



BIRDVILLE INDEPENDENT SCHOOL DISTRICT SPECIAL EDUCATION OPERATING PROCEDURES: LEAST RESTRICTIVE ENVIRONMENT

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.

How does a student’s ARD committee make a placement decision?¹

To the maximum extent appropriate, students with disabilities must be educated with students who are nondisabled, and special classes, separate schooling, or other removal of students with disabilities from the general educational environment occurs only if the nature or severity of the disability is such that education in general education classes, with the use of supplementary aids and services, cannot be achieved satisfactorily.² Once a student’s IEP is fully developed, the Educational Diagnostician/ARD Facilitator shall ensure that the student’s ARD committee considers, and the student’s IEP documents, a placement determination based upon the individual needs of the particular student and the appropriate and least restrictive educational environment in which the IEP can be implemented. When making a placement decision, the Educational Diagnostician/ARD Facilitator shall ensure that the ARD committee considers a continuum of alternative placements.

¹ *A.B. v. Clear Creek ISD*, 75 IDELR, 787 F.App’x 217 (5th Cir. 2019); *Daniel RR v. State Bd. of Ed.*, 874 F.2d 1036 (5th Cir. 1989); *J.H. v. Fort Bend Indep. Sch. Dist.*, 482 Fed. Appx. 915 (5th Cir. 2012)

² 34 C.F.R. § 300.114 (a)

³ *White ex rel. White v. Ascension Parish School Board*, 343 F.3d 373 (5th Cir. 2003).

What does it mean to have a continuum of placement options for students? The District shall make available a continuum of alternative placements listed in the definition of special education under 34 C.F.R. § 300.38 (e.g., instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions), and make provision for supplementary services to be provided in conjunction with placement in the general education setting to facilitate such placement.⁴ The IEP, evaluations and other relevant data guide the ARD committee in making placement decisions.

Before moving a student to a more restrictive environment⁵, the student's ARD committee shall consider—

- Has the District taken steps to accommodate the student with disabilities in general education?
- Were these efforts sufficient or token?
- Will the student receive an educational benefit from general education?
- What will the student's overall educational experience be in the general education environment, balancing the benefits of general and special education?
- What effect does the student's presence have on the general education classroom environment?⁶

Residential Treatment Centers (RTCs) or private residential programs are included in the continuum of placements.⁷ The District is not required to place a student in a private residential program unless such placement is necessary to provide special education and related services. In order for a residential placement to be appropriate under the IDEA, the placement must be (1) essential in order for the student to receive a meaningful educational benefit, and (2) primarily oriented toward enabling the student to obtain an education. The District is not required to bear the costs of private residential services that are primarily aimed at treating a student's medical difficulties or enabling the student to participate in non-educational activities.^{8 9}

How does the District respond to a parent or guardian's request for private placement when there is a disagreement regarding FAPE?

⁴ 34 C.F.R. § 300.115(b); 34 C.F.R. § 300.115(b); 19 TEX. ADMIN CODE §89.1005

⁵ 34 C.F.R. § 300.116(e)

⁶ *Daniel RR v. State Bd. of Ed.*, 874 F.2d 1036 (5th Cir. 1989)

⁷ 34 C.F.R. § 300.115

⁸ *Richardson ISD v. Michael Z*, 580 F.3d 286 (5th Cir. 2009); 34 C.F.R. § 300.104

⁹ Tex. Ed. Code § 29.008; Tex. Ed. Code § 29.012; 19 TEX. ADMIN. CODE § 89.1092; 34 C.F.R. § 300.325(a)

If the parents or guardians of a student with a disability, who previously attended the District, enroll the student in a private preschool, elementary school, or secondary school without the consent of or referral by the District, a court or a hearing officer may require the District to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the District had not made FAPE available to the student in a timely manner prior to that enrollment, and that the private placement is appropriate. The cost of reimbursement may be reduced or denied:

- if, at the most recent ARD committee meeting that the parents or guardians attended prior to removal of the student from the District, the parents or guardian did not inform the ARD committee that they were rejecting the placement proposed by the District to provide FAPE to the student, including stating their concerns and their intent to enroll the student in a private school at public expense;
- if, at least 10 District business days (including any holidays that occur on a business day) prior to the removal of the student from the District, the parents or guardians did not give written notice to the District that they were withdrawing the student and seeking reimbursement from the District for the cost of the private school placement;
- if, prior to the parents or guardians' removal of the student from the District, the District informed the parents or guardians, through the notice requirements described in these Operating Procedures, of its intent to evaluate the student (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the student available for the evaluation; or
- if a hearing officer or judge finds that the parents acted unreasonably.¹⁰

How does the District provide FAPE via virtual or remote instruction?

In accordance with [guidance from the TEA](#), each student's Case Manager is encouraged to offer to convene ARD committee meetings to develop emergency contingency plans as part of a student's IEP that provides for virtual or other remote services and instruction during periods of cessation of normal school operations in response to a natural disaster, pandemic and/or other public health and safety crisis in accordance with federal, state and local authorities. A student's Case Manager may also propose that a student's ARD committee and the parent(s) or guardian(s) agree to modify a student's IEP to include a separate schedule of related services and accommodations that will be followed during periods of remote or virtual instruction. Each Diagnostician, ARD Facilitator or Speech Pathologist together with input from the parent or guardian and the student's ARD committee, may choose to use the model [Special Education Emergency Contingency Plan](#) developed by the [TEA or other plan as determined by the District](#).

¹⁰ *School Comm. of Burlington v. Department of Educ. of Mass.*, 471 U.S. 359, 369 (1985); *see also*, 34 C.F.R. 300.148(c); *Forest Grove Sch. Dist. v. T.A.*, 557 U.S. 230, 129 S. Ct. 2484, 2496 (2009)

According to nonbinding guidance from [OSEP on September 28, 2020](#), ARD committees should consider—

- “how a student's IEP will be implemented with traditional in-person instruction
- how services also could be provided through remote/distance instruction if circumstances require a change to distance learning or a hybrid model.”¹¹

When ARD committees make these determinations, the ARD committee, together with the parent or guardian, may also consider:

- alternate available instructional methodologies or delivery;
- online instruction, teleconference, direct instruction via telephone or videoconferencing; and
- consultative services to the parent, if feasible and appropriate.¹²

The Diagnostician, ARD Facilitator or Speech Pathologist will investigate all appropriate assessment instruments and tools to determine if some can be administered or completed remotely during the natural disaster, pandemic and/or other public health and safety crisis, provided that evaluation of the student is based on personal observation (whether in person or through tele- or videoconferencing).

The Evaluation Coordinator may coordinate with the developers of their current assessment instruments to determine if the instruments can be administered or completed remotely, without significantly impacting the validity and reliability of the results. Tests and other evaluation materials must be used for the purposes for which the assessments or measures are valid and reliable, and must be administered by trained and knowledgeable personnel in accordance with any instructions provided by the producer of the assessments.¹³

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

- Schedules of services
- Residential Treatment Center applications
- Lists/descriptions of Placements options
- Centralized program descriptions

¹¹ OSEP. [Part B Implementation of IDEA Provision of Services in the Current COVID-19 Environment Q&A Document](#). September 28, 2020.

¹² *Id.*

¹³ 34 C.F.R. § 300.304(c)(1)(iii)-(v)

- LRE supplements
- Evaluation reports
- Training materials