



Ryan Walters  
State Superintendent of Public Instruction  
Oklahoma State Department of Education

## MEMORANDUM

TO: The Honorable Members of the State Board of Education

FROM: Ryan Walters, State Superintendent of Public Instruction

DATE: July 31, 2024

SUBJECT: DRAFT Review of Amendments to the Oklahoma Special Education Policies and Procedures

The Office of Special Education Services requests the Oklahoma State Board of Education and State Superintendent of Public Instruction review the draft copy of the amendments to the Oklahoma Special Education Policies and Procedures (P&P) prior to the August Board meeting for approval consideration. The following legislative amendments required revisions to the Special Education P&P:

### 2023 Legislative Session:

- HB 1041 (Amended 70 O.S. § 11-103.6)– Authorized a state-defined alternate diploma for students with the most significant cognitive disabilities, based upon participation in the Oklahoma alternate assessment program (OAAP), aligned with alternate academic achievement standards. The IEP team, including the parent, is responsible for making decisions about participation in the OAAP. However, under IDEA, a standard diploma shall not be aligned to the alternate academic achievement standards.

### 2024 Legislative Session:

- HB 3386 (Codified as 70 O.S. § 8-114)– Authorized an appeal process for parents of students with disabilities who are initially denied a transfer, including a reporting requirement on the total number of transfers approved and denied by the LEA.

In addition, based on the new alternate diploma, a new State Special Education Policy has been added which requires post-secondary goals and annual transition goals with at least two short-term objectives/benchmarks in Education/Training, Employment, Independent Living and Community Participation. This requirement applies to all students with the most significant cognitive disabilities participating in the Oklahoma Alternate Assessment Program (OAAP), which is aligned with the alternate academic achievement standards, and earning an alternate diploma.

Additional revisions include addition of legal citations and language amendments providing clarification, including revisions made based upon public comment.

Cover and Table of Contents linked to each chapter will be provided for the final version.

# Oklahoma Special Education Policies and Procedures 2024

# Special Education Policies and Procedures

## Oklahoma State Department of Education

### Ryan Walters, State Superintendent of Public Instruction

#### **Overview**

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.), Section 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**

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.
  - Qualified professionals for the eligibility team members defined.
  - 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.
  - Students participating in the Oklahoma Alternate Assessment Program (OAAP), aligned with alternate academic achievement standards, and earning an alternate diploma must have postsecondary goals and annual transition goals with at least two short-term objectives/benchmarks in the following areas: Education/Training, Employment, Independent Living, and Community Participation.
  - Before making the determination to shorten the student's day/week based on behavior, a Functional Behavioral Assessment (FBA) and Behavior Intervention Plan (BIP) must 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 5. "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 or as needed and delineated

by disability category. For more information, refer to Chapter 5. "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 time frame 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. 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; or when the suspected disability only involves a Speech Language Impairment (SLI) then a speech-language pathologist (SLP) may be the 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 5. "Evaluation and Eligibility", Section 11(A). "Group Members Required to Attend Eligibility Meeting" and [Appendix B. "Team Members Needed to Participate in Special Education Decision-Making"](#) for more information.

5. When a student, who has been served on an IEP in another Oklahoma district, enrolls in a new LEA, the new LEA must within 10 school days from the student's first day of attendance either accept the previous district's IEP by finalizing an In-State Transfer IEP, or develop and finalize a new Subsequent IEP through a formal IEP meeting. For more information, refer to Chapter 6. "Individualized Education Program (IEP)", Section 2. "IEP Timelines."

6. 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. Depending on the type of instruction or lesson plan, a related service provider may also provide co-teaching type service.
- **Direct Instruction:** The student receives primary instruction from a special education teacher with special education credential(s) and meets the OSDE requirements for the content credential(s) regarding the specific secondary content area or for elementary or early childhood. Related service providers may also provide direct instruction. This type of service is provided outside of the general education classroom.

For more information refer to Chapter 6. "Individualized Education Program (IEP)", Section 3. "IEP Development", G. "Type of Service/Placement, and Support Components."

7. 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\(d\)\(1\)\(A\)\(i\)\(VIII\)](#)). For more information refer to Chapter 6. "Individualized Education Program (IEP)", Section 3. "IEP Development", M. "Secondary Transition."

8. **Students participating in the Oklahoma Alternate Assessment Program (OAAP), aligned with alternate academic achievement standards, and earning an alternate diploma, must have postsecondary goals and annual transition goals with at least two short-term objectives/benchmarks in the following areas: Education/Training, Employment, Independent Living, and Community Participation.** The IDEA requires IEP teams to address education/training and employment for all students, including postsecondary education/training and employment goals based upon the student's unique circumstances, strengths, interests, and capacities, and independent living, as appropriate. The OSDE SES recognizes the need to address independent living and community participation and provide services in these areas to improve outcomes for students with the most significant cognitive and adaptive behavior needs. This new policy aligns with the [Criteria Checklist for Assessing Students with Disabilities on Alternate Assessments](#). (See [34 C.F.R. § 300.43](#) and [34 C.F.R. § 300.320\(b\)](#) (Authority: [20 U.S.C. § 1414\(d\)\(1\)\(A\)\(i\)\(VIII\)](#)). For more information refer to Chapter 5. **6. "Individualized Education Program (IEP)", Section 3. "IEP Development", M. "Secondary Transition."**
9. 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 based on the FBA results. The IEP team may also consider ~~the increased special education program service time with additional~~ direct instruction for behavior **involving self-regulation and/or** social skills. For more information, refer to [Chapter 3. "Multi-Tiered System of Supports \(MTSS\)", Section 1. "E. Treatment Integrity/Fidelity"](#) and Chapter ~~10. "Behavior"~~ **12. "Discipline Guidelines and Protections"**, Section 4. "Shortened Day."

#### **10. 9-Class Size/Caseload or Workload:**

The ["School Facilities – Caseload/Class Size Check"](#) sheet is a fillable form to assist with determining the maximum limits for caseload and/or class size.

**Class Size:** 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 <b>multiple severe/profound</b> 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	<p>Grades Pre-K – 4th: Maximum of ten (10) students per classroom</p> <p>Grades 5th - 12th: Maximum of fifteen (15) students per classroom</p>	These classrooms are designed to provide a higher level of support than what is provided in the general education classroom. Students receive direct support services for specific subjects. They are also available for students seeking extra help to complement general education classroom instruction.

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

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

PLACEMENT	CASELOAD	
	PERCENTAGE (FTE)	TOTAL
Special Class Part-time (inside the general education class 40% to 80% of the day)	.05	<del>20</del>
Special Class Full-time (inside the general education class less than 40% of the day)	.067	<del>15</del>
Special Class Full-time (inside the general education class less than 10% of the day)	.1	<del>10</del>
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	<del>40</del>
Half-day preschool continuum	.05	<del>20</del> (10 students per .5 day)
Full-day preschool continuum	.1	
Speech/Language 60 minutes; or less per week	.02	50
More than 60 minutes per week	.025	40
Total (1.0 or less)		

**Workload:** The following chart details maximum full-time equivalent (FTE) based on a range of services. See instructions to workload calculation in Chapter 15. "Special Education Staffing" Section 7. "Caseload and Class Size Requirement" B. "Caseload or Workload."

Job Function	Specifics	Weight of Item	Tally /# of Students	Total Points
<b>Section A</b>				
Provides services but is <b>NOT</b> the IEP TOR		0.25		
Teacher of Record (TOR) Only		0.50		
TOR & provides one or more IEP services		0.75		

<b>Section B</b>				
Initial Evaluation – current school year		1.0		
Three-Year Reevaluation – current school year		0.25		
In-State move in – current school year		0.25		
Out-of-State move in – current school year		0.50		
<b>Section C</b>				
Number of school sites served – Select <b>only one</b> option and enter the number one in the box. Leave the other two options blank.	One site	0.25		
	Two - three Sites	0.75		
	Four or more sites	1.0		
<b>Section D</b>				
Grade level of students served - Count all students per grade level range the TOR provides services to regardless of being the IEP Teacher of Record (TOR).	EC through 3 <sup>rd</sup>	1.0		
	4 <sup>th</sup> – 6 <sup>th</sup>	0.50		
	7 <sup>th</sup> – 12 <sup>th</sup>	0.75		
	Extended Transition Program	0.25		
<b>Section E</b>				
Service Delivery Type – count all students the TOR provides services to regardless of being	Consultation	0.25		
	Monitoring	0.35		

<p>the IEP Teacher of Record (TOR). Count each student based upon the type of service.</p> <p><b>NOTE:</b> Students can be counted more than once depending on the number of IEP services the TOR provides.</p>	Collaboration	0.50		
	Co-Teaching	0.75		
	Direct Instruction	1.0		
<b>Section F</b>				
<p>Service Minutes – Frequency of service for all students the TOR provides services regardless of being the IEP Teacher of Record (TOR).</p>	Up to 3 hours/week	0.25		
	3:01 hours to 10 hours/week	0.50		
	10:01 hours to 20 hours/week	0.75		
	20:01 hours +/week (more than 20 hours a week)	1.0		
<b>Section G</b>				
<b>Total Workload (Average Points Range from 75 to 125)</b>				

The LEA must choose either the caseload or workload calculation for determining the special education teacher of record maximum limit. The LEA will document their choice within the annual LEA Assurance; however, may not utilize both.

Note: The caseload or workload calculation is only for the Teacher of Record who manages the student file, and is not intended for related service personnel who provide IEP services (i.e., Physical Therapists, Occupational Therapists, Licensed Professional Counselors, School Counselors, Nurses, etc.). However, the LEA may utilize these calculation tools to assist in making the determination for these other related service personnel who are not carrying at least one student as the Teacher of Record for the student file.

## ***Exceptions to Caseload/Workload/Class Size***

If the total Caseload is over 1.0 or the Workload is over 125 points, the LEA must apply for an exception to caseload or workload depending on which calculation the district is utilizing for their staff. For permission to adjust caseload/workload/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/workload/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/workload/class size, the LEA must submit the “Caseload/Workload/Class Size Request for Exception” form. This exception will expire at the end of the school year. If the LEA continues to have staffing needs above the caseload or workload maximum number, then the LEA must apply annually for an exception for each school year the LEA exceeds the caseload/workload.

The LEA must utilize either the caseload calculation or the workload calculation. However, the LEA must not use both to determine staffing needs when requesting an exception.

For more information, refer to Chapter ~~13~~. 15. “Special Education Staffing”, Section ~~7~~. 8. “Caseload and Class Size Requirements.”

## ***Legal Citations***

### **United States Code, Title 20: Education**

20 U.S.C. § 1400 et seq.	IDEA statutory requirements.
20 U.S.C. § 1407(a)	State Administration.
20 U.S.C. § 1414(a)	Evaluations, Parental Consent, and Reevaluations.
20 U.S.C. § 1414(d)(1)(A)	Individualized Education Program Definitions.
20 U.S.C. § 1414(d)(1)(A)(i)(VIII)	Transition Services.

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

34 C.F.R. Part 300	IDEA Regulatory Requirements.
<u>34 C.F.R. § 300.43</u>	<u>Transition Services.</u>
34 C.F.R. § 300.199	State Administration.
34 C.F.R. § 300.301(c)(1)(i)	Procedures for Initial Evaluation.
34 C.F.R. § 300.306	Determination of Eligibility.
34 C.F.R. § 300.308	Additional Group Members.
34 C.F.R. § 300.320(b)	Transition Services.

# 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~~ ~~until they no longer meet the eligibility criteria for special education services, a parent or adult student revokes consent, they graduate from high school with a regular standard diploma, or reach the maximum age for FAPE. end of the school year in which they turn 22 or reach maximum age.~~ Based on Oklahoma Statute (70 O.S. § 5-132.1(B)), a student reaches maximum age when they are 22 or older on September 1 of a school year; and therefore, are no longer eligible for FAPE in Oklahoma. The LEA may deny admittance of persons over the age of 21 on or before September 1st.

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. v. Douglas County School Dist. RE-1*, 137 S. Ct. 988 (2017)], 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 (34 C.F.R. § 300.104). 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 Schools and Homeschool"**, ~~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.
- A student with the most significant cognitive disability ~~who is taught to alternate academic achievement standards, assessed under~~ participating in the Oklahoma Alternate Achievement Program (OAAP) aligned with alternate academic achievement standards, and has graduated or will graduate with an alternate diploma is still eligible for FAPE, if the student is 21 years old or younger on or before September 1st of that school year.
  - Under ESSA, an alternate diploma is not considered a “regular” standard diploma. Therefore, students with the most significant cognitive disabilities may continue to receive FAPE, even after receiving their alternate diploma in four years of high school, anytime between age 18 through the school year in which they turn 22 or until they reach maximum age in an Extended Transition Program. Based on Oklahoma Statute (70 O.S. § 5-132.1(B)), a student reaches maximum age when they are 22 or older on September 1 of a school year. The LEA may deny admittance of persons over the age of 21 on or before September 1st. Continued enrollment does not need to be consecutive in the 18-22 Extended Transition Program. For example, a student may graduate in four years with their alternate diploma and move to a new school district. The new LEA would be required to enroll the student who had earned their alternate diploma, if the student is 21 on or before September 1st of that school year in order to receive FAPE.
- 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 re-enroll 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 a FAPE to every eligible child 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 [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)]*, 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 through an IEP Service Agreement;
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. ~~10. "Private, Charter, Residential and Other Settings", Part 3. "Residential and Other~~ **Non-Traditional** 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. When the student meets the LEA requirements that apply to all students for receipt of a standard **regular** high school diploma; or
2. When the student no longer meets the eligibility criteria for special education services on an IEP, as determined by the evaluation group after a reevaluation; or

3. When a parent (or student at age of majority) revokes consent for special education and related services.
4. Based on Oklahoma Statute (70 O.S. § 5-132.1(B)), When the student reaches the maximum age of (At the end of the school year in which the student turns 22 years of age or is 22 or older on or before September 1 of a school year.
  - 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.
    - Based on Oklahoma Statute (70 O.S. § 5-132.1(B)), a student reaches maximum age when they are 22 or older on September 1 of a school year; and therefore, are no longer eligible for FAPE in Oklahoma. The LEA may deny admittance of persons over the age of 21 on or before September 1st.
    - A student with the most significant cognitive disability who earned an alternate diploma decides not to return to receive FAPE from age 18 through the entire school year in which the student turns 22, even though the LEA offered to provide FAPE services through the maximum age.

#### **1. i. Regular Standard Diploma vs. Alternate Diploma When Does FAPE End**

A student who is taught according to the regular Oklahoma Academic Standards, assessed under the regular Oklahoma State Testing Program (OSTP), and has earned the state/local units for and has met all graduation requirements shall receive a regular standard high

school diploma. Upon graduating with a regular high school diploma IDEA services cease and because it constitutes a “change in placement” a Written Notice to Parent and a Summary of Performance is required. The Written Notice ~~should~~ **shall** include notifying the parent that the LEA’s obligation to provide FAPE ends upon receiving the regular high school diploma; and therefore, all of the services written within the IEP cease.

IDEA 34 C.F.R. § 300.102 “Limitation - exception to FAPE for certain ages.

(a) General. The obligation to make FAPE available to all children with disabilities **does not apply** with respect to the following:

(3)

(i) Children with disabilities who have graduated from high school with a regular high school diploma.

(ii) The exception in paragraph (a)(3)(i) of this section does **not apply** to children who have graduated from high school but have not been awarded a regular high school diploma.

(iii) Graduation from high school with a regular high school diploma constitutes a change in placement, requiring written prior notice in accordance with §300.503.

(iv) As used in paragraphs (a)(3)(i) through (iii) of this section, the term regular high school diploma means the standard high school diploma awarded to the preponderance of students in the State that is fully aligned with State standards, or a higher diploma, except that **a regular high school diploma shall not be aligned to the alternate academic achievement standards** described in section 1111(b)(1)(E) of the ESEA. A regular high school diploma does not include a recognized equivalent of a diploma, such as a general equivalency diploma, certificate of completion, certificate of attendance, or similar lesser credential.”

Therefore, any student **with a disability** ~~who is taught to alternate academic achievement standards and is assessed under~~ **participating in** the Oklahoma Alternate Achievement Program (OAAP) **aligned with alternate academic achievement standards, in high school, shall not receive** a “regular high school diploma.” The Every Student Succeed Act (ESSA) allows states to define and adopt an alternate diploma under certain conditions. The alternate diploma must be specifically designated for students with the most significant cognitive disabilities assessed using the alternate assessment aligned to alternate academic achievement standards. The State-defined alternate diploma can be counted in the four-year adjusted cohort graduation rate if it is:

1. Standards-based (e.g., all required courses/**coursework** have **been assessed using** alternate academic achievement standards approved by the Oklahoma School Board of Education).
2. Aligned with the State requirements for the regular high school diploma (e.g., all requirements for the alternate diploma within the Oklahoma Statute have been aligned to the requirements for a regular high school diploma, such as ~~three~~ **four** units of ~~mathematics-~~ **English** are required for a regular high school diploma and

~~three~~ **four** units of ~~math~~ **English** alternate are required for an alternate high school diploma (House Bill 1041 amended 70 O.S. § 11-103.6).

3. Obtained within the time for which the State ensures the availability of a FAPE, which is defined in Oklahoma through the school year in which the student turns 22. Based on Oklahoma Statute (70 O.S. § 5-132.1(B)), a student reaches maximum age when they are 22 or older on September 1 of a school year (**70 O.S. § 1-114**); and therefore, are no longer eligible for FAPE in Oklahoma. The LEA may deny admittance of persons over the age of 21 on or before September 1st (**70 O.S. § 5-132.1**). The student with a significant cognitive disability may receive their alternate diploma at any time they have earned the required units (e.g., within four years) but may continue to receive FAPE through the school year in which the student turns 22 even after receiving their alternate diploma.

The state-defined alternate diploma must meet the implied condition of being state-defined with a viable pathway to a diploma option that provides meaningful access to college programs, careers, and community. Having an Oklahoma state-defined alternate diploma provides students with the most significant cognitive disabilities the opportunity to earn a diploma that shows they have completed a rigorous alternate academic achievement standards-based program of study aligned to the regular Oklahoma Academic Standards.

NOTE: The availability of the State-defined alternate diploma should not prevent any student with a significant cognitive disability from working toward meeting the requirements for a regular diploma by being taught **fully aligned** to with regular Oklahoma Academic Standards. Each student with a significant cognitive disability must be viewed individually based on their unique circumstances to determine their individual path for graduation, **as documented on their IEP**.

