th Cir. 2017) (“[W]e consider whether there was a **present** need for special education services . . . [a] fear that a student may experience problems in the future is not by itself a valid basis for IDEA eligibility”(emphasis added).

³⁵ 34 C.F.R. § 300.39(a)(1)

³⁶ 34 C.F.R. § 300.39(b)(3)(emphasis added)

well as the District's Policy **EIE(Local)**.³⁷ The state-wide assessments that determine a student's progress toward meeting those educational standards are the **State of Texas Assessments of Academic Readiness (STAAR)**.

The student will not be determined to be eligible for special education and related services if the determinant factor for the determination is-

- lack of appropriate instruction in reading, including the essential components of reading instruction;
- lack of appropriate instruction in math;
- limited English proficiency, or
- if the student does not meet the criteria for one of the eligibility categories set out in **the District's Child Find Duty Operating Procedure**.³⁸

Within 30 calendar days of the completion of the student's full individual and initial evaluation report, the student's ARD committee will meet to determine whether the student is eligible for special education and related services and, if the student is determined to be eligible, the ARD committee shall develop the student's individualized education program (IEP). However, if the 30th calendar day falls during the summer and school is not in session, the ARD committee may wait until the first day of the following school year to finalize any decision regarding the student's initial eligibility, IEP and/or educational placement, unless the student's initial evaluation indicates that he or she will need extended school year services during the intervening summer.³⁹

The campus will provide a parent with a free copy of the evaluation report.

When and how are reevaluations conducted?

The District will ensure that a reevaluation of a student with a disability is conducted if—

- the District determines that the educational or related services needs, including improved academic achievement and functional performance, of the student, warrant a reevaluation, or
- the student's parent, guardian or teacher requests a reevaluation.⁴⁰

A reevaluation will be conducted at least every three-years unless the parent or guardian and the District maintains it is not necessary. A reevaluation can only occur once a year unless the parent or guardian and the District agree otherwise.⁴¹

³⁷ The educational standards applicable to all students in the state of Texas are also outlined in Tex. Ed. Code § 28.002 and in 19 TEX. ADMIN. CODE § 74.1.

³⁸ 34 C.F.R. § 300.306(b)

³⁹ 19 TEX. ADMIN. CODE § 89.1011(g); 34 C.F.R. § 300.306

⁴⁰ 34 C.F.R § 300.303(a)

⁴¹ 34 C.F.R. § 300.303(b)

The District will obtain informed parental consent prior to conducting any reevaluation; however, the evaluation may be completed without the parent or guardian's consent if the District can demonstrate that it made reasonable efforts to obtain informed parental consent and the student's parent or guardian has failed to respond.⁴²

The District's reevaluation of a student with a disability begins with a REED as outlined **the District's Evaluation Procedure Operating Procedure**. The District's reevaluation of a student with a disability should meet the requirements outlined in **the District's Evaluation Procedure Operating Procedure**, but the reevaluation is not required to be identical to the student's initial evaluation for special education and related services.

What is the timeline for a reevaluation?

Both state and federal law are silent as to how long the District has to complete a reevaluation other than "at least once every three years," so the reevaluation will be completed by the three-year anniversary date, unless the ARD committee has agreed to complete it sooner. The parent or guardian and the District may also agree to conduct a REED in lieu of a reevaluation.⁴³

A reevaluation must occur at least once every three years, unless the parent or guardian and the District agree that a reevaluation is unnecessary. 34 C.F.R. § 300.303(b)(2). The U.S. Department of Education "acknowledges that, during the pandemic, social distancing measures and each child's individual disability-related needs may make administering some in-person evaluations impracticable and may place limitations on how evaluations and reevaluations are conducted" pursuant to IDEA and these Operating Procedures.⁴⁴

What is the process for conducting an evaluation before a student may no longer be eligible for special education and related services?

Before determining that a student is no longer eligible for special education and related services, the District will complete a full individual and initial evaluation of the student.⁴⁵ However, no reevaluation is required if the student's special education rights have been terminated due to graduation from high school with a regular diploma or due to exceeding the age eligibility for FAPE under State law.⁴⁶ If a student's right to special education has been terminated due to age or graduation with a regular high school diploma, the District will provide the student with a

⁴² 34 C.F.R. § 300.300(c)

⁴³ 34 C.F.R. § 300.303(b)(2)

⁴⁴ OSEP. [Part B Implementation of IDEA Provision of Services in the Current COVID-19 Environment Q&A Document](#), September 28, 2020.

⁴⁵ 34 C.F.R. § 300.305(e)(1)

⁴⁶ 19 TEX. ADMIN. CODE § 89.1070(g); 34 C.F.R. § 300.305(e)(2)

summary of the student's academic achievement and functional performance, including recommendations about assisting the student in meeting postsecondary goals.⁴⁷

Demonstrations of this procedure's implementation may include, but are not limited to, examples such as:

- Multi-Tiered Systems of Support or Intervention Data Reports
- Student specific data collection and monitoring
- Observation data
- Evaluation reports
- Collection of information from parents and independent service providers
- ARD committee reports

⁴⁷ 19 TEX. ADMIN. CODE § 89.1070(g); 34 C.F.R. § 300.305(e)(3)