## 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 ([34 C.F.R. § 300.103](#)). 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 "[Special Education Finance](#)." For more information [regarding residential placements](#) refer to Chapter ~~8~~ [10](#), "[Private, Charter, Residential, and Other Non-Traditional 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. [Please refer to the Oklahoma Health Care Authority, School-Based Services for more information.](#)

The Oklahoma Health Care Authority (OHCA) is the State Medicaid agency and administers the public insurance program known as SoonerCare [and SoonerSelect](#). In Oklahoma, LEAs may enter into intergovernmental agreements or contracts with the OHCA to participate in the Medicaid program. Services provided by the LEA, in accordance with the agreement and OHCA rules, may be billed for reimbursement of eligible claims. LEAs assure a state/local funding match for the federal Medicaid funds received through reimbursements for the services provided. Referrals to and coordination with SoonerCare [and SoonerSelect](#) 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 all students with disabilities to meet their unique disability related needs ([34 C.F.R. § 300.172](#)). AEM are print-based and technology-based educational materials, including printed and electronic textbooks, and related core materials that are designed or enhanced in a way that makes them usable across the widest range of learner variability, regardless of format (e.g., print, digital, graphic, audio, video). Accessible formats provide the same information in another form to address the barriers text-based materials can present for some learners. Examples of accessible formats include braille, audio, large print, tactile graphics, and/or digital text conforming with accessibility standards, 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. The alternative format must be provided in a timely manner, at the same time as the traditional materials are received for other students.

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. [Oklahoma ABLE Tech](#) is a NIMAC authorized user for the State of Oklahoma. [Oklahoma ABLE Tech is also available to consult and provide assistance with LEAs regarding a review of their procedures and/or policies for selecting curriculum materials to make certain they include ways they must be accessible to students with disabilities, such as textbooks by publishers, teacher created materials, or online educational programs.](#)

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).

Refer to the [Accessible Educational Materials Technical Assistance \(AEM TA\) Document](#) for procedures Procuring and Providing Accessible Educational Materials (AEM), Accessible Technology, and Assistive Technology.

### **C. Assistive Technology**

The IEP team determines whether a student requires assistive technology devices or services to receive a FAPE. *“Assistive technology device means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability. The term does not include a medical device that is surgically implanted, or the replacement of such device (34 C.F.R. § 300.5).”*

An assistive technology service directly assists an individual with a disability in the selection, acquisition, or use of an assistive technology device. A student’s need for assistive technology devices and services 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 ([34 C.F.R. § 300.105](#)). 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/or 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 ([34 C.F.R. § 300.34\(b\)](#) and [§ 300.113](#)).

The U.S. Department of Education, Office of Special Education Programs (OSEP), in collaboration with the Office of Educational Technology disseminated a guidance document titled [“Myths and Facts Surrounding Assistive Technology Devices and Services dated January 2024.”](#) OSEP Dear Colleague Letter (January 22, 2024) stated “This guidance aims to increase understanding of the Individuals with Disabilities Education Act’s (IDEA’s) requirements regarding AT devices and services, and dispel common misconceptions regarding AT, while also providing examples of the use of AT devices and services for children with disabilities. The document is intended for a wide range

of individuals including parents, early intervention service providers, special educators, general educators, related services personnel, school and district administrators, technology specialists and directors, and employees at State lead agencies and educational agencies. AT devices and services can help improve outcomes for children, develop important skills and abilities, and prepare them for the workforce and life after high school.”

#### ***D. Physical Education***

##### **General:**

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

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

Each child with a disability must be afforded the opportunity to participate in the general education PE program available to students without disabilities 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 the general education 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 general education 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 ([34 C.F.R. § 300.108](#)).

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

Each LEA must provide extended school year (ESY) services to students who need such services to receive a FAPE ([34 C.F.R. § 300.106](#)). Each LEA is responsible for establishing an ESY policy and 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 (10<sup>th</sup> Circuit 1990)]. For more information on ESY refer to Chapter 5-6. “Individualized Education Program (IEP)”, Section 3. “IEP Development”, I. “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 ([34 C.F.R. § 300.174](#)). 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. *“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 the previous district) to confirm the student's eligibility for IDEA special education and related services to ensure at the beginning of each school year each eligible student with a disability within its jurisdiction has in effect an IEP (34 C.F.R. § 300.323(a)). "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.
6. LEAs must not require a child with a disability to be toilet trained as a condition of enrolling and attending public schools. The IEP team should meet to discuss and possibly consider various barriers and supports within the IEP such as: medical and/or cognitive barriers, toileting accommodations, toileting schedule, behavior intervention plan for toileting, adaptive skills assessment (if no assessments in adaptive behavior exist). The IEP team should consider writing adaptive behavior/self-care measurable goal(s) for toileting including what data will be collected to measure the goal and determine if the student is making meaningful progress. The IEP should also consider how related service personnel may support toileting, including goal(s) (i.e., SLP to assist in teaching a nonverbal or verbal request to go to the restroom, OT to assist with all fine motor skills necessary to be successful in the toileting sequence procedures, etc.). If the student is non-disabled, the LEA may want to consider whether the adaptive behavior is a possible red flag for Child Find to determine if this is a child with a suspected disability (70 O.S. 1-114(B))

## **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 10-12. "Behavior" "Discipline Guidelines and Protections", Section 4. "Shortened Day" for more information.

#### **H. Compensatory Services**

Compensatory services may be provided when the LEA cannot implement the IEP as written due to incidents such as staff shortages, long-term school closures, delayed Child Find obligation, including when State complaint investigation decision or a due process hearing officer determine noncompliance and is awarded for the denial of FAPE. Compensatory services must be individualized to meet the student's unique circumstances and address any skills that may have been lost or any lack of sufficient progress made with a focus on services missed in accordance with the requirements in 34 C.F.R. §§ 300.320-300.324. If compensatory services are awarded, then the IEP team must meet to determine how to provide these special education and/or related services "in addition to" the student's current instructional day/week/year to provide FAPE, including in addition to Extended School Year (ESY) services if the IEP team had already been determined as necessary. The IEP team, including the parent, must determine when these additional compensatory services will take place (e.g., before or after school, or on weekends, or during the summer months, etc.), the frequency and duration of these additional services, the date of completion, as well as consider any potential harmful effects to providing the additional services. The parent has the right to reject the full amount or a portion of the compensatory services offered. LEAs must provide the parent a Written Notice to describe the reasons for the proposal to initiate the compensatory services, including options discussed and determined not appropriate, along with providing parents a copy of their procedural safeguards. The LEA and the parents are encouraged to use mediation to resolve any disagreements about the amount of, or continuing need for, the additional compensatory services unless the amount was determined by a due process hearing officer or through a State complaint investigation. The parent has other dispute resolution choices as outlined within their procedural safeguards and listed on the Written Notice.

Student level data collected may have indicated specific dates upon which the LEA should have been knowledgeable of compounding red flags to which a Child Find obligation exists or the possibility of denying FAPE has occurred. In considering the amount of compensatory services awarded to the child it will be based upon the time frame during which this knowledge began.

### ***i. Student No Longer Enrolled***

OSEP Letter to Oettinger (March 2, 2023) indicated compensatory education may be awarded even if a student has already graduated. OSEP Letter to Riffel (August 22, 2000) clarified this issue much earlier by stating if a school district denied FAPE, the “student’s receipt of a regular high school diploma (a terminating event under the IDEA to the right to FAPE) did not negate the student’s independent right to compensatory education service”. However, Part B does not authorize compensatory services at the postsecondary level, but must be the type of educational and related services offered by the State at the elementary and secondary education levels.

When a student moves out of state, if the State “complaint resolution decision has ordered relief (e.g., compensatory education) that can reasonably be implemented in a new State and the parent does not reject the remaining compensatory services, the SEA must ensure the decision is implemented in the new State.” (OSEP Letter to Anonymous (October 23, 2019)). If the State ordered the LEA to develop a new IEP, and the student moved out-of-state, then the previous LEA would **not** be required to develop a new IEP, “because the new LEA in the new State would be responsible for developing and implementing the IEP.” OSEP’s guidance regarding compensatory services may be awarded even if the student moved out-of-state may be applied to the State Complaint for compensatory services when a student moves from an Oklahoma resident LEA to another Oklahoma LEA. Therefore, based on the OSEP Letter to Anonymous (October 23, 2019), if a SEA’s complaint resolution decision awards compensatory education that can be reasonably implemented in a new Oklahoma LEA, and the parent does not reject the remaining compensatory services, upon the family moving school districts within the state, the SEA must ensure the decision is implemented in the new Oklahoma school district. When the student no longer attends the LEA that denied them FAPE, the parent may arrange for another provider to deliver the student’s awarded compensatory education [Tilley et al vs. Thomas Edison Charter School North, (D. Utah 2023)].

## **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, 137 S. Ct. 988 (2017)].*

## Legal Citations

### **United States Code, Title 20: Education**

**20 U.S.C. § 1111(g)(1)(E) State Plans. Other Plan Provisions - Descriptions.**

**20 U.S.C. § 1111(b)(1)(E) Challenging Academic Standards and Academic Assessments - Alternate Academic Achievement Standards for Students with the Most Significant Cognitive Disabilities.**

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

- 34 C.F.R. § 99.31(a)(2) Under What Conditions is Prior Consent Not Required to Disclose Information?
- 34 C.F.R. § 99.34 What Conditions Apply to Disclosure of Information to Other Educational Agencies or Institutions?
- 34 C.F.R. § 300.5 Assistive Technology Device.
- 34 C.F.R. § 300.17 Free Appropriate Public Education.
- 34 C.F.R. § 300.34(b) Related Services – Exception; Services that Apply to Children with Surgically Implanted Devices, Including Cochlear Implants.
- 34 C.F.R. § 300.101 Free Appropriate Public Education (FAPE).
- 34 C.F.R. § 300.102 Limitation – Exception to FAPE for Certain Ages.
- 34 C.F.R. § 300.103 FAPE – Methods and Payments.
- 34 C.F.R. § 300.104 Residential Placement.
- 34 C.F.R. § 300.105 Assistive Technology.
- 34 C.F.R. § 300.106 Extended School Year Services.
- 34 C.F.R. § 300.108 Physical Education.
- 34 C.F.R. § 300.109 Full Educational Opportunity Goal (FEOG).
- 34 C.F.R. § 300.113 Routine Checking of Hearing Aids and External Components of Surgically Implanted Medical Devices.
- 34 C.F.R. § 300.172 Access to Instructional Materials.
- 34 C.F.R. § 300.174 Prohibition on Mandatory Medication.
- 34 C.F.R. § 300.320 Definition of Individualized Education Program.**
- 34 C.F.R. § 300.321 IEP Team.**
- 34 C.F.R. § 300.322 Parent Participation.**
- 34 C.F.R. § 300.323 When IEPs Must be in Effect.**
- 34 C.F.R. § 300.324 Develop, Review, and Revision of IEP.**
- 34 C.F.R. § 300.503 Prior Notice by the Public Agency; Content of Notice.**
- 34 C.F.R. § 300.704(c) Local Educational Agency High Cost Fund.

### **Oklahoma Statutes, Title 70: Education**

**70 O.S. § 1-114 Right to Attend School Free of Charge.**

**70 O.S. § 5-132.1 Opportunity to Receive Regular High School Diploma.**

**70 O.S. § 11-103.6 Option for High School Graduation.**

70 O.S. § 24-101.4 Disclosure of Disciplinary and Non-Directory Educational Records.

## 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: 5. “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 residential or treatment facilities;
8. Not enrolled in elementary or secondary school, including children ages 3 through 5, or youth ages 18 through 21 who have not graduated with a standard diploma;
9. Highly mobile students, such as migrant and homeless as defined by the McKinney Vento Homeless Assistance Act;

10. Child Find also must include § students who are suspected of being a child with a disability under 34 C.F.R. § 300.8 and in need of special education, even though they are advancing from grade to grade (34 C.F.R. § 300.111(c)(1)). (e.g.,

Note: There are various examples of students who may be academically progressing from grade to grade but behaviors, functional skills, or other determinant factors are adversely impacting the student's education and the student is in need of specially designed instruction;

and

11. ~~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 refer 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 development **activities**, presentations, as well as electronic forms of communication. Regardless of the methods employed, LEAs must conduct comprehensive Child Find activities **to ensure that all children with disabilities residing in the LEA's boundaries, including children with disabilities who are homeless or are wards of the State, who are in need of special education and related services are identified, located, and evaluated (34 C.F.R. § 300.111)**. In addition, during the timely and meaningful consultations throughout the school year 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, **such as rural versus urban settings, and** cultural and language diversity in a local community must be considered in selecting effective methods and activities to inform the public of the 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 safeguards** under the Individuals with Disabilities Education Act (IDEA) apply and a copy of the procedural **rights safeguards** 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.

## **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 ([34 C.F.R. § 300.302](#)). Although screening is an important part of the Child Find system, screening cannot be used to delay **or deny** processing a referral to consider a special education evaluation where immediate action is warranted.

A student who scores at-risk on the dyslexia screener indicates the student has characteristics of a child with dyslexia but **this screening is not considered an initial evaluation under IDEA (34 C.F.R. § 300.302)** for the determination of a Specific Learning Disability (i.e., SLD is the umbrella term for conditions such as dyslexia, dysgraphia, dyscalculia, etc.). The dyslexia screener assists the LEA in determining which essential component of reading needs to be targeted as a skill deficit. The LEA must then create an intervention plan to remediate the skill (see Chapter 5 Evaluation and Eligibility for more information).

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

~~Under the LEA funding option,~~ **A school district may choose to set aside IDEA funds for conducting Coordinated Early Intervening Services (CEIS).** CEIS are services for K-12 general education students who need additional academic and behavioral supports to succeed in the general education environment ([34 C.F.R. § 300.226](#)). 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 **to students receiving CEIS supports.** ~~at this time.~~

The overarching goal is to **reduce the need to evaluate a student for a disability and** 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 may 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. **3. “Behavior” “Multi-Tiered System of Supports”**, Section 1. “Multi-Tiered System of Supports.”

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	1. African American
2. Autism	9. Separate School Other Setting (correctional or residential facility etc.)	11. Out-of-school suspensions more than ten days	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

LEAs are required to have Child Find policies, procedures in effect that describe the LEA's efforts related to their local screening, intervention, and referral process. An LEA must also have written Child Find procedures and practices developed to assist parents through public awareness activities (See Section 2. Locating Students, "B" Public Awareness in this chapter), educators using internal procedures, and other interested parties (e.g., SoonerStart, Head Start, etc.) in implementing the specific steps necessary to refer a child suspected of having a disability under IDEA, for an initial evaluation (34 C.F.R. § 300.111). As stated in IDEA 34 C.F.R. § 300.212 "Public information. The LEA must make available to parents of children with disabilities and to the general public all documents relating to the eligibility of the agency under Part B of the Act."

LEAs must have Child Find is a set of policies, procedures, practices and public awareness activities designed to locate, identify, and evaluate students suspected of having a disability under IDEA and who may be in need of special education and related services. The Child Find process may include reviewing data such as, but is not limited to: universal screening results, progress monitoring data,

absenteeism, behavior incidents, lack of academic progress in the classroom, suspected physical or mental health condition, adaptive behavior, etc. that indicates a student may be at-risk. LEAs should determine if the data is a compounding red flag which triggers the LEA's obligation to refer the student for an initial evaluation for a suspected disability as identified under IDEA 34 C.F.R. § 300.8.

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. [5](#). "Evaluation & Eligibility" for additional information.

If a student is two years old and SoonerStart (Part-C) sends a transition notification to the LEA, this notification is considered a referral for an initial evaluation under IDEA Part B. The LEA is required to send the parent a copy of their procedural safeguards (aka parent rights), along with a Written Notice indicating the LEA is either proposing to initiate an initial evaluation or refusing to initiate an initial evaluation under IDEA Part-B. This action may occur at the Transition Planning Conference (TPC) or before depending on the circumstances.

If the parent chooses to decline ~~s~~ to release the confidential SoonerStart record, including evaluation and disability information to the LEA; ~~nonetheless~~, the LEA must treat the SoonerStart (Part-C) notification as a referral for an initial evaluation. ~~Therefore, by an agency the LEA and~~ must provide the parent a Written Notice documenting the LEA's proposal or refusal to initiate an initial evaluation, along with a copy of their procedural safeguards.

If the parent chooses to provide ~~s~~ consent to release the confidential SoonerStart records, the LEA must complete a Review of Existing Data (RED) form. The LEA would request parent consent if the LEA suspects the child is a child with a disability under IDEA, and provide the parent a Written Notice regarding the district's proposal for an initial evaluation, along with parent rights. If after completing the RED the LEA does not suspect the child has a disability under IDEA Part B, then the LEA must provide the parent a Written Notice describing the reasons why the district is refusing to initiate an initial evaluation under IDEA and provide the parents a copy of their procedural safeguards outlining their options for dispute resolution. The SoonerStart transition notification to the LEA must be treated as an initial referral under Part B 34 C.F.R. § 300.504(a)(1) and OSEP's Letter to Nix (March 17, 2023). See the "[2023 Early Childhood Transition Questions and Answers](#)" (OSEP QA 24-01 U.S. Department of Education, Office of Special Education and Rehabilitative Services, November 28, 2023) and Chapter 4. "Young Children, Ages 3-5" for additional information.

## ***Legal Citations***

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

**34 C.F.R. § 300.8** Child with a Disability.

34 C.F.R. § 300.111 Child Find.

34 C.F.R. § 300.134(a) Consultation - Child Find Process.

34 C.F.R. § 300.226 Early Intervening Services.

34 C.F.R. § 300.302 Screening for Instructional Purposes is Not Evaluation.

## CHAPTER 3: MULTI-TIERED SYSTEM OF SUPPORTS (MTSS)

### Section 1. Multi-Tiered System of Supports (MTSS)

#### A. OVERVIEW

A Multi-Tiered System of Supports (MTSS) is a comprehensive continuum of evidence-based systemic practices to support a rapid response to students' needs in academic and social-emotional-behavioral (SEB) skills, with regular observation to facilitate data-based instructional decision making (ESEA, as amended by the ESSA, 20 U.S.C. § ~~7801~~ 8101(33)). It is **not** a program or a referral process to special education. It is a multi-level tiered, proactive, prevention ~~system~~ framework to maximize all student achievement and reduce problem behaviors throughout the school community.

The MTSS framework has key components that are the foundation; however, the implementation may look different from school to school. LEAs have discretion in creating specific data decision rules and procedures when ~~designing~~ implementing their own MTSS program. However, LEAs should clearly define these data decision rules by authoring written procedures to support clear, objective, and standardized methods (e.g., frequency of universal screening and progress monitoring, setting target goals, selection of an evidence-based intervention program(s), analysis of progress monitoring data to determine quantitative changes to an intervention such as dosage, decreasing group size, etc. or qualitative adaptations altering the way the intervention is delivered such as arranging for instruction to reduce distractions, type of adult feedback and error correction, etc.). For more information refer to the [National Center on Intensive Intervention \(NCII\) at American Institutes for Research](#). These written procedures need to be understood by both educators and parents.

The core components of OKMTSS, the Oklahoma framework, include Sustainable Teaming, Evidence-Based Practices, Data-Driven Decision Making, and Continuous Improvement Cycle. Within these components, there are essential activities that should be included in each LEA's MTSS program, including:

- Sustainable Teaming
  - Leadership Support
    - Administrator involvement
    - Allocation of Resources
  - Multidisciplinary Teams
    - Engagement of students, families, and community stakeholders
    - Selection/identification of appropriate school personnel
    - Multi-directional communication
  - Effective Meetings
    - Agenda and Action plan
    - Team member roles and responsibilities

- MTSS Coaching Support
  - Internal coaching capacity through district-level support
  - Access to external MTSS coaching expertise
  - Professional learning
- ~~○ Participation in professional development~~
- ~~○ Develop teaming structures to review data for developing intervention plans and instruction~~
- Evidence-Based Practices
  - Tier-1 Universal School-wide Supports
    - Academics- Core curriculum with standards for rigor
    - Behavioral/Mental Health- Prevent, Teach, Reinforce, Respond practices to support school climate and culture
  - Tier 1- Universal Class-wide Supports
    - Academics-High-quality, differentiated instruction for core academics
    - Behavioral/Mental Health- Prevent, Teach, Reinforce, Respond practices to support classroom climate and culture.
  - Tier 2- Interventions
    - Standard protocol, evidence-based interventions to address specific skill deficits
  - Tier 3- Interventions
    - Intensified evidence-based interventions matched to individual's needs
    - Data-based individualization protocol
- ~~● Universal Screening of All Students (within specific grade levels), and~~
- ~~● High-Quality Evidence-Based Instruction and Interventions~~
- Data-Driven Decision-Making
  - Measurement for Team-based Decisions
    - Effective screening tools and processes
    - Structure to analyze graphic results
  - Identifying Needs and Selecting Interventions and Practices
    - Multiple sources of data for decision making at Tier 1, Tier 2, and Tier 3
    - Decision rules to identify areas of needed supports and interventions (Tier 1, Tier 2, and Tier 3)
    - Student grouping for intervention that prioritizes skill needs
  - Evaluate Effectiveness of Interventions and Practices
    - Data informs instructional changes and alterations
    - Progress monitoring individual student interventions
    - Progress-monitoring class, school, and deficits district-level interventions and practices
  - Evaluate Fidelity of Implementation
    - Fidelity checks for teaming culture
    - Fidelity inventories for practices
  - ~~○ Objective Decision Rules~~

- ~~Progress Monitoring~~
- ~~Regular Data Review~~
- Continuous Improvement Cycle
  - Evaluation of MTSS effectiveness
  - Implementation Fidelity/Integrity (throughout the MTSS framework)

An MTSS framework has a systematic implementation of increasingly more intensive levels of interventions **for both academics and behavior**, which are referred to as tiers. **Tiers refer to the level of systemic supports and are intended to categorize the intensity of services, not the student. These supports are determined at a district/site level and should take into consideration student needs, personnel certification and skill sets, and access to community resources. Supports are intended to be layered upon one another to close skill deficits with the additional resources. It is **not** a single or static intervention program or strategy. There is an integrated relationship between academics and behavior, and for some students may demonstrate a need for both at the same time.**

### ***B. Tier 1: Universal Supports***

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.

#### ***i. Universal Screening***

Universal screening, using a general outcome measure, should provide staff with information on where a student is performing in relation to an expected benchmark. A general outcome measure allows LEAs to track a student's performance over time and not a **one time** measurement of mastery regarding a specific skill. A general outcome measure is, for example, a curriculum-based measurement (CBM), or a common formative assessment (CFA). There are other validated instruments that are norm-referenced such as rating scales for measuring behavior (e.g., internal and external behaviors) that may also be used as a universal screening. Measures used should be predictive of future difficulties in a skill or 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 proficiency level for their grade, 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 general outcome measures as being "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 the universal supports within Tier 1 core instruction and class interventions. Tiers 2 and 3 interventions are layered upon existing supports to supplement student learning and are not intended to replace the core instruction at Tier 1.

Universal screening for social-emotional-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 skill(s) to be targeted, evidence-based intervention(s) and the associated step-by-step protocol, and a progress monitoring plan.~~

## **ii. Instructional Materials**

LEAs should consider their universal instructional materials as a part of Tier 1, universal supports. Part of the comprehensive evaluation process for special education eligibility includes consideration of whether the student has had a ‘lack of appropriate instruction’. This consideration must be a factor in the universal academic instruction provided to the student universally prior to referring a student for an initial evaluation. eligibility determination. Instructional materials should be evaluated to ensure that they can accurately respond to the consideration of appropriateness as it relates to effective instruction.

In the case of MTSS **and** 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 school-wide **positive** behavior expectations, classroom management practices, schoolwide acknowledgement and reinforcement systems, ~~social-emotional learning~~ **social skills and self-regulation** curricula, bullying prevention practices, and school climate practices. School-wide 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.

### **C. Tier 2: Targeted Supports**

Based on universal screening and student academic **and/or** behavioral diagnostic assessments (as needed), MTSS teams should use clearly defined decision rules to support the identification and implementation of evidence-based interventions that target specific skill deficits for the individual student. In a well functioning school system, it is anticipated that approximately **10-15% of students should need Tier 2 supports.**

#### ***i. Evidence-based Interventions***

Interventions selected for use as Tier 2 are considered **targeted supports** and must have evidence of effectiveness in improving the targeted skill deficit. **Teams should ensure that providers of evidence-based interventions are trained in providing that specific intervention according to the standard protocol. Training appropriately depends on the specific protocol. Some evidence-based interventions require specialized certifications or education. Other evidence-based interventions can be trained at the LEA or site level to ensure a standard protocol to the definition of the intervention. It is the responsibility of the LEA to ensure that the intervention has been provided with integrity and fidelity to the standardized protocol.**

#### ***ii. Intervention Plan***

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. **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.**

### **iii. Progress Monitoring**

~~Progress monitoring~~ **Intervention** plans should include information on the frequency of **progress monitoring** data collection and review, and how many data points (e.g., research indicates six to eight data points provides adequate data to predict trends) 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.

## **D. Tier 3: Intensive Supports**

In a well-functioning school system, it is anticipated that approximately 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.

### **i. Intensity of Intervention Framework**

**The National Center for Intensive Intervention defines intervention intensity with a framework of seven components:**

1. **Strength**
2. **Dosage**
3. **Alignment**
4. **Attention to transfer**
5. **Comprehensiveness**
6. **Academic/Behavioral Support**
7. **Individualization**

**When determining an intervention intensity change, the team should consider the components of intervention intensity that will most benefit the student. Then they should indicate a change of intensity by graphing a vertical 'phase line' to mark the event. This visual representation of the event, indicates to providers, and evaluators that the intervention needed intensification and thus was not continued as originally defined.**

### **E. Treatment Integrity and Fidelity**

Treatment fidelity (also known as treatment integrity) is a process of determining whether the interventions are accurately and consistently being provided as designed. Without measuring the fidelity of the administration of the intervention, it remains unclear as to whether the intervention itself is ineffective or whether the intervention would have been effective had the interventionist implemented the intervention as prescribed. Integrity and 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.

American Institutes for Research (AIR) NCII developed "[Considerations for Effective Implementation: 5 Elements of Fidelity](#)" to consider when asking the question "Is there evidence that the intervention was delivered as intended?"

1. **Adherence:** "How well do we stick to the plan, curriculum, or assessment? Are the intervention and assessment delivered consistently across different teachers and settings?"

2. **Exposure/Duration:** “Does the schedule allow the intervention to be delivered for the recommended dosage (duration and frequency)? How often does a student receive an intervention? How long does it last? Is the student regularly attending school? Is the teacher regularly available to support instruction? Did any factors prevent the student from receiving the intervention as intended?”
3. **Quality of Delivery:** “Does the interventionist have the necessary training, knowledge, and skills to deliver the intervention correctly? How well is the intervention, assessment, or instruction delivered? Are quality teaching practices used consistently and with appropriate intensity across all sessions or interventionists?”
4. **Program Specificity:** “How well is the intervention defined and different from other interventions?”
5. **Student Engagement:** “How attentive and involved are the students in this intervention or activity?”

## ***F. Special Education Considerations***

### ***i. Students Without a Disability Not Yet Identified***

Students who have not been identified as a student with a disability receiving special education can be considered for a comprehensive “initial” evaluation for special education under IDEA at ANY time, including at parent request. Teams may determine that a student may benefit from an “initial” evaluation under IDEA as needing special education or under Section 504 if they have noticed a pattern demonstrating a lack of academic/behavioral progress through the use of intervention provision. However, teams may also consider any factor alone as enough cause to determine a need for special education evaluation. With appropriate intervention provision and implementation, a student may be successful with targeted or intensive interventions and may not need a comprehensive initial evaluation to determine if a suspected disability exists. If a student has demonstrated a pattern indicating a lack of sufficient academic and/or behavioral progress through the use of scientific, evidence-based interventions, teams may suspect a possible existence of a disability and refer the student for an initial evaluation under IDEA. However, the student may exhibit a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade-level standards in one or more areas identified in IDEA (34 C.F.R. 300.309(a)(1)) determined by the group to be relevant to the identification of a specific learning disability, as enough cause to determine a student is in need of referring for a comprehensive initial evaluation. If a student positively responds to the targeted or intensive interventions implemented, then the group may determine the data does not demonstrate an existence of a disability; and therefore, the student may not need a comprehensive initial evaluation to determine whether the student is eligible for special education services. (34 C.F.R. § 300.309(a)(2)). However, it is important to note that general education interventions cannot delay or deny the initial evaluation for special education services if a student is suspected of having a disability.

### ***ii. Students Referred for Special Education Evaluation***

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.

An inappropriate use of scientific, research-based response to intervention is to deny or to delay the process for an initial evaluation under IDEA for a suspected disability. To utilize the process based on the child's response to scientific, research-based intervention criteria for determining whether a student has a Specific Learning Disability (34 C.F.R. § 300.307(a)(2)), clearly defined written procedures are critical. If interventions have not been occurring on a regular basis for students at risk, then when a referral is considered for an initial Specific Learning Disability (SLD), the team may begin the intervention(s) as part of the referral process/evaluation that must be completed within the 45 school day timeline (34 C.F.R. § 300.309(b)(1). It is also critical to note that LEA processes defined to inadvertently delay or deny an evaluation may lead to a Child Find violation. See Chapter 5 "Evaluation and Eligibility" for more information regarding eligibility considerations.

### ***iii. Students Already Identified for Special Education***

Students who have already been determined eligible for special education may also need targeted (Tier 2) and/or intensive (Tier 3) interventions and/or supports. Special education does not prevent a student from accessing specific interventions and/or supports that have been determined as needed for a skill deficit the student demonstrates. A student receiving special education services eligibility should continue to access the specially designed instruction the student receives throughout the MTSS framework, but should not eliminate the access for Tiered support. Interventions are layered "in addition" to Tier 1 core instruction based upon how the student responds to the interventions and the level of intensive intervention supports are necessary for each individual student as appropriate to meet their unique needs.

A special education student with a disability receiving special education services should not be categorized as Tier 4, as Tier 4 does not exist within the MTSS framework. or Additionally, students should not be categorized as any one specific category of Tier (e.g., An inaccurate statement such as all Tier 3 students are on an IEP)., as the process of using MTSS eligibility of a Specific Learning Disability (SLD) is not intended to be used as a process categorizing students, but as a response to provide intervention for specific skill deficits that a student demonstrates. A student may have skill deficits that are best supported by targeted interventions and supports determined by data driven decisions. An effective MTSS system utilizes a layering of supports in addition to the core instruction to target specific skill deficits. Tier 3 does

not equal special education. MTSS framework is a prevention system to maximize student achievement, including supporting students with disabilities, who depending on their unique individual needs may need the layering of the core instruction, the Tier 2 small group standardized evidence-based interventions targeted to skill deficits, and the Tier 3 intensive interventions individualized to their needs. Tier 3 is for any student not responding to Tier 2 interventions who may have poor achievement and prolonged intensive needs.

### ***Legal Citations***

#### **United States Code, Title 20: Education**

20 U.S.C. § 8101(33) Definitions. Multi-Tier System of Supports.

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

34 C.F.R. § 300.307 Specific Learning Disabilities.

## CHAPTER 3. 4. 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) requires that services be provided for young children with disabilities (34 C.F.R. § 300.8) 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.

Districts must allow students to attend the early childhood programs in their district. (70 O.S. 1-114(B)(1)). "Children who are at least four (4) years of age but not more than five (5) years of age on or before September 1 shall be entitled to attend either half-day or full-day early childhood programs in their district of residence free of charge as long as the district has the physical facilities and teaching personnel to accommodate the child."

LEAs should not restrict the enrollment of preschool students without disabilities who demonstrate delays in cognitive, motor, communication, adaptive behavior (e.g., toileting skills), and social/emotional skills. Delays in one or more of these domains may trigger the LEAs Child Find obligation. For students already identified as having a disability, the IEP must address all of the student's disability related needs and any deficits or delays must **not** be a barrier to enrollment or school attendance.

The LEA is also responsible for coordinating with SoonerStart Early Intervention (EI) Program regarding the Child Find system and the transition for children prior to three years of age, who have previously been identified as an infant or toddler with developmental delays through SoonerStart. Public charter schools who serve elementary age children are also responsible for serving young children ages three to five years old. 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, health care providers, and agencies, as well as promoting public awareness.

### A. Coordination

1. **Families** – LEAs 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. Refer to [Section 3. "SoonerStart \(Part C\)"](#) of this chapter for more information.
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 having a developmental delay through the SoonerStart Early Intervention Program.~~ **and who have an active SoonerStart Individualized Family Service Plan (IFSP). An LEA notification from SoonerStart regarding the demographic information about a child is considered a referral for an initial evaluation under Part B of IDEA, and LEAs must respond.** See [Section 3. "SoonerStart \(Part C\)"](#) of this chapter for more information on SoonerStart **transitions**.
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. Refer to Chapter 8. **9.** ~~"Private, Charter, Residential, and Other Settings", Part 3. "Residential and Other Settings", Part 3, Section 6. "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 June 2, 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 (MTSS/RTI), if appropriate. Additional information about **MTSS can be found in Chapter 3**, and 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 who are potentially eligible for Part B under IDEA 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.~~ SoonerStart will send the LEA notification for all children approaching their third birthday with an active Individualized Family Service Plan (IFSP) who live within the LEA's boundary. This LEA notification from SoonerStart of the child's directory information is considered a referral for an initial evaluation under Part B of IDEA and requires action on the part of the LEA (see OSEP [Letter to Nix, 2023](#)). The LEA is required to provide the parent a copy of procedural safeguards (aka parent rights), along with a Written Notice indicating the LEA is either proposing to initiate an initial evaluation or refusing to initiate an initial evaluation under IDEA Part B. This action may occur at the Transition Planning Conference (TPC) or before depending on the circumstances (See Chapter 2. "Child Find", Section 4. "Special Education Referral for Evaluation").

### 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 having a developmental delay 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~~

SoonerStart will notify districts of all potentially eligible children with an LEA notification that includes demographic information, but will **not** include the child's evaluation data, eligibility for SoonerStart, IFSP or any other records. This LEA notification is considered a referral (see OSEP [Letter to Nix, 2023](#)). The LEA notification will occur not fewer than 90 calendar days prior to the child's 3rd birthday. To release confidential information regarding a specific child, such as evaluation results, eligibility, IFSPs, etc., parents must provide written consent to SoonerStart. With parent consent to release confidential information, SoonerStart will release the child's records to the LEA through the special education software system. SoonerStart will then invite the LEA to a Transition Planning Conference (TPC) along with the required SoonerStart staff, the family, and other parties the family requests. This TPC meeting will occur no 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's third birthday. ~~Both the LEA and~~

~~SoonerStart are required to participate in the TPC.~~ **The LEA is required to attend the TPC when invited by SoonerStart (34 C.F.R. § 300.124(c)).**

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)**

**If the parent provides consent for the release of the confidential SoonerStart record, th**e 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. After the RED is completed, if the determination is made that additional data is needed, then the LEA must obtain parental consent to conduct an initial evaluation under IDEA Part B federal program (Refer to Chapter 4- **5. "Evaluation and Eligibility"** for more information). **In some cases, best practice may include completing the RED during the course of the TPC, with parent consent being obtained for an initial evaluation.** 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. If eligible under Part B of the IDEA, 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- **11.**

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

SoonerStart is required to evaluate referred **infants and** toddlers ~~if it is 45 calendar days or more to the child's third birthday~~ **when a child is referred** 45 calendar days or more **before their** 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~~ **has an initial SoonerStart IFSP** 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:~~ the following will occur:

- ~~• 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 must provide notification to the LEA (34 C.F.R. § 303.209(b)) with the student's demographic information as soon as possible after initial IFSP. This is considered a referral for an initial evaluation under Part B of IDEA.**
- With written consent to release confidential information pertaining to the child, initial evaluation, eligibility and IFSP, will be shared with the receiving LEA. This includes the electronic file transfer (EFT).**
- A Transition Planning Conference (TPC) is recommended but is **not** required due to being a late referral.

### **B.C. Late Referral to SoonerStart Young Children without SoonerStart Eligibility**

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.~~ **In this circumstance, SoonerStart will provide the parent with contact information for the LEA or other appropriate community services. Only children with an active IFSP are entitled to SoonerStart transition including a transition planning conference.**

LEAs 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 SoonerStart. 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 45 school days.

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 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. If the evaluation, eligibility, and if eligible, the IEP are **not** completed by the child's 3rd birthday, then the LEA would indicate **this** on their End-of-Year Data Report ~~as a late referral from SoonerStart.~~

#### **D. Child Moves From District During SoonerStart Transition, Before Age 3**

##### **SoonerStart has sent the LEA Notification**

- i. **If a child moves out of the district and no confidential records from SoonerStart have been shared:** The original LEA of residence will complete a written notice due to receiving the LEA notification to document a proposal or refusal for an initial evaluation, even though the child has moved and **no** longer a resident of the LEA. A copy of the written notice and procedural safeguards will be provided to the parent at the last known address or email contact.
- ii. **If a child moves out of the district and the electronic file transfer of the student's confidential record from SoonerStart has occurred, but the LEA has not completed the RED:** The original LEA of residence will complete a written notice documenting the LEA's proposal or refusal regarding the initial evaluation to provide to the parent, along with a copy of their procedural safeguards, at their last known address or email contact. The LEA must document the receipt of the SoonerStart LEA notification, including the SoonerStart confidential student file containing the child's evaluation reports, IFSPs, etc., noting the child is no longer a resident of the LEA. The original sending LEA will follow standard student transfer procedure and transfer student records to the receiving district. The receiving district will do their best to complete the evaluation/eligibility in a timely manner and, if eligible, develop an initial IEP by the child's 3rd birthday.
- iii. **If a child moves out of the district after eligibility determination, including the IEP has been completed:** The receiving LEA will review the IEP from the previous sending LEA to determine if they will adopt the previous IEP (In-State Transfer) or conduct an IEP meeting to develop a new subsequent IEP.

## 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 (34 C.F.R. § 300.124);
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.
5. LEAs ~~should~~ shall ensure parents have received a copy of their procedural safeguards no later than the TPC, since the SoonerStart LEA Notification is considered an initial referral (34 C.F.R. § 300.504(a)(1)). Districts may complete the Review of Existing Data (RED) at the TPC and may ask the parent for consent if additional assessments are determined necessary. A parent declining to sign consent at the TPC should **not** be considered declining a referral for an initial evaluation under Part B of IDEA. The LEA should offer another meeting to discuss the documentation on the RED form to determine if additional assessments are needed and obtain parent consent to move forward with the initial evaluation, unless the parent states they are declining to proceed with the referral for the initial evaluation under Part B of IDEA. LEAs ~~will~~ must provide the parent a Written Notice documenting the proposal or refusal to initiate an initial evaluation. This Written Notice ~~will~~ must be provided to the parent as well as a copy of procedural safeguards (2023 Early Childhood Transition Questions and Answers).

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

1. Family Members (required member)
2. Persons invited by the family
3. SoonerStart Staff (required member)
4. LEA Staff ~~(both LEA and SoonerStart are required to attend)~~ (required member if invited by SoonerStart)
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:

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

A request for an initial evaluation is made when it is suspected that a child may be a student with a disability who may need special education services ([34 C.F.R. § 300.301](#)). 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. 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."](#) Refer to Chapter 4. [5.](#) "Evaluation and Eligibility" for information.

## 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. **7.** "Least Restrictive Environment (LRE)."

OSEP reiterated their support for high quality least restrictive environments in November 2023, noting "All young children with disabilities should have access to high-quality inclusive early childhood programs that provide individualized and appropriate support so they can fully participate alongside their peers without disabilities, meet high expectations, and achieve their full potential." (Inclusion of Children with Disabilities in Early Childhood Programs, 2023).

Settings for young children ages 3-5 years include public or private early childhood programs. LEAs must provide the same length of instructional day for children with disabilities as the school day provided to their same aged peers without disabilities. An LEA providing a full day general education preschool program must offer the same length of day for same aged children with disabilities. 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 general education early childhood programs;
2. Providing 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 general education early childhood program that includes at least 50% of children without disabilities. General education 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 general education 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 general education early childhood program; OR
  - (A2) Receive the majority of hours of special education and related services in some other location.
3. Children attending a general education 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 general education early childhood program; OR

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

An [OSEP Dear Colleague](#) policy letter addressed to reaffirm the position of the U.S. Department of Education (January 9, 2017), stated that special education and related services delivered in the child's classroom in the course of daily activities in which all children in the classroom participate (e.g., "circle time", "learning centers"), would be considered as being received in the General Education 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 General Education 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 General Education 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:
  - general education 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, or in a service provider's location.

- (D1) Home (The child receives some or all of their special education services in the primary residence of the child’s family or caregivers and does not attend a general education 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 early 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 of the Oklahoma Administrative Code (OAC § 210:10-1-19).

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. The LEA may fulfill this duty, to provide FAPE, by one of the following:

1. Directly providing special education and related services for such children;
2. Joining a cooperative program with another district or districts to provide special education and related services;
3. 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. 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 on an IEP. 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.

5. A family receiving SoonerStart services may ask to transition their child to a school district (LEA) outside of their district of residence by the child's 3<sup>rd</sup> birthday. However, the responsibility for transition remains with the resident district. The resident district is responsible for the TPC, evaluation, eligibility determination, and if eligible, the development of the IEP/placement by the child's 3<sup>rd</sup> birthday. The LEA outside of their district of residence which the parent would like to transfer to does **not** have this obligation nor requirement. If their child is determined eligible under IDEA Part B and is placed on an IEP for special education and related services, then the family may apply for a transfer to the LEA outside of their district of residence. The new receiving LEA shall establish availability of the appropriate program, staff, and services prior to approval of the transfer. The receiving LEA shall consult the resident school district and the parents of the child to determine how FAPE will be provided to the child. Services comparable to those described in the IEP shall be provided until the receiving LEA accepts the child's IEP from the resident district or develops and implements a new IEP that meets IDEA requirements.

See Chapter ~~12~~, 14, "Transfers and Move-In Students", Section 1. "Transfers for Students with Disabilities" for more information on IEP Service Agreements, transfers, and transportation.

6. 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. However, if the child is attending a Head Start program located outside of their district of residence, then the LEA where the Head Start program is located is **not** responsible for educational services, provisions of FAPE, and Child Find, the LEA of residence is still responsible. See Chapter 9, Part 3 "Head Start and Early Head Start" for more information.

## ***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.

Refer to Chapter 5, 6, "Individualized Education Program (IEP)", Section 3: "IEP Development" for more information.

### **C. Extended School Year (ESY) for Young Children**

IEP teams should consider whether ESY services are appropriate for young children annually. LEAs must also consider whether ESY services are necessary for the provision of FAPE to a child who transitions from SoonerStart to the LEA and is determined to be initially eligible for Part B services on or before the child's third birthday. For example, after the initial eligibility determination, the IEP team developing the initial IEP must consider whether the child transitioning from SoonerStart may need ESY services for the provision of FAPE based upon relevant and developmentally appropriate data, including background information, current evaluations, and information regarding the history of the child's performance in the SoonerStart program, including regression and recoupment of skills when services were interrupted. IEP teams ~~should~~ **must** utilize the ESY Determination form to review the 12 factors for consideration. The IEP developed for a child who will reach age three during the summer must specify the child's program upon the third birthday, including ESY services, if needed by that particular child to receive FAPE. If ESY services are not needed to provide FAPE, the date of initiation of services and goals would be the beginning of the upcoming school year for students to attend; however, the date on the front of the "initial" IEP would be the date the team met to develop the IEP on or before the child's third birthday.

NOTE: The LEA notification arriving during the summer months does not negate the LEA's Child Find responsibility regarding a timely transition from Part-C to Part-B. The LEA should create procedures for how to respond to SoonerStart and the parent when this scenario occurs.

### ***D. Assistive Technology (AT)***

During the TPC, past and/or current assistive technology use and needs will be discussed. If a child is eligible for special education, the IEP team must consider whether the child needs assistive technology, regardless of whether they received AT devices and services while served by SoonerStart 34 C.F.R. § 300.324(a)(2)(v) and (b)(2).

## **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 during the Initial IEP process. ~~However, 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 entry and exit scores are not required.~~ A child initially placed late in preschool, who will receive less than six months of service does not require an ECO entry or exit. However, the state data software will ask for data for all 3 and 4-year-old children placed on IEPs. Refer to [OSDE guidance on ECO completion](#).
2. All students with six months or more of IEP services must have an ECO Exit Rating.
3. The ECO Entry Rating should be completed during the Initial IEP process, but the ECOs must be completed prior to finalizing the Initial IEP.
4. The ECO Exit Ratings will be submitted with all observations and data at the time the child exits preschool ~~with an IEP, or returns to general education,~~ or turns 6 whichever comes first. ~~The only exception is if a student turns six while still in preschool. When this happens, the ECO exit is completed at the preschool student's sixth birthday.~~ Exiting preschool includes:
  - Return to general education due to:
    - Exiting special education due to re-evaluation indicating the student is no longer eligible
    - Parent revokes consent to all special education services
  - Student advances to Kindergarten~~Otherwise, the ECO Exit Rating will be completed when the student is exiting preschool and advancing to kindergarten. The ECO exit will be submitted at the time that the student meets one of the above conditions.~~
5. All eligible children receive an entry ECO rating; however, for those children who did not receive 6 months of special education services, LEAs should enter the last day of school or the IEP service date (whichever comes first) in the Exit Date area of ECO. This documentation will demonstrate that the student received less than 6 months of early childhood special education services.

## ***B. Completing the ECOs***

The Early Childhood Outcome (ECO) ratings and supporting evidence are documented on the Child Outcome Summary Form (COSF). While completed during the Initial IEP process and at preschool exit, it does not need to be completed in conjunction with an IEP meeting.

The ECO is a 7-point scale 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 ECO. The information may include one or more norm-referenced evaluation/assessments, parent reports on child's skills and behavior, classroom observations, or other sources. The student's performance should be based on information gathered from various sources and summarized. It is not based solely on an evaluation or assessment score.

The ECO and COSF is NOT an assessment instrument. It is a method used for monitoring the functioning and progress of young children receiving early childhood special education programs at the local, state, and federal level. The ECO allows results of different assessments given to different children across the State to be placed on the same scale to be aggregated for federal reporting.

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

ECO ratings rely on information about a child's functioning across situations and settings by individuals who have been involved with the child, like providers, teachers, and family members. 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 ECO rating discussion and their observations should be included as part of the ECO rating summary. If families choose not to participate, professionals must explain to the parent(s) why the rating is being completed 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 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-based or faith-based preschools or daycare 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***

### **United States Code, Title 20: Education**

20 U.S.C. § 1400 et seq. IDEA Statutory Requirements.

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

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

34 C.F.R. § 300.124 Transition of Children from the Part C Program to Preschool Programs.

34 C.F.R. § 300.301 Initial Evaluations.

34 C.F.R. § 300.304 Evaluation Procedures.

34 C.F.R. § 300.324 Development, Review, and Revision of IEP.

34 C.F.R. § 300.504 Procedural Safeguards Notice.

34 C.F.R. § 303.209 Transition to Preschool and Other Programs.

### **Oklahoma Statutes, Title 70: Schools**

70 O.S. § 13-103 Authorized Services and Transfers for Children with Disabilities.

### **Oklahoma Administrative Code (OAC): State Department of Education**

OAC § 210:10-1-19 Special Education and Gifted Education Transfers.

OAC § 210:25-3-2 Average Daily Attendance/Membership.

## CHAPTER 4. 5. EVALUATION & ELIGIBILITY

Evaluation procedures and determination of eligibility for the purpose of ~~determining~~ **establishing** 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. **A request for a** ~~referral for an~~ evaluation for a child under the age of three ~~should~~ **must** be directed to Oklahoma's SoonerStart agency under Part C of the IDEA. This process is discussed in detail in Chapter ~~3.~~ **4.** "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, or the Local Education Agency (LEA) personnel (e.g., a general education teacher, school counselor, administrator, etc.) may initiate a request for an initial evaluation to determine if the child is a child with a disability (34 C.F.R. § 300.301(b)).

The effective implementation of targeted 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), is a schoolwide approach that provides a continuum of evidence-based, systemic practices to address the needs of all students, including struggling learners and students with disabilities, in academic and social-emotional-behavioral skills. MTSS integrates universal screening, progress monitoring, and evidence-based instruction and interventions within a multi-level tiered 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 letter to Musgrove dated January 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 receiving intervention(s) in the general education setting, the LEA should conduct regular assessment of targeted skills to monitor student progress and assist in making data driven decisions.

For example:

- Continue the current plan of instruction and intervention, if the student is making adequate progress;
- Alter the current intensity of the chosen intervention by changing one of these dimensions:
  - “Dosage” meaning increase the number of sessions within a day or week or duration/length of each session,
  - Decrease the size of the intervention group to increase the student’s opportunity to respond and engage with instructional content,
  - Narrow the targeted skill (e.g., narrow from intervention on vowel pairs to “ea” only),
  - Select a different interventionist with more targeted expertise in the instructional area;
- Select a new evidence-based intervention that is better aligned to the skill need; or
- Discontinue or reduce intensity of the intervention if the student has reached proficiency in the skill.

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. 3. “Behavior” “Multi-Tiered System of Supports”, Section 1. “Multi-Tiered System of Supports” for more information regarding the 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. **As soon as possible, the LEA must thoroughly investigate the possible existence of a disability and potential need for services by completing a Review of Existing Data (RED) form. This procedural step of filling out the RED form must be completed before refusing to evaluate, especially when whether or not 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 from the review of existing data the LEA determines not to conduct an initial evaluation, the LEA must provide the parent a Written Notice documenting the refusal to initiate an initial evaluation, along with a copy of the Parents Rights in Special Education: Notice of Procedural Safeguards.**

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 obtain a 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 provide the parent a Written Notice of their proposal to conduct an initial evaluation "before" the LEA actually implements the action of gathering assessment data/information. The LEA may give the Written Notice at the same time it requests parental consent for the initial evaluation. OSEP responded to a comment about when to provide Written Notice stating "parental consent cannot be obtained without the requisite prior written notice....however, is not intended to prohibit a public agency from giving prior Written notice at the same time that parental consent is sought, should the agency choose to do so." (Federal Register Vol. 71, No. 156, Monday, August 14, 2006, Rules and Regulations, 46691). ~~OSEP Letter to Chandler (April 26, 2012) states, "Prior written notice must also include a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action; a description of the other options that the IEP team considered; the reasons why those options were rejected; and a description of other factors that are relevant to the agency's proposal or refusal."~~ (See 34 C.F.R. § 300.503(b)(3),(6) and (7)). 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 **at public expense, if the parent disagrees with an evaluation obtained by the public agency**, which is included in the Procedural Safeguards. See Chapter 9- **11**. "Procedural Safeguards", Section 5. "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.

### 2. 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 (20 U.S.C. § 1414(a)(2)(B)(i)(ii)), unless the parent and LEA agree otherwise to determine:

- If the student continues to have a disability identified under the IDEA and meets sufficient key eligibility indicators outlined by the state;
- 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 make appropriate progress towards the measurable annual goals set out in the IEP and to participate, as appropriate, in the general education curriculum.

### ***B. General Considerations for Reevaluation***

A reevaluation, 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~~ **initiate** 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 addressed through the IEP, **or the team determines a possible need for adding a related service,** 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~~ **prior to** the change of placement; or
- Due to exceeding the age of eligibility for a FAPE; however, Written Notice is required ~~for~~ **prior to** the change of placement.

### **C. In-State Transfer vs. Out-of-State Transfer**

1. **In-State Transfer** (New student move-in from another Oklahoma LEA): Students with disabilities on an Oklahoma IEP who transfer/move LEAs within the State of Oklahoma, the LEA must, with the agreement of the parent, accept/adopt the IEP as written or meet within 10 school days of the student's first day of attendance to develop a new subsequent IEP (34 C.F.R. § 300.323(e)). At this time the LEA should review the previous eligibility determination to consider whether or not to conduct a reevaluation due to the fact either the reevaluation is out-of-date (i.e., has been longer than three years from previous eligibility) or the evaluation did not cover all of the required components based upon the category of disability. If the evaluation is compliant and the reevaluation is not due within the school year, then the LEA is not obligated to conduct a reevaluation at this time.
2. **Out-of-State Transfer** (New student move-in from out-of-state): When a student transferred from another State with an IEP, the receiving Oklahoma LEA, in consultation with the parents, must provide FAPE to the child using the out-of-state IEP with services comparable to those described in the child's IEP from the previous school district starting the child's first day of attendance until the Oklahoma LEA conducts an initial evaluation (34 C.F.R. § 300.323(f)) and Federal Register Vol. 71. No. 156 August 14, 2006 - 46682).

Upon an out-of-state transfer, the LEA must conduct an IEP meeting within 10 school days of the student's first day of attendance. At this IEP meeting the Oklahoma LEA and parent will:

#### **Complete a Review of Existing Data (RED) form:**

- If the out-of-state evaluation meets all of the Oklahoma eligibility standards and the required evaluation components based on the category of disability, the Oklahoma LEA may use all existing data (one calendar year old or less, some historical information may also be utilized) to document on the RED no additional assessments are needed. Therefore, parent consent will **not** be necessary, since the determination was made to utilize the existing data from the previous out-of-state eligibility documentation. The parent and the group of qualified professionals will be able to complete the "initial" eligibility determination on the MEEGS and if eligible, offer an Oklahoma "initial" IEP. The LEA will provide the parent a Written Notice regarding their proposal for special education and related services, along with procedural

safeguards (aka parent rights). If the student is not eligible, then the LEA will provide the parent a Written Notice regarding their refusal to initiate special education and related services, along with procedural safeguards. The LEA may consider whether to refer for a Section 504 “initial” evaluation utilizing the existing data or gathering parent consent to collect additional assessments and information.

- If the out-of-state evaluation does **not** meet all of the Oklahoma eligibility standards and some or all of the required evaluation components are missing as documented on the RED, then the Oklahoma LEA must conduct an **initial** evaluation:
  - Obtain parent consent for the “initial” evaluation by documenting the required Oklahoma evaluation components based upon the suspected category or categories of disability(ies). Review the proposal for each category of disability along with each evaluation component with the parent so the parent is fully informed.
  - Conduct an Oklahoma Short-Term Eligibility using the existing data provided by the parent and the previous out-of-state school district. Document on the MEEGS eligibility determination “The student is considered eligible so that services can be provided while further evaluation is conducted to determine eligibility under Oklahoma Eligibility Standards.” This temporary eligibility will allow the Oklahoma LEA to provide services comparable to those described in the IEP from out-of-state until the initial Oklahoma evaluation can be completed. Review with the parent any proposed changes to the out-of-state IEP, if any, and document on the out-of-state IEP the agreed upon changes. Do **not** conduct an initial Oklahoma IEP until initial Oklahoma eligibility has been established. Have the parent initial and date any changes made to the out-of-state IEP. The LEA will upload this final version of the out-of-state IEP document into the special education software system.
  - Provide the parent a copy of the RED, parent consent, the Oklahoma Short-Term Eligibility, a copy of the out-of-state IEP with the amendment changes, if any, along with a copy of the parent’s procedural safeguards (aka parent rights).
  - Provide the parent a Written Notice documenting the proposal for the short-term eligibility, including the proposal for the changes to the out-of-state IEP for the comparable services that will be provided until such time an initial Oklahoma evaluation is completed to conduct an eligibility determination.
  - Due to the evaluation being considered an initial, the LEA has 45 school days to complete the evaluation.
  - After the evaluation is completed, the LEA and parent will meet to conduct an Oklahoma initial eligibility determination.
  - If the student is eligible, the LEA will offer and develop with the parent an “initial” Oklahoma IEP. The LEA will provide the parents a copy of their procedural safeguards, as well as a Written Notice regarding the LEA’s proposal to initiate special education and related services.

- o If the student is not eligible under Oklahoma standards, then the LEA will provide the parent with a copy of their procedural safeguards, as well as a Written Notice regarding the LEA's refusal to initiate special education and related services. The LEA may consider offering an initial evaluation under Section 504.

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

The very first step in conducting an evaluation is to complete the Review of Existing Data (RED) form prior to determining a need for additional assessments or gathering of additional information which may lead to a need to obtain parent consent for the evaluation.

A Review of Existing Data must be conducted when:

- A parent requests an initial or re-evaluation
- A parent submits an outside evaluation
- School personnel suspect a disability and refer the student for an initial evaluation
- School personnel request a re-evaluation

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 for **all** disability categories as defined in 34 C.F.R. § 300.8(a): a lack of appropriate instruction in reading, including the essential components of reading instruction; lack of appropriate instruction in math; or limited English proficiency (34 C.F.R. § 300.306(b)). The LEA **must** also consider any outside information or evaluation data provided by the parent by documenting this information or evaluation data on the RED form when suspecting a disability under IDEA. Otherwise, the LEA should consider documenting on a 504 Review of Existing Data (RED) form, unless the parent is requesting an initial evaluation under IDEA.

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

- Parent(s) (at least one parent)
- Special Education Teacher; or when appropriate Speech-Language Pathologist (SLP).
- LEA Administrator
- General 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 Copenhaver, October 19, 2007](#)). 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 by consulting with qualified professional(s) as part of a Review of Existing Data (RED) requirement.

IDEA 34 C.F.R. 300.309(b) "To ensure that underachievement in a child suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the group must consider, as part of the evaluation described in 300.304 through 300.306 -

- (1) Data that demonstrate that prior to, or as part of, the referral process, the child was provided appropriate instruction in regular education settings, delivered by qualified personnel; and
- (2) Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the child's parents."

Therefore, ~~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) either prior to, or as part of the referral/evaluation process. For example, a student who moves in from out-of-state and there is no previous intervention data, the LEA has 45 school days to collect intervention data as part of the evaluation process. The LEA must also document on the RED form the frequency and duration of the interventions implemented, including the integrity/fidelity data (e.g., using a fidelity checklist indicating the intervention was implemented as prescribed to ensure accuracy). See Chapter 10. 3. "Behavior" "Multi-Tiered System of Supports", Section 1. "Multi-Tiered System of Supports."

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, including historical information. The existing assessment data must be one calendar year old or less from the date of the eligibility determination to be considered ~~relevant.~~ current. ~~and e~~ Current existing data for an initial evaluation should be carried forward from the RED form to the Multidisciplinary Evaluation and Eligibility Group Summary (MEEGS) form to determine initial eligibility.

Each evaluation component must be included in the MEEGS per suspected disability category. This one calendar year timeframe for existing data includes **current:** classroom assessments, curriculum-based measurements, local or State assessments, classroom observations, assessments and evaluations provided by the LEA or by the parent. Background information regarding educational history or cultural information and other historical information may be older than one calendar year for an initial evaluation. ~~(f)~~ For example, older information provided by the parent, regarding a student with a long-term chronic/acute health condition or a congenital condition such as sickle cell anemia, cystic fibrosis, etc., or mental health conditions, psychiatric treatment placements, the student's history of behavior or interpersonal relations may help drive the suspected disability

category. Therefore, the district must document this information on the RED form to ensure the outside information from the parent is considered and all suspected disabilities for the evaluation are included. ↗

Assessment and other evaluation data may be older than one calendar year for all components that make up a reevaluation if the IEP team determines the data is relevant enough to make an eligibility determination. However, it is recommended to update the academic achievement data to determine the student's educational needs, present levels of academic performance, and whether any additions or modifications to the IEP are needed for the student to make appropriate progress towards their goals/objectives.

Lack of appropriate instruction in reading, including the essential components of reading instruction; lack of appropriate instruction in math; or limited English proficiency (LEP) must **not** be the determinant factor when making eligibility decisions for any of the suspected disability categories. These factors do not preclude the possibility that the student may have a disability. For example, while poor attendance contributes to limited educational progress, the team may determine the attendance issues are secondary to the student's physical or mental health challenges. Therefore, the health condition may be the primary factor both in poor attendance and lack of educational progress.

Moreover, the LEA may not deny an initial evaluation solely on the student's frequent absences as the basis for a lack of exposure to the core curriculum or a lack of appropriate instruction. Chronic or excessive absences could trigger the LEA's Child Find obligations to determine why the student is missing so many days of school. If the LEA's investigation determined the student's absences are not due to a medical or mental health condition but possibly a behavior issue, then the LEA may want to address the absences utilizing a targeted behavior intervention. For example, a Check In/Check Out intervention plan may be needed to motivate the student to attend school consecutively for a certain number of days with clear expectations, feedback, and support through reinforcement for reaching targeted goals. If the parent requests an initial evaluation and their child has excessive absences, the LEA must not deny the evaluation solely based on the absences. If after **documenting on** a Review of Existing Data **form**, the LEA chooses not to move forward with the evaluation, the LEA must provide the parent with a Written Notice as to why the LEA is refusing to initiate an initial evaluation. As it relates to reevaluation, LEAs must not use lack of appropriate instruction based solely on attendance as a reason to dismiss a previously identified student with a disability as no longer being eligible for special education services.

If based on the existing data the determination is the child has a disability, the team still needs to determine if there is an adverse impact on the child's functional, developmental, behavioral, and/or academic educational performance, and is in need of special education and related services (See [Section 12. "Adverse Impact on Educational Performance"](#) in this chapter for more information). Additional data may be necessary to assist the group in determining the child's educational needs beyond the existing academic performance, such as social, health, behavioral/emotional, communicative, physical and other conditions adversely affecting the student's non-academic performance ([OSEP Letter to Clarke, March 8, 2007](#)).

LEAs are required to draw upon information from a variety of sources as listed within IDEA 34 C.F.R. § 300.306(c)(1). LEAs are required to gather the required IDEA components as well as the following components for all preschool and school age students referred for an initial evaluation, or reevaluation for any of the suspected disability categories:

- Parent Input
- Teacher Input/Recommendations
- Adaptive Behavior
- Aptitude/Achievement Tests
- Child's Physical Condition such as:
  - Vision Screening
  - Hearing Screening
  - General Health/Medical
- Observation (classroom or age-appropriate setting)
- Background (Social or Cultural and Educational)
- Developmental History

The above components are vital in planning and determining a suspected disability for an initial evaluation and for completing a reevaluation. 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. However, parental consent is not required if universal screening of all students across the LEA for specific grade levels is conducted for vision and hearing. It is recommended that LEAs conduct vision and hearing screenings as part of the intervention procedures to rule out if the child's physical condition is or is not a factor in the child's academic progress. If a student fails the vision/hearing screening, the parent will be notified of the results to provide to their family physician for further evaluation.

If the student failed the vision and/or hearing screening and was not addressed earlier through the intervention process, then an evaluation for vision and/or hearing may be needed. If the suspected disability is a sensory disability (e.g., Visual Impairment or Hearing Impairment or Deaf-Blind) then the LEA must ensure as part of the initial or re-evaluation to gather additional information from a qualified professional (e.g., audiologist) would be at no cost to the parent.

#### ***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 student 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 believes 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, 11, "Procedural Safeguards", Section 6. "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 through a Written Notice:

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. The LEA must provide the parent a Written Notice after the IEP team meeting regarding the proposal to initiate the reevaluation using existing data, which includes the rationale and options considered by the IEP team such as why additional assessments were not needed.

As part of an initial evaluation (if appropriate) and as part of any reevaluation under 34 C.F.R. § 300.305, the IEP team and other qualified professionals, as appropriate, may use existing data, including input from the parent, ~~that to determine~~ no additional assessments are needed. The qualified professional(s) must sign the Review of Existing Data (RED) form to document their area of competency (Refer to Section 8. "F. Group of Qualified Professionals" as a guide) regarding whether the existing data is relevant and answers the questions within 34 C.F.R. § 300.305 for an initial or a reevaluation indicating that no additional data is necessary. Therefore, ~~A~~ a specific qualified professional ~~is~~ may not be necessary for signing the eligibility determination document (MEEGS form) due to the fact ~~required group member for determining continued eligibility if~~ the existing data, signed off by the qualified professional for that specific area, on the RED form being

used by the IEP team has previously been interpreted to the parent and remains relevant (e.g., student with Other Health Impairment has a medical diagnosis and the school nurse has reviewed the existing data indicating no additional medication information is necessary). The LEA and the parent must agree that the qualified professional does not need to attend the eligibility determination meeting if the qualified professional signed the RED form indicating no further assessment or information is necessary in their area of competency.

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.

LEAs may excuse members from the MEEGS meeting under the same conditions that an excusal is allowed for the IEP team meeting when both the parent and LEA are in agreement. An excusal from a MEEGS meeting, in whole or in part, is a rare situation and the LEA must obtain parent's consent in writing. If a team member is excused, then the team member must provide written documentation of their input. Best practice is all team members are present to interpret the evaluation data for the parent. The following is the IDEA regulation on attendance for IEPs:

34 C.F.R. § 300.321(e) IEP Team attendance.

*(1) A member of the IEP Team described in paragraphs (a)(2) through (a)(5) of this section is not required to attend an IEP Team meeting, in whole or in part, if the parent of a child with a disability and the public agency agree, in writing, that the attendance of the member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting.*

*(2) A member of the IEP Team described in paragraph (e)(1) of this section may be excused from attending an IEP Team meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related services, if -*

*(i) The parent, in writing, and the public agency consent to the excusal; and*

*(ii) The member submits, in writing to the parent and the IEP Team, input into the development of the IEP prior to the meeting."*

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 consent** in the determination (either the LEA ~~cannot convince the parent~~ **made reasonable efforts to obtain such consent**, or the parent fails to respond to the LEA's request to meet to discuss the reevaluation). 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). **However, if the parent refuses to sign consent for the reevaluation then the LEA may, but is not required to, pursue the reevaluation by mediation or by filing a due process. The LEA does not violate its obligation under 34 C.R.F. § 300.111 and §§ 300.301 through 300.311 if the LEA determines not to pursue the gathering of additional assessments. If the parent refuses mediation or the LEA does not seek the consent override procedures, then the LEA will not be able proceed with gathering new assessment data or information without the parent's consent; and therefore, would utilize existing data to complete the required three year reevaluation (34 C.F.R. § 300.300).** See Chapter 9- **11.** "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. 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 timeline of 45 school days from the date of the parent consent for the completion of an initial eligibility (**34 C.F.R. § 300.301(c)(1)(i)**), and 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 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 term school day applies to all children attending school for instructional purposes, including children with and without disabilities. Virtual days and partial days (34 C.F.R. 300.11(c) are also included in the definition of a school day when used by all students in an LEA. Since all children with**

and without disabilities do not receive Extended School Year (ESY) services, or attend credit recovery summer programs, these days or partial days do **not** count as “school days.”

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 requirements and purposes of the law. Indicator 11 of the SPP/APR report is the percent of children with parental consent for an initial evaluation who were evaluated within the Oklahoma state established timeline. The Office of Special Education Program requires 100% to be evaluated within the state established timeline of 45 school days to ensure students are evaluated in a timely fashion and establishes state compliance with child find requirements outlined in IDEA. There are two exceptions under Indicator 11 for not meeting the 45 school day timeline:

***i. Two Exceptions to the 45 School Day Timeline for Initial Evaluation***

The timeline of 45 school days for the initial evaluation does not apply to the child’s evaluation if: 34 C.F.R. § 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 with an “open” parent consent, meaning after the initial evaluation has begun in the previous district yet before the determination of eligibility could be completed.

Upon electronic transfer of records through the online special education software system to the new LEA, the consent date from the previous sending district carries over and sets the same compliance due date in the receiving district. It is important to note that the new or receiving LEA is required to make sufficient progress to ensure prompt completion of the evaluation. The receiving LEA must contact the parent to determine a completion date and document this discussion. If the decision is that the receiving district will complete the initial evaluation within the timeline of 45 school days, determined by the sending district, then the receiving LEA will move forward with the current documents to complete the evaluation. If the receiving LEA cannot meet the timeline within 45 school days determined by the sending district, the new LEA and the parent may agree to extend the compliance date beyond 45 school days. In this case, the receiving LEA will exceed the timeline requirement but is not held accountable as a transfer to a new district is an acceptable exception from the timeline requirement under IDEA (34 C.F.R. § 300.301(d)(2)). The LEA ~~will~~ **must** document the agreed upon extended timeline date on ~~within~~ the MEEGS under the “Eligibility Timeline” panel within the special education online software system. In either case, the receiving LEA ~~should~~ **must not** conduct a new RED and new parent consent to “reset” the timeline to avoid a timeline compliance conflict.

All of this will be followed by providing the parent a Written Notice documenting ~~these decisions.~~ the LEA's proposal to either complete the evaluation within the current 45 school day timeline or the proposal of the extended date of completion discussed with the parent.

Parents delaying a meeting date with the LEA for the eligibility determination is **not considered** an **exception** ~~excused reason~~ for going over the timeline of 45 school days from the date of parent consent. Determination of initial eligibility can be made without parents if the parent does not respond, or the LEA cannot persuade the parent to attend the meeting. Specific documentation and procedural steps must be taken if this occurs. Refer to [Section 14. "Parent Participation in the MEEGS Meeting"](#) in this chapter for more information.

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 days from the date of parent consent is a timeline only used 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)), 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 is an individual the district contracts with for evaluations on a regular basis,~~ of the a child provides any evaluations and information to the district, the LEA must consider the outside evaluation data by completing a RED. [OSEP Letter to Zirkel, May 2, 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 LEA is going to utilize the outside evaluation/information as part of the comprehensive evaluation, then a qualified professional with the same credentials/competency to interpret the outside information/assessment results must participate in the eligibility determination and sign the MEEGS form. The qualified professional the LEA uses to interpret the outside information/assessments does not have to have the same level of educational degrees as the outside examiner.

If the information is **not** from a qualified source, the LEA will document this information on the RED form indicating the LEA considered the information, however, the LEA will inform the parent in a Written Notice to state their refusal and reasons 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 the results. For more information regarding IEEs refer to Chapter 9- 11. “Procedural Safeguards”, Section 5: “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)) 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.*” Also, please refer to [Section 12 “Adverse Impact on Educational Performance”](#) of this chapter for additional information regarding eligibility.

## Section 5. Parent 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). The LEA will send the parent a Written Notice indicating the proposal to initiate an initial evaluation, but cannot move forward without the parent's written consent.

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 (for example, detailed records of telephone calls made or attempted, and the results of each attempt, or copies of written or electronic correspondence sent to the parents, and their response if any, or visits made to the parents' home or place of employment, and the results of those visits). At least one of the two required contacts

must be an Invitation for Meeting form (34 C.F.R. § 300.322). When the LEA is unable to convince the parent to attend or the parent fails to respond to a request to meet to discuss parental consent for a reevaluation, the LEA must provide Written Notice to the parent regarding the proposed 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; and therefore, the LEA may conduct the reevaluation without the parent's consent (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 information.
- Screen an individual child to determine appropriate instructional or intervention strategies.
- Administer an evaluation, assessment, or screener 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, April 7, 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. For example, a Speech Language Pathologist (SLP) may not screen an individual student to determine whether to evaluate this student for a suspected Speech or Language Impairment disability. If a SLP suspects a student may have a Speech or Language Impairment disability, then the SLP must complete a RED form and obtain parent consent for the initial evaluation. For example, students may be administered screening tools for the purpose of providing targeted evidence-based interventions, or to determine instructional strategies for home/school. However, the LEA may not screen an individual student as the sole source for determining to delay or deny a request for an evaluation. When a parent or teacher or someone else has a concern suspecting the student may have a disability, the LEA must complete a RED. If the data and information gathered for the review of existing data indicates the need for an evaluation, the LEA must move forward with the evaluation using existing data or by obtaining parent consent for additional assessments necessary for the evaluation. If it is determined by the team based upon the RED that an evaluation is not warranted, then the LEA must provide the parent a Written Notice stating the district is refusing to initiate an evaluation.

#### ***D. Parent Revokes Consent in Writing***

##### ***Initial Evaluation***

At the time of obtaining parent consent for an initial evaluation, the LEA must notify the parent that their consent is voluntary and the parent may revoke their consent at any time. After the LEA obtains parent consent for the initial evaluation and has begun gathering the assessment data/information needed, yet prior to the eligibility determination meeting, if the parent verbally states they want to revoke consent for the initial evaluation, then the LEA must obtain the parent's revocation in writing. Once the LEA receives the parent's written request to revoke consent, then the LEA will upload this document into the online special education software system. The LEA will provide the parent a Written Notice regarding the fact the parent has revoked consent for the initial evaluation and their child will continue to be considered a child who is nondisabled. The parent's revocation is not retroactive; and therefore, does not negate the evaluation actions that have already occurred after the parent's consent was obtained but before the parent revoked consent. Therefore, the evaluation data/information collected is considered an educational record that the LEA may maintain (34 C.F.R. § 300.9). The LEA will document in the online special education software system within the RED document the parent revoked consent for the initial evaluation and the date the LEA received the parent revoked consent in writing. No meeting is required when a parent revokes consent.

If the entire evaluation has been completed and the LEA is attempting to schedule the eligibility determination meeting, and the parent revokes consent in writing, then the LEA may attempt to have the parent attend the eligibility meeting to go over the results of the evaluation. If the parent refuses or does not respond, then the LEA will complete the Multidisciplinary Evaluation and Eligibility Group Summary (MEEGS) form without the parent. The LEA will mark on the MEEGS either the student is not eligible for special education services based on the evaluation data or the student is eligible; however, the parent is declining parent consent for initial placement. The finalized MEEGS will document the student is now considered nondisabled. The LEA will provide the parent a Written Notice summarizing the student's data and indicating the LEA is in receipt of

the parent's revocation of consent. The LEA will document on the Written Notice that the student will be considered nondisabled. See Section 14 in this chapter for more information.

### **Reevaluation**

At the time the LEA obtains parent consent for a reevaluation, the LEA must inform the parent that consent is voluntary and may be revoked at any time. If the parent sends the LEA a written request to revoke consent once the reevaluation has begun and some but not all the required assessments are complete, the LEA must stop the assessment process. The LEA must then provide the parent a Written Notice indicating that the LEA has received the revocation and will not continue to assess the student. The parent's written request to revoke consent for the reevaluation must be uploaded to the online special education software system by the LEA.

Though the parent has revoked consent, the LEA must continue the reevaluation process (MEEGS) to meet the three-year timeline. The team may complete the reevaluation using existing data and/or may use the assessment information completed with the parent's consent **before** the parent revoked consent. The LEA must note in the eligibility determination summary on the MEEGS that the parent revoked consent before all assessments were complete. This documentation indicates the LEA was unable to complete the current assessment components for the suspected disability category, but existing data was used to assess the current disability category. The revocation of consent for evaluation is not the same as revoking consent for **all** IDEA eligibility and services. See Chapter 11 Procedural Safeguards, Section 3. Informed Consent for more information.

A parent's revocation of consent for reevaluation is not retroactive; therefore, the revocation does not exclude the use of the assessments completed after obtaining parent consent but before the parent revoked consent. The reevaluation data/information collected is considered an educational record that may be maintained by the LEA (34 C.F.R. § 300.9).

## **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, January 29, 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, August 5, 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), 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. "Selecting Assessments and Other Evaluation Materials"](#) 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 sufficient 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:

#### **Parent Input**

- **The LEA must obtain the parent's input as part of the procedures for reviewing existing data (RED), for determining factors involved in selecting a suspected disability, and for the purpose of determining if a child is a child with a disability under § 300.8 and the**

educational needs of the child. The LEA must ensure the parent input information obtained is documented on the RED form and carefully considered as part of the eligibility on the MEEGS form.

- The LEA may utilize a variety of methods to obtain parent input such as: a parent interview form, parent's verbal observations of the child's functioning and needs, etc.

### Teacher Input/Recommendations

- The LEA must obtain the teacher's input and/or recommendations from at least one general education teacher of the child (if the child is, or may be, participating in the general education environment) as part of the procedures for reviewing existing data (RED), for determining factors involved in selecting a suspected disability, and for the purpose of determining if a child is a child with a disability under § 300.8 and the educational needs of the child. The LEA must ensure the teacher input information obtained is documented on the RED form and carefully considered as part of the eligibility on the MEEGS form.
- The LEA may utilize a variety of methods to obtain the teacher's recommendations/input such as an interview, observations of the student, samples of class assignments provided to the student based on subject area of concern, results of quizzes or classroom unit tests, or other current assessment data, etc. regarding the student's present levels of academic, behavior or functional performance in the classroom, including areas of need.

### 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.
- General Health/Medical information may come from a parent indicating the child is in good health when the primary disability is not related to a medical condition. Due to IDEA requiring information about the child's physical condition, a general statement of their physical condition is acceptable to indicate no concern.

## 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.
- When selecting measures for cognitive abilities, the qualified professional should be informed of assessment data or information 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 instrument 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.
- When students have significant language deficits it is suggested to conduct language-free non-verbal intelligence test in order to obtain the student's true ability functioning level(s) and not utilize an intelligence/cognitive instrument that may weigh heavily in the area of language abilities.

## **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 involving 3, 4 and 5 year old (not 5 years old on or before September 1) children, 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).
- Information should be gathered through multiple modalities and across settings (e.g., home, community, and within the school environment including the gym, cafeteria, library, hallways, classroom, playground, etc.), using multiple sources (teachers, parents, other individuals involved with the student, and 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, and self-report.
- Information gathered should 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.
- 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, teachers, and the student) and methods such as standardized assessments, norm-referenced measures, rating scales, observations, and interviews.

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

- Consideration of cultural factors including information related to family background, native language, mode of communication, cross cultural communication, and English proficiency.
- Consideration of family history related to disabilities, genetic disorders, learning issues, or exposure to adverse childhood experiences.
- Evaluation of culturally and linguistically diverse students should be conducted in the student's native language so as not to be discriminatory on a racial or cultural basis. Also, when selecting assessments or evaluation materials the LEA should take into consideration the student's mode of communication (e.g., sign language), or alternative communication system (e.g., augmentative communication device). Assessments and other evaluation materials used to assess a child must be in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to provide or administer (34 C.F.R. § 300.304(c)(1)(ii)).
- 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. Administered in the child's native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to so provide or administer (34 C.F.R. § 300.304(c)(ii)).
- 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:
  - Settings or events
  - Triggering antecedents
  - 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 should 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 (including the general education classroom setting) related to the identified concern and suspected disability

(34 C.F.R. § 300.310). 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 provided by the general education teacher.

- The observation must be conducted by at least one team member other than the child's general education teacher (including preschool settings, private schools, the general education 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.
- Observations should be conducted in-person but may be conducted through live virtual observations across various environments, including interactions with same age peers.

### **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 devices and services and inform the team which tools may be most effective in supporting the student's receipt of FAPE. This component may be required as a part of the student's special education, related services, or supplementary aids and services based on the student's unique needs.

### **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 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. Selecting Assessments and Other Evaluation Materials***

When selecting assessments and other evaluation materials to assist in gathering the data, those conducting the evaluation must also ensure the IDEA requirements are met:

34 C.F.R. § 300.304(b)(c) Evaluation procedures.

*(b) Conduct of evaluation. In conducting the evaluation, the public agency **must**—*

*(1) Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, that may assist in determining—*

*(i) Whether the child is a child with a disability under § 300.8; and*

*(ii) The content of the child's IEP, including information related to enabling the child to be involved in and progress in the general education curriculum (or for a preschool child, to participate in appropriate activities);*

*(2) Not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child; and*

*(3) Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.*

*(c) Other evaluation procedures. Each public agency must ensure that—*

*(1) Assessments and other evaluation materials used to assess a child under this part—*

*(i) Are selected and administered so as not to be discriminatory on a racial or cultural basis;*

*(ii) Are provided and administered in the child's native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to so provide or administer;*

*(iii) Are used for the purposes for which the assessments or measures are valid and reliable;*

*(iv) Are administered by trained and knowledgeable personnel; and*

*(v) Are administered in accordance with any instructions provided by the producer of the assessments.*

*(2) Assessments and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.*

*(3) Assessments are selected and administered so as best to ensure that if an assessment is administered to a child with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).*

*(4) The child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities;*

*(5) Assessments of children with disabilities who transfer from one public agency to another public agency in the same school year are coordinated with those children's prior and subsequent schools, as necessary and as expeditiously as possible, consistent with §300.301(d)(2) and (e), to ensure prompt completion of full evaluations.*

*(6) In evaluating each child with a disability under §§300.304 through 300.306, the evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.*

*(7) Assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided."*

### ***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 sufficient 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?

34 C.F.R. § 300.306(c)(1) and (2) *"Procedures for determining eligibility and educational need.*

*(1) In interpreting evaluation data for the purpose of determining if a child is a child with a disability under [§ 300.8](#), and the educational needs of the child, each public agency **must** -*

*(i) Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior; and*

*(ii) Ensure that information obtained from all of these sources is documented and carefully considered.*

*(2) If a determination is made that a child has a disability and needs special education and related services, an IEP must be developed for the child in accordance with [§§ 300.320 through 300.324](#)."*

## ***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, which allows them to administer the specific assessment area.

Professional Assessment Competency Areas									
EVALUATION COMPONENTS	GUIDE FOR QUALIFIED PROFESSIONAL EVALUATOR**								
	Hearing Specialist	Vision Specialist	School Nurse	Occupational Therapist	Physical Therapist	Certified School Psychologist	Certified School Psychometrist	Speech Language Pathologist	Special Education Teacher
Health/Medical*	X	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	X	X
Social/Emotional						X		X	
Background (Cultural and Educational)						X	X	X	X
Observations Classroom/Other	X	X	X	X	X	X	X	X	X
Transition/Vocational									X
Assistive Technology	X	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 sufficient 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 sufficient 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 sufficient 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 C.F.R. §§ 300.304 through 300.311, 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. The group must determine from the comprehensive evaluation components if they meet sufficient key eligibility indicators for one or more categories for a primary disability (e.g., speech language impairment).

## Section 10. Disability Categories and Evaluation Components

IDEA provides information regarding evaluation procedures (as mentioned in [Section 8\(E\)](#) of this chapter) but does not specify the required evaluation components that make up a comprehensive evaluation.

As part of the OSDE-SES policies, the required evaluation components have been determined and are listed per disability category, including a list of additional evaluation components which may be included as needed for both initial and reevaluations. 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 or as needed and delineated by disability category. All required components must be documented within the MEEGS for both the initial and reevaluation using either existing data or obtaining parent consent for the additional assessments. There are times the team is unsure about what evaluation components might be needed. For example, not all students suspected of having a Specific Learning Disability require a communication/language evaluation. The intent of the review of existing data is for the group members to determine if there are any other evaluation components listed in the “as needed” column to include in the consent for additional assessments based on concerns revealed within the existing data. The members might indicate their only concern is math calculation based on all existing data. There are eight areas of academic achievement required to document under the Key Eligibility Indicators for SLD that must be addressed in the evaluation. Many academic achievement

instruments include listening comprehension and oral expression that can be used as a screening process to rule out any concerns for the communication/language area. However, during the evaluation, the results reveal a concern in listening comprehension and/or oral expression areas. Since a screener or an individual subtest is not comprehensive enough to determine eligibility, then this data cannot be used as part of the determining factors. The qualified professional would need to go back to the parent to obtain additional consent for the communication/language evaluation component in order for the speech-language pathologist to conduct a comprehensive evaluation in this evaluation component area.

*“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, dated May 22, 2017.](#)

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), (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 for Autism	
REQUIRED	AS NEEDED
<ul style="list-style-type: none"> <li>● Communication/Language</li> <li>● Academic Achievement</li> <li>● Intellectual/Cognitive</li> <li>● Developmental</li> <li>● Social/Emotional</li> <li>● Behavior</li> <li>● Adaptive Behavior</li> <li>● Background (Social or Cultural and Educational)</li> <li>● Observation (Classroom / Other Environment)</li> <li>● Vision Screening</li> <li>● Hearing Screening</li> <li>● Additional requirements see Section 3 within this chapter</li> </ul>	<ul style="list-style-type: none"> <li>● Health/Medical</li> <li>● Vision Evaluation (e.g., Ophthalmic exam or Optometric/Vision exam)</li> <li>● Hearing Evaluation (e.g., Audiological Exam)</li> <li>● Motor</li> <li>● Perceptual/Processing</li> <li>● Psychological</li> <li>● Assistive Technology</li> <li>● Other Intervention Documentation</li> <li>● Vocational</li> </ul>

**Note:** It is important to select and administer Autism specific evaluation tools for the required components.

## *Considerations for the Evaluation Components for Autism*

### *Communication/Language*

- When considering Autism as a primary category it is important to prioritize social communication in addition to other aspects of speech and language development.
  - 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 use and understanding of non-verbal communication, 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. Examples include pronoun reversal, referring to oneself by name, immediate

echolalia (immediately repeating what others said) and delayed echolalia (repeating dialog from movies, television, or other media with no regard to the current topic of conversation).

- Communication is more likely to interfere with performance on an intellectual/cognitive measure for students with Autism; and therefore, consideration of the student's verbal and nonverbal responses should be analyzed prior to determining an intellectual/cognitive evaluation instrument to make certain of the student's ability.

### ***Academic Achievement***

- Consideration of the student's academic achievement must consider the influence of social and adaptive skill development within the context of educational activities. Academic achievement includes the student's ability to participate meaningfully in academic instruction with typically developing peers and their ability to demonstrate progress on classroom-based academic tasks (in addition to standardized achievement results).
- 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.

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

- Evaluation instrument selection for measuring cognitive abilities should be informed by data collected in other areas listed above (for example through interviews, observations, social interactions, speech-language evaluation) prior to selecting a tool to assess this component.
- Nonverbal instruments should be used for students with limited verbal language skills. The impact of a student's functional communication and basic language skills should be considered.

### ***Developmental***

- Information from the parent is essential to obtain about the student's early developmental history, skills, and abilities.
- Knowledge of typical child development and developmental differences commonly associated with Autism is important to inform how the student's development has progressed in relation to the same age peers.

## ***Social/Emotional***

- Information about social communication skills and Autism specific characteristics should be gathered from multiple sources (e.g., parents, teachers, the student) utilizing methods such as norm-referenced measures, rating scales, observations, and interviews.
- 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, appropriate initiating and maintaining interactions with peers. Understanding of and following rules of a game, turn-taking, preference to play with peers or alone should be documented.
  - Shared interests, enjoyment, experiences, and achievement.
  - Perspectives taking and social understanding (i.e., understanding and recognizing the needs and feelings of others, understanding how behavior impacts how others think or feel, recognizing appropriate emotional responses).

## ***Behavior***

- Information gathered from multiple sources through norm-referenced rating scales, systematic observations, and interviews should be considered as it relates specifically to Autism behavioral characteristics.
- Data reported should include any restrictive, repetitive, stereotyped patterns of behavior that are extreme and intense in nature compared to age peers. For example:
  - Inflexible to change when routines/schedules are altered.
  - 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.
  - Preoccupations with specific items or conversational topics (repetitive interest in objects, parts of objects, topics, or unusual themes beyond developmentally appropriate levels).
  - 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.

### ***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. Difficulties in social and communication domains of adaptive behavior are prevalent among students with Autism. Discrepancies between the student's cognitive performance and adaptive functioning are also common for students in the Autism category.
- 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.

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

- Information gathered should take into consideration the student's educational history in relation to the suspected disability category of Autism.
- Cultural and linguistic factors should be considered, as they relate to the child's development of social skills. Information from the parent can provide insight regarding how the student functions within the context of the family and culture.

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

- In addition to standardized assessments that may not be sensitive to identifying specific Autism related characteristics, it is necessary to conduct direct observation of the student in the classroom and one other setting (unstructured/structured environments, gym, cafeteria, playground, auditorium) covering academic achievement, social, and behavior components listed above. Observations should be systematic/quantitative.
- Given the importance of observing a child in social contexts, for a child who is less than school age or not in school, an observation of the child in an environment with age-appropriate peers is needed. If not possible, then the observation must be in relation to the child's social interactions with family members.

## *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.

## *Key Eligibility Indicators for Autism*

- Reciprocal social interaction difficulties such as relating to peers, understanding social expectations, or lack of interest in same age peers.
- Impairments in communication (nonverbal and verbal), such as use of gestures and facial expressions, semantic and pragmatic use of language, prosody, idiosyncratic language.
- Excessive repetitive activities or stereotyped movements, rigid resistance to environmental change or change in daily routines, or abnormal responses to sensory experiences.
- 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.
- According to IDEA 34 C.F.R. § 300.306(b) Special Rule for Eligibility Determination: A child must **not** be determined a child with a disability if the determining factor is a lack of appropriate instruction in reading, including the essential components of reading instruction; lack of appropriate instruction in math; or limited English proficiency.
- Clarification of adverse impact on educational performance related to Autism:  
In considering adverse impact on educational performance for children identified with Autism, it is important to consider skills or activities that may not be considered academic but may be related to a student's educational performance. Considerations common for students with Autism include:
  - Ability to work in groups.
  - Work completion (in-class/homework).
  - Ability to follow societal norms and expectations.
  - Ability to apply skills in a variety of ways or settings.
  - Ability to engage in effective verbal and nonverbal communication.

## 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), (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 for Deaf-Blindness	
REQUIRED	AS NEEDED
<ul style="list-style-type: none"><li>● Vision Evaluation (Ophthalmic or Optometric)</li><li>● Hearing Evaluation (Audiological)</li><li>● Health/Medical</li><li>● Communication/Language</li><li>● Academic Achievement</li><li>● Intellectual/Cognitive</li><li>● Developmental</li><li>● Social/Emotional</li><li>● Adaptive Behavior</li><li>● Background (<b>Social or</b> Cultural/Educational)</li><li>● Observation in Classroom/Other Environment</li><li>● Assistive Technology</li><li>● <b>Additional requirements see Section 3 within this chapter</b></li></ul>	<ul style="list-style-type: none"><li>● Motor</li><li>● Perceptual Processing</li><li>● Psychological</li><li>● Behavior</li><li>● Other Intervention Documentation</li><li>● Vocational</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 Evaluation (Audiological)***

- 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.

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

- Students who are deaf-blind have multiple barriers to learning and information gathering due to their combined hearing-vision loss, which may mask their cognitive abilities. Consequently, it may be helpful to identify the student's cognitive capabilities and vulnerabilities in relation to their learning.

### ***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.

### ***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.

### ***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.

### ***Background (Social or 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 assessments and other evaluation materials 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 for communication, daily living, recreation, mobility, computer access, environmental adaptations, hearing, and vision or Braille instruction needs.

### ***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 Fluctuating Hearing Loss
- Cochlear Implants/Hearing Aids
- 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).

According to IDEA 34 C.F.R. § 300.306(b) Special Rule for Eligibility Determination: A child must **not** be determined a child with a disability if the determining factor is a lack of appropriate instruction in reading, including the essential components of reading instruction; lack of appropriate instruction in math; or limited English proficiency.

## ***Developmental Delays***

Each year, as part of the LEA's assurances, the LEA will select Developmental Delays as a primary category for children ages 3-9 for their district, except for the sensory disabilities, or select that all students determined eligible will be identified as having a specific primary category of disability within their district. Only districts who select Developmental Delays may utilize this category of disability. Refer to [Section 17. "Developmental Delays vs. Disability Category"](#) for more information.

### **Definition**

34 C.F.R. § 300.8 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 Delays**, 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 for Developmental Delays	
REQUIRED	AS NEEDED
<ul style="list-style-type: none"> <li>• Motor</li> <li>• Communication/Language</li> <li>• Intellectual/Cognitive</li> <li>• Developmental History</li> <li>• DD Category (Five domains required for ages 3 to 5 not yet eligible for kindergarten. If KG thru age 9 then five domains are optional)</li> <li>• Social/Emotional</li> <li>• Adaptive Behavior</li> <li>• Background (Social or Cultural/Educational)</li> <li>• Observation in Classroom/Other Environment</li> <li>• Vision Screening</li> <li>• Hearing Screening</li> <li>• Additional requirements see Section 3 within this chapter</li> </ul>	<ul style="list-style-type: none"> <li>• Health/Medical</li> <li>• Vision Evaluation (Ophthalmic or Optometric)</li> <li>• Hearing Evaluation (Audiological)</li> <li>• Academic Achievement</li> <li>• Perceptual Processing</li> <li>• Psychological</li> <li>• Behavior</li> <li>• Assistive Technology</li> <li>• Other Intervention</li> <li>• Documentation</li> <li>• Vocational</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 delays 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 Delays***

#### ***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 Delays,” the student may be evaluated and found eligible based on sufficient key eligibility indicators from the suspected disability category. However, their category of eligibility will still be “Developmental Delays” with the suspected category listed.
- If the LEA chooses to utilize the category specific evaluation components of students aged 5 through 9, instead of the five domains, the evaluation components will be the same as those of the suspected disability category.
- Do **not** use the label Developmental Delays 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.

Refer to [Section 8. "Evaluation", C. "Evaluation Procedures-General Evaluation Considerations"](#) for additional information.

## ***Key Eligibility Indicators for Developmental Delays***

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

- Functioning **at least** one and a half (1.5) standard deviations below the mean in two developmental domains; OR,
- Functioning **at least** 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 Developmental Delays as their primary category 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.
- According to IDEA 34 C.F.R. § 300.306(b) Special Rule for Eligibility Determination: A child must **not** be determined a child with a disability if the determining factor is a lack of appropriate instruction in reading, including the essential components of reading instruction; lack of appropriate instruction in math; or limited English proficiency. For preschool age children, a child must not be determined a child with a disability if the determining factor is a lack of appropriate instruction regarding early literacy and math development, including limited English proficiency. Questions and/or gathering of information about appropriate early literacy and math development in the home environments and/or other settings such as childcare or other environments will assist teams in determining if the child has been exposed to appropriate readiness skills. Questions for the family or other adults who provide care for the child might include: "Has the child been read to by adults?", "Are there books in the home or does the family visit the library regularly?", "What type of books or songs that include rhyming has the child been exposed to at home or in the daycare?", "Is the child able to sort by color or by shapes?", "Can the child count items (1:1 correspondence)?", etc.

- 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 sufficient key eligibility indicators under the Developmental Delays category, 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 (i.e., motor, communication/language, intellectual/cognitive, social/emotional, and adaptive behavior), OR
- Meet sufficient key eligibility indicators for any specific disability category using the evaluation components required for a comprehensive evaluation.

#### **OSEP Guidance on Preschool Age Children 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(b)(1)(2).

## Emotional Disturbance

### Definition

34 C.F.R. § 300.8 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), (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 for Emotional Disturbance

REQUIRED	AS NEEDED
<ul style="list-style-type: none"><li>● Academic Achievement</li><li>● Intellectual/Cognitive</li><li>● Developmental</li><li>● Psychological</li><li>● Social/Emotional</li><li>● Behavior</li><li>● Adaptive Behavior</li><li>● Background (<b>Social or</b> Cultural and Educational)</li><li>● Observation in Classroom/Other Environment</li><li>● Vision Screening</li><li>● Hearing Screening</li><li>● <b>Additional requirements see Section 3 within this chapter</b></li></ul>	<ul style="list-style-type: none"><li>● Health/Medical</li><li>● Vision Evaluation</li><li>● Hearing Evaluation</li><li>● Motor</li><li>● Communication/Language</li><li>● Perceptual/Processing</li><li>● Assistive Technology</li><li>● Other Intervention Documentation</li><li>● Vocational</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***

### ***Academic Achievement***

- The team must document a demonstrable, causal relationship between the student's emotional condition and adversely ~~effects on~~ **affects the student's** 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 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.).

### ***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.

### ***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 adversely effects on affects the student's educational performance and progress.

### ***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 affects the student's 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.

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

## ***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 (Social or 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.
  - Family history of mental health/emotional disturbance.
- 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 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 the 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.

Refer to [Section 8. "Evaluation", C. "Evaluation Procedures-General Evaluation Considerations"](#) for additional information.

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

- Health/Medical information is not required; however, a review of existing medical conditions, that may cause atypical behavioral indicators, is suggested because it 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.

### ***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 sufficient key eligibility indicators are satisfied.

- According to IDEA 34 C.F.R. § 300.306(b) Special Rule for Eligibility Determination: A child must **not** be determined a child with a disability if the determining factor is a lack of appropriate instruction in reading, including the essential components of reading instruction; lack of appropriate instruction in math; or limited English proficiency.

## 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 C.F.R. § 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), (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 for Hearing Impairment Including Deafness	
REQUIRED	AS NEEDED
<ul style="list-style-type: none"><li>● Health/Medical</li><li>● Hearing Evaluation (Audiological)</li><li>● Communication/Language</li><li>● Academic Achievement</li><li>● Developmental</li><li>● Adaptive Behavior</li><li>● Background (<b>Social or</b> Cultural and Educational)</li><li>● Observation in Classroom/Other Environment</li><li>● Assistive Technology</li><li>● Vision Screening</li><li>● <b><u>Additional requirements see Section 3 within this chapter</u></b></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>● Other Intervention</li><li>Documentation</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 Evaluation (Audiological)***

- 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 (Social or 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.

Refer to [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 Fluctuating Hearing Loss,
- Cochlear Implants/Hearing Aids
- Auditory Neuropathy
- The IEP team must consider any medical documentation in an eligibility determination.
- According to IDEA 34 C.F.R. § 300.306(b) Special Rule for Eligibility Determination: A child must **not** be determined a child with a disability if the determining factor is a lack of appropriate instruction in reading, including the essential components of reading instruction; lack of appropriate instruction in math; or limited English proficiency.

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

## Intellectual Disability

### 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), (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 Disability**, 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 for Intellectual Disability	
REQUIRED	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 (<b>Social or</b> Cultural and Educational)</li><li>● Observation in Classroom/Other Environment</li><li>● Vision Screening</li><li>● Hearing Screening</li><li>● <b>Additional requirements see Section 3 within this chapter</b></li></ul>	<ul style="list-style-type: none"><li>● Health/Medical</li><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>● Assistive Technology</li><li>● Other Intervention Documentation</li><li>● Vocational</li></ul>

### Considerations for the Evaluation Components for Intellectual Disability

#### Communication/Language

- 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 instrument when there is a significant discrepancy between the verbal (being significantly lower) and nonverbal measures of the child's IQ scores.
- The use of rating scales, or developmental inventories cannot be used as a sole indicator for eligibility under this category.
- An IQ evaluation may 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 Disability.

### ***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 (Social or 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 compared to same age peers.
- 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 is not required, but there may be additional information that needs to be addressed. Some students may have medical conditions which impact their 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 Disability***

- 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 domains (conceptual, social, and practical) are 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.
- A student with an Intellectual Disability may exhibit ~~some or all of these~~ **different aspects of functioning; and therefore, associated features should be considered such as:**
  - 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).
- According to IDEA 34 C.F.R. § 300.306(b) Special Rule for Eligibility Determination: A child must **not** be determined a child with a disability if the determining factor is a lack of appropriate instruction in reading, including the essential components of reading instruction; lack of appropriate instruction in math; or limited English proficiency.

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), (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 for Multiple Disabilities	
REQUIRED	AS NEEDED
<ul style="list-style-type: none"> <li>• Health/Medical</li> <li>• Motor</li> <li>• Communication/Language</li> <li>• Academic Achievement</li> <li>• Intellectual/Cognitive</li> <li>• Developmental</li> <li>• Adaptive Behavior</li> <li>• Background (<b>Social or</b> Cultural and Educational)</li> <li>• Observation in Classroom/Other Environment</li> <li>• Assistive Technology</li> <li>• Vision Screening</li> <li>• Hearing Screening</li> <li>• <b>Additional requirements see Section 3 within this chapter</b></li> </ul>	<ul style="list-style-type: none"> <li>• Vision Evaluation</li> <li>• Hearing Evaluation</li> <li>• Perceptual Processing</li> <li>• Psychological</li> <li>• Social/Emotional</li> <li>• Behavior</li> <li>• Other Intervention</li> <li>• Documentation</li> <li>• Vocational</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 a 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-referenced 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-referenced 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 should evaluate 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 (Social or 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.

### ***Assistive Technology***

- Depending on the individual student, the team should consider assistive technology for speech communication, learning/cognitive development, daily living, recreation, mobility, transportation modifications, computer access, environmental adaptations, hearing, and vision needs.

### ***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.
- According to IDEA 34 C.F.R. § 300.306(b) Special Rule for Eligibility Determination: A child must **not** be determined a child with a disability if the determining factor is a lack of appropriate instruction in reading, including the essential components of reading instruction; lack of appropriate instruction in math; or limited English proficiency.

## ***Orthopedic Impairment***

### **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), (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 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 for Orthopedic Impairment	
REQUIRED	AS NEEDED
<ul style="list-style-type: none"> <li>● Health/Medical</li> <li>● Motor</li> <li>● Academic Achievement</li> <li>● Developmental</li> <li>● Background (Social or Cultural and Educational)</li> <li>● Observation in Classroom/Other Environment</li> <li>● Assistive Technology</li> <li>● Vision Screening</li> <li>● Hearing Screening</li> <li>● <u>Additional requirements see Section 3 within this chapter</u></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>● Adaptive Behavior</li> <li>● Other Intervention Documentation</li> <li>● Vocational</li> </ul>

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

#### **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 should evaluate 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 (Social or 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 Impairment***

- 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).
- According to IDEA 34 C.F.R. § 300.306(b) Special Rule for Eligibility Determination: A child must **not** be determined a child with a disability if the determining factor is a lack of appropriate instruction in reading, including the essential components of reading instruction; lack of appropriate instruction in math; or limited English proficiency.

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 sufficient 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 Impairment

### 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), (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 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 for Other Health Impairment

REQUIRED	AS NEEDED
<ul style="list-style-type: none"> <li>● Health/Medical</li> <li>● Academic Achievement</li> <li>● Developmental</li> <li>● Background (<b>Social or Cultural and Educational</b>)</li> <li>● Observation in Classroom/ Other Environment</li> <li>● Vision Screening</li> <li>● Hearing Screening</li> <li>● <b>Additional requirements see Section 3 within this chapter</b></li> <li>● <b>If suspecting ADHD see “Special Considerations” below</b></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>● Psychological</li> <li>● Social/Emotional</li> <li>● Behavior</li> <li>● Adaptive Behavior</li> <li>● Assistive Technology</li> <li>● Other Intervention Documentation</li> <li>● Vocational</li> </ul>

## *Considerations for the Evaluation Components for Other Health Impairment*

### *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, stroke, or Tourette's Syndrome. (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.
- For some students, the group may need to gather information regarding health-related disorders. For example, a child with dysphagia (feeding and swallowing problems) may need additional information from a licensed physician and management by the SLP regarding procedures to minimize risks for choking and for aspiration during oral feedings. Students with feeding and swallowing problems (dysphagia) often present with unique and highly complex needs associated with management of their dysphagia that, if not properly managed, can have a negative effect on their ability to access an appropriate education. The SLP's role could include screening and gathering diagnostic information, communication and collaboration with caregivers, staff training and education, and the implementation and monitoring of the medically prescribed dysphagia treatment plan. The SLP, OT, and nurse should consult with other team members of the school team (food services, paraprofessionals), parents/guardians, and outside medical providers to determine the nature of the services necessary (Refer to the Therapy Services Handbook regarding more information regarding services for students with dysphagia).

### *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 (Social or 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 peers).
- 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.

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

### ***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 for an Other Health Impairment (OHI).
- Medical Physicians, Licensed Psychologists, LPCs or other mental health professionals are qualified to conduct evaluations for ADHD.
- A qualified professional from an LEA may conduct evaluations for the purpose of establishing the criteria for ADHD under OHI.
- Evaluations for ADHD, under the category of OHI 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.

**NOTE: For a central auditory processing disorder (CAPD), an Audiologist evaluation is required as part of the assessment components for a CAPD comprehensive evaluation. The team might consider the involvement of a speech-language pathologist to provide interventions, supports, and possibly additional assessments.**

- 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.
- According to IDEA 34 C.F.R. § 300.306(b) Special Rule for Eligibility Determination: A child must **not** be determined a child with a disability if the determining factor is a lack of appropriate instruction in reading, including the essential components of reading instruction; lack of appropriate instruction in math; or limited English proficiency.

## ***Specific Learning Disability***

The OSDE has established options for determining a Specific Learning Disability (34 C.F.R. § 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 Interventions** (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), (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.

Components of a Comprehensive Evaluation for Specific Learning Disability	
REQUIRED	AS NEEDED
<ul style="list-style-type: none"> <li>● Academic Achievement</li> <li>● Intellectual/Cognitive</li> <li>● Adaptive Behavior</li> <li>● Developmental</li> <li>● Background (Social or Cultural and Educational)</li> <li>● Observation in Classroom/ Other Environment</li> <li>● Other Intervention Documentation</li> <li>● Vision Screening</li> <li>● Hearing Screening</li> <li>● <u>Additional requirements see Section 3 within this chapter</u></li> </ul>	<ul style="list-style-type: none"> <li>● Health/Medical</li> <li>● Vision Evaluation</li> <li>● Hearing Evaluation</li> <li>● Motor</li> <li>● Communication/Language</li> <li>● Perceptual Processing</li> <li>● Psychological</li> <li>● Social/Emotional</li> <li>● Behavior</li> <li>● Assistive Technology</li> <li>● Other Intervention Documentation</li> <li>● Vocational</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, as amended by the Every Student Succeeds 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.
- 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 supports the study's findings?

Progress monitoring is a process of measuring student growth of skills over time and is used to determine if the student is progressing adequately. This process is done using alternate forms of general outcome measures (e.g., Curriculum Based Measurement) 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. LEA should have a MTSS framework in place so that on a regular basis students receive high quality research-based instruction in their general education setting with continuous monitoring of student performance through universal screening of all students for academic and behavioral problems providing multiple levels (tiers) of instruction that are progressively more intense, based on the student's response to instruction. Therefore, data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting the student's response to the intervention(s) implemented should be in place prior to the referral/evaluation process, and if not, then as part of the initial referral/evaluation process. 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) either prior to, or as part of the referral/evaluation process. Strategies used as part of the response to intervention shall not delay or deny the provision of a full and individual evaluation, pursuant to 34 CFR §§300.304 - 300.311, to a child suspected of having a disability under 34 CFR §300.8 including upon a parent's request for an initial evaluation. If the LEA agrees with a parent who refers their child for an initial evaluation that the child may be a child who is eligible for special education and related services, the LEA must evaluate the child. However, the LEA does not suspect that the child has a disability, and denies the request for an initial evaluation, the LEA must document existing data (RED form) and provide written notice to parents explaining why the LEA refuses to conduct an initial evaluation and the information that was used as the basis for this decision (OSEP Letter to

Musgrove, January 21, 2011). 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.

### ***Adaptive Behavior***

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

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

### ***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.

### ***Background (Social or 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~~ **must** be collected **and documented on the MEEGS** for all areas of a suspected disability. **The team may use current existing data or obtain parent consent to gather new data with additional assessments. If the existing data provides the required evidence to substantiate the academic achievement area for one or more of the eight areas listed under 34 C.F.R. § 300.309(a)(1), no further academic achievement assessments are necessary.**
  - 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 general 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 general education 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 Intervention 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; **and**
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.

**LEAs must not use only the scientific, research-based intervention data as the "sole" criterion for determination of eligibility under the category of Specific Learning Disability (34 C.F.R. 300.304(b)(2)). The group of qualified professionals and the parent must consider a variety of sources in making eligibility determination decisions (34 C.F.R. § 300.304(b)(1) and § 300.306(c)).**

## *Indicators for Option 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 LEA may choose to utilize the regression toward the mean method in determining the severe discrepancy using an “obtained” or “predicted” IQ score from the regression formula.~~ **The LEA may choose to utilize the regression toward the mean formula (e.g., Reynolds Regression Formula, or Standard Linear Regression Model).** The team must not use age equivalents, grade equivalents, or relative proficiency index (RPI), nor a single subtest score to determine a severe discrepancy.

**LEAs must *not* use only a statistical formula which reflects the severe discrepancy of 1.5 standard deviations between the student’s achievement and aptitude/intellectual ability as the “sole” criterion or basis for determination of eligibility under the category of Specific Learning Disability. The group of qualified professionals and the parent must consider a variety of sources in making eligibility determination decisions (such as classroom observations of the student’s performance in one or more of the eight areas, adaptive behavior, teacher and parent input of the child’s needs, etc. based on 34 C.F.R. § 300.306(c)). The LEA must *not* use the severe discrepancy (i.e., looking exclusively to the numerical discrepancy) as the single source of eligibility in their summary of eligibility considerations.**

#### IDEA 34 C.F.R. § 300.307 - Specific learning disabilities.

(a) General. A State must adopt, consistent with §300.309, criteria for determining whether a child has a specific learning disability as defined in §300.8(c)(10). In addition, the criteria adopted by the State—

- (1) Must not require the use of a severe discrepancy between intellectual ability and achievement for determining whether a child has a specific learning disability, as defined in §300.8(c)(10);
- (2) Must permit the use of a process based on the child’s response to scientific, research-based intervention; and
- (3) May permit the use of other alternative research-based procedures for determining whether a child has a specific learning disability, as defined in §300.8(c)(10).

In Oklahoma, each LEA may choose annually, to utilize either the use of a severe discrepancy **or** the child’s response to scientific, research-based intervention criteria through the LEA Agreement.

## ***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.
- According to IDEA 34 C.F.R. § 300.306(b) Special Rule for Eligibility Determination: A child must **not** be determined a child with a disability if the determining factor is a lack of appropriate instruction in reading, including the essential components of reading instruction; lack of appropriate instruction in math; or limited English proficiency.

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

Specific Learning Disability is the umbrella term that includes conditions such as dyslexia, dysgraphia, dyscalculia, etc. 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."

**Possible considerations** Differential Identification Questions for Dyslexia, **not intended for eligibility:**

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. Is the reading, spelling, and/or 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?

**Note: Key Eligibility Indicators must be utilized for determination whether a child is a child with a Specific Learning Disability (e.g., Dyslexia).**

When a request has been made for an initial evaluation, a multidisciplinary group of qualified professionals (for example the group might consist of positions such as a certified school psychologist, certified school psychometrist, speech-language pathologist, general 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, screening for characteristics of dyslexia or a diagnosis of dyslexia does not automatically determine eligibility under the IDEA as additional assessments may be necessary by the LEA. For more information refer to the [Oklahoma Dyslexia and Dysgraphia Handbook \(July 2023\)](#).

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. If eligible, 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), (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 for Speech or Language Impairment	
REQUIRED	AS NEEDED
<ul style="list-style-type: none"><li>• Communication/Speech/ Language/Voice/Fluency</li><li>• Developmental (5 domains for preschool age DD only)</li><li>• Background (<b>Social or</b> Cultural and Educational)</li><li>• Observation in Classroom/Other Environment</li><li>• Vision Screening</li><li>• Hearing Screening</li><li>• <b>Additional requirements see Section 3 within this chapter</b></li></ul>	<ul style="list-style-type: none"><li>• Health/Medical</li><li>• Vision Evaluation</li><li>• Hearing Evaluation</li><li>• Motor</li><li>• Academic Achievement</li><li>• Intellectual/Cognitive</li><li>• Perceptual Processing</li><li>• Psychological</li><li>• Social/Emotional</li><li>• Behavior</li><li>• Adaptive Behavior</li><li>• Assistive Technology</li><li>• Other Intervention Documentation</li><li>• Vocational</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 group as a part of the eligibility process. The group, not a medical practitioner, determines the need for an evaluation for special education services **and eligibility** based on ~~documented effects of~~ the voice impairment ~~on~~ **that adversely affects** the child's educational performance.

### ***Developmental (Required for Developmental Delays 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 the DD category, procedures must evaluate all five domains of developmental functioning (adaptive, cognitive, communication, social/emotional, and

physical). Refer to [Key Eligibility Components of the Developmental Delays \(DD\)](#) category in this chapter.

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

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

### **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 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.

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

- A child may be eligible for special education services in the category of speech language impairment if, following a comprehensive evaluation; the child demonstrates impairment in one or more of the following areas: speech sound, fluency, voice, or language that negatively impacts the child's ability to participate in the classroom environment. The speech or language impairment ~~presence of an~~ that adversely ~~effect~~ **affects** of the speech language impairment on the child's **educational performance (e.g.,** progress in the curriculum), including social and/or emotional growth, must be documented in writing and used to assist in determining eligibility. Evidence that the communication impairment has an adverse ~~effect~~ **affect** on **the child's** educational performance must be gathered and considered along with background information before a determination of eligibility can be made.
- 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, when the mean is a standard score of 100) be used as the threshold level for establishing the presence of a disability. The individual eligibility group should determine how the student's deficits impact adversely ~~effects~~ **affects** on the child's education performance (some students who have scores fall 1.5 SD below the mean may not have evidence

indicating the experience of an adverse ~~effect~~ **affect** on educational performance; and therefore, may not require specially designed instruction and consequently may not be determined eligible for special education services). This cutoff should be applied to composite scores of receptive and/or expressive measures, or to the overall test scores, rather than individual subtests. Eligibility should not be determined solely by comparing a composite or overall score to this cutoff level. The standard error of measurement (SEM) should be considered 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 to determine their educational need and eligibility for specially designed instruction.

- For children to be determined eligible under the category of Developmental Delays with a Suspected Disability Category of Speech Language Impairment, a complete evaluation must be obtained to determine if the child also meets eligibility criteria for speech ~~and~~ **or** language impairment.
- 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. **Refer to the Other Health Impairment (OHI) category for more information on central auditory processing disorder (CAPD).**
  - 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 of these children to qualify for special education services. **The SLP should be consulted for any child suspected or determined to have selective mutism. If the SLP does not have experience with selective mutism, guidance should be found from a professional who currently serves this population.**

- The age and cognitive levels of the student, including the professional judgment of the SLP and the eligibility group 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.
- According to IDEA 34 C.F.R. § 300.306(b) Special Rule for Eligibility Determination: A child must **not** be determined a child with a disability if the determining factor is a lack of appropriate instruction in reading, including the essential components of reading instruction; lack of appropriate instruction in math; or limited English proficiency.
  - 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), (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 for Traumatic Brain Injury	
REQUIRED	AS NEEDED
<ul style="list-style-type: none"> <li>● Health/Medical</li> <li>● Communication/Language</li> <li>● Academic Achievement</li> <li>● Intellectual/Cognitive</li> <li>● Perceptual/Processing</li> <li>● Developmental</li> <li>● Social/Emotional</li> <li>● Adaptive Behavior</li> <li>● Background (Social or Cultural and Educational)</li> <li>● Observation in Classroom/ Other Environment</li> <li>● Vision Screening</li> <li>● Hearing Screening</li> <li>● <u>Additional requirements see Section 3 within this chapter</u></li> </ul>	<ul style="list-style-type: none"> <li>● Vision Evaluation</li> <li>● Hearing Evaluation</li> <li>● Motor</li> <li>● Psychological</li> <li>● Behavior</li> <li>● Assistive Technology</li> <li>● Other Intervention Documentation</li> <li>● Vocational</li> </ul>

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

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

- Medical information from a licensed physician, physician 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.

#### ***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.

### ***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.

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

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

### ***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.

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

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

### ***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.

### ***Background (Social or 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 peers).

### ***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.
- According to IDEA 34 C.F.R. § 300.306(b) Special Rule for Eligibility Determination: A child must **not** be determined a child with a disability if the determining factor is a lack of appropriate instruction in reading, including the essential components of reading instruction; lack of appropriate instruction in math; or limited English proficiency.

### *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), (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 for Visual Impairment Including Blindness	
REQUIRED	AS NEEDED
<ul style="list-style-type: none"> <li>• Health/Medical</li> <li>• Vision Evaluation</li> <li>• Academic Achievement</li> <li>• Developmental</li> <li>• Adaptive Behavior</li> <li>• Background (Social or Cultural and Educational)</li> <li>• Observation in Classroom/Other Environment</li> <li>• Assistive Technology</li> <li>• Hearing Screening</li> <li>• Additional requirements see Section 3 within this chapter</li> </ul>	<ul style="list-style-type: none"> <li>• Hearing Evaluation</li> <li>• Motor</li> <li>• Communication/Language</li> <li>• Intellectual/Cognitive</li> <li>• Perceptual Processing</li> <li>• Psychological</li> <li>• Social/Emotional</li> <li>• Behavior</li> <li>• Other Intervention</li> <li>• Documentation</li> <li>• Vocational</li> </ul>

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

#### ***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.

#### ***Vision Evaluation***

- 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 or optometrist 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).

### ***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.).

### ***Background (Social or 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 student's vision difficulties, even with the use of glasses (e.g., accessing the school environment, seeing information written on the board or displayed on a wall within the classroom, viewing information at their desk, 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.

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

- Depending on the individual student, assistive technology may be needed for mobility, computer access, daily living, recreation, vision, and possibly Braille instruction which may be additional special factors that should be considered in the evaluation process.

### ***Key Eligibility Indicators for Visual Impairment 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.
- According to IDEA 34 C.F.R. § 300.306(b) Special Rule for Eligibility Determination: A child must **not** be determined a child with a disability if the determining factor is a lack of appropriate instruction in reading, including the essential components of reading instruction; lack of appropriate instruction in math; or limited English proficiency.
- The IEP team must consider any medical documentation in an eligibility determination. **There are other visual impairment conditions, even with correction, which adversely affect a child's educational performance. Refer to [OSEP Letter to State Directors of Special Education](#) (May 22, 2017) for further guidance.**

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

### ***A. 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; or when the suspected disability only involves a Speech Language Impairment (SLI) then a speech-language pathologist (SLP).
- 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 a reevaluation 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. Also, 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. If the team requests an additional component of academic achievement for reading fluency and reading comprehension as part of the reevaluation, a remedial reading teacher is qualified to conduct these reading assessments and interpret the results to the group. The group will determine if reading fluency and reading comprehension needs to be added to the MEEGS for the additional academic areas of the student's Specific Learning Disability.

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

Refer to Chapter 5. **6.** "Individualized Education Program (IEP)", Section 1(F). "Excusal from the Meeting" for further information regarding the two circumstances that allow a required team member to be excused in whole or in part from a formal meeting with a parent.

## ***B. Copies of the Evaluation Report and the Documentation of Determination***

IDEA 34 C.F.R. § 300.306(a)(2) states, *"The public agency [LEA] provides a copy of the evaluation report and the documentation of determination of eligibility at no cost to the parent."*

**The evaluation report is a written interpretation of a set of assessments administered by a certified qualified professional to obtain information in a specific evaluation component or components that**

are a portion of the comprehensive evaluation. It is best practice for each qualified professional who has administered an evaluation as part of a student's initial or reevaluation eligibility determination (MEEGS) to provide an evaluation report. This evaluation report may be maintained in the student's paper file and/or uploaded to the student's electronic file.

The documentation of determination of eligibility in Oklahoma is called a Multidisciplinary Evaluation and Eligibility Group Summary (MEEGS). The MEEGS form documents all of the required evaluation components which determines a comprehensive evaluation per suspected category of disability as outlined in the Oklahoma Eligibility standards as listed in Section 10 of this chapter. The MEEGS provides a summary of eligibility determination and the child's educational needs.

If the LEA chooses to use electronic mail to provide a copy of the evaluation results, determination of eligibility (MEEGS), IEPs, and other related confidential documents to the parents, refer to [OSEP Guidance Letter \(OSEP Letter to Breton, March 21, 2014\)](#) for additional information.

If a parent requests access to the qualified professional's completed written report prior to the eligibility determination meeting, then the LEA must permit the parent to inspect and review the evaluation report either through an informal meeting or by providing a copy prior to the eligibility determination meeting. The qualified professional must **not** indicate eligibility or non-eligibility in their written evaluation report due to the fact IDEA states it is a group of qualified professionals and the parent of the child determines whether the child is a child with a disability and if the child is eligible for special education and related services. IDEA 34 C.F.R. § 300.306(a) and § 300.613(a) and (b)(1); including Federal Register/Vol. 71, No. 156/August 14, 2006/Rules and Regulations 46645.

## 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 **impact** on educational performance cannot, therefore, be based solely on discrepancies in age or grade level performance in academic subject areas. An adverse effect **impact** 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 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 [*Rocklin Unified Sch. Dist. v. J.H., et al.*, No. 2:20-cv-01053-KJM-KJN (E.D. Cal. February 15, 2022)].

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 without considering other factors [*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 sufficient key eligibility indicators to be identified as a student with a disability.
- It is also possible that the student may be demonstrating sufficient 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 sufficient 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.

If the LEA is not using electronic signatures, the signature page needs to be uploaded as an attachment to the MEEGS into the online special education software 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 may 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.

If a parent is in disagreement with the eligibility determination, an evaluation obtained by the LEA, then the parent has a right to an Independent Educational Evaluation (IEE). IDEA 34 C.F.R. 300.502(b) states:

(b) Parent right to evaluation at public expense.

(1) A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency, subject to the conditions in paragraphs (b)(2) through (4) of this section.

(2) If a parent requests an independent educational evaluation at public expense, the public agency must, without unnecessary delay, either—

(i) File a due process complaint to request a hearing to show that its evaluation is appropriate; or

(ii) Ensure that an independent educational evaluation is provided at public expense, unless the agency demonstrates in a hearing pursuant to §§300.507 through 300.513 that the evaluation obtained by the parent did not meet agency criteria.

See Chapter 11. "Procedural Safeguards", Section 5 for more information on IEEs.

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 and the parent fails to respond, or the LEA cannot persuade a parent to attend.

### ***A. When Parents Fail to Respond or Cannot Persuade a Parent to Attend***

The LEA must take steps to ensure that at least one of the parents is 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 for 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, etc.).

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** of the following methods of contact, one of the two must be the Invitation for 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 for Meeting"* form with sufficient notice in advance of the meeting (34 C.F.R. § 300.322).

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 **(34 C.F.R. 300.323(c))**. 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. "Parent 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.

A parent who fails to respond or the LEA cannot persuade the parent to participate in the meeting is **not** the same as a parent who states no to additional testing, or no to the eligibility determination or that the parent states they are in disagreement with the evaluation. If a parent participates in the eligibility MEEGS meeting and states they are in disagreement with the evaluation, then the LEA may ask for the parent's reason why they object to the public evaluation. However, the LEA may not require the parent to provide an explanation and may not unreasonably delay either providing the independent education evaluation (IEE) at public expense or filing a due process complaint to request a due process hearing to defend the public evaluation (34 C.F.R § 300.502(b)(4)).

## 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 ~~at the same time~~ **when** obtaining the parental consent for the evaluation, the LEA must also provide a Written Notice to Parents **after regarding** the eligibility (MEEGS) meeting. The Written Notice to Parents is a summary of the discussion surrounding the documented MEEGS eligibility determination **regarding the LEA's**

**proposal or refusal.** 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 **proposal for** 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., **making a proposal to initiate** ~~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 appropriate progress. It is important to note that 34 C.F.R. § 300.305(e) requires the LEA to reevaluate a student with a disability in accordance with 34 C.F.R. §§ 300.304 through 300.311 before determining that the student is no longer a child with a disability.

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. "Eligibility Determination"](#) 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 the required components for the student's primary disability category or possible suspected disabilities, either by using existing data or obtaining parent consent for additional assessments, before determining that the student is no

longer a child with a disability who requires special education services. However, reevaluation is not needed when the student:

- Graduates from high school with a standard education diploma, **or**
- Exceeds the age of eligibility for a FAPE. Refer to ~~the~~ [Chapter 1. “Free Appropriate Public Education”](#) of this manual for additional information regarding maximum age.

### ***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 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 or 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 from the speech/language goals/objectives. 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 Primary or Secondary Disability of Speech or 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.

If a student’s primary disability is Speech or Language Impairment (SLI) and the IEP team determines through the Review of Existing data that another category or categories are suspected, then this evaluation will be considered a reevaluation. The reevaluation must address all of the required evaluation components for SLI and the other suspected category of disability or disabilities.

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

Once a child has been exited from special education services through revocation or non-eligibility, 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.

### ***D. Eligibility Expired Out-of-Date for Three-Year Reevaluation***

If a student’s eligibility has expired gone beyond the due date of the three-year reevaluation yet was never determined no longer eligible and was never exited from special education and related services, nor did the parent revoke consent to all special education services, then the student is still considered a student with a disability. If the student’s three-year reevaluation was not addressed at the compliance timeline and is over the due date, then the LEA will conduct a reevaluation to determine continued eligibility for special education and related services as soon as possible. In this scenario, it is **not** considered an initial evaluation.

## **Section 17. Developmental Delays vs. Disability Category**

The LEA may choose “Developmental Delays” for children ages 3 through 9 by selecting this option in the annual LEA agreement by July 1<sup>st</sup> of each year. Once selected, then the eligibility category on the MEEGS form must be Developmentally Delayed (DD) for all children eligible under the IDEA and state criteria standards in the age range of 3-9, **except** for the sensory categories of **deaf-blindness, hearing impairment including deafness, and visual impairment including blindness**, may **not** be identified as DD.

Many LEAs choose the DD category because the evaluation focuses on the five developmental domains (i.e., motor, cognitive/intellectual, communication, social/emotional, and adaptive behavior). LEAs also choose the DD category because they want a young child who is eligible for special education to have exposure to the early interventions provided by special education and related services prior to determining the specific disability category. Since category does not drive services or placement, the eligible child under the category of DD allows the IEP team to focus on the child’s functional, developmental, behavioral and/or academic educational needs without labeling the child. If a child is identified at age 3, the LEA has six to seven years of intensive, prolonged interventions prior to making a final determination of the child’s specific category of disability.

If the LEA chooses **not** to use the “Developmental Delays” category, then each student(s) eligibility group must determine whether a student is a student with a disability utilizing the required components based on that specific category of disability. No student in this LEA would have a child labeled with the category of DD.

### ***A. DD Changing to a Primary Category of Disability Prior to Turning 10***

If the LEA has selected the “Developmental Delays” (DD) category for children eligible for special education and related services ages 3 through 9, then prior to the student's 10<sup>th</sup> birthday, the primary category of eligibility will need to change from Developmentally Delayed to a specific disability category. Special considerations impacting this reevaluation are needed for students who have been determined eligible for special education services under the category of Developmentally Delayed (DD). These considerations must be made in accordance with regulations regarding a student’s continued eligibility for services. This will ensure determination of whether the student continues to be a student with a disability as defined by a specific disability eligibility criterion at age 10. There is language on the MEEGS document that explains this process and should be reviewed with the parent at the eligibility meeting that takes place prior to the student’s 10th birthday.

For example, a student's reevaluation is being conducted prior to the student turning 9 years old. Based on this example, the student is a year out from turning 10 years old, but the team may review the "suspected" disability at that time during the reevaluation eligibility determination and all agree that the suspected disability will become the “primary” disability category upon the child turning 10 years old. In this scenario, the parent will initial that they are in agreement the child's primary disability category will change from DD to the category listed as the "suspected disability” upon the student turning 10 years old. Once the parent initials the MEEGS, then this change of category process happens automatically within the online special education software system, unless the team or parent requests a reevaluation because the "suspected" disability may not be clearly identified, and the team needs additional assessments to make a clear determination of the child's primary category of disability. If the parent agrees the change from the DD category to the specific category listed as the "suspected" disability upon the student turning 10, then no formal MEEGS meeting is necessary when the child turns 10. However, the LEA must notify the parent through a Written Notice at the time of the primary disability change that this process will occur just prior to the student turning 10 years of age. Therefore, the student’s category automatically transitions from the primary category of Developmentally Delayed to the suspected disability category as the new primary disability category.

### ***B. Student with DD Category Moves to LEA with Categorical and Vice-Versa***

If a student who has a primary category of DD moves to a categorical district or vice-versa, the district must complete new eligibility paperwork including both the RED and the MEEGS indicating the change to match the district’s designation of DD or categorical by utilizing either existing data or obtaining parent consent for additional assessments for the reevaluation. It is necessary to ensure all the required components of a comprehensive evaluation related to the new category have been addressed. If there are missing required components, the LEA must seek parental consent to conduct a reevaluation to obtain the additional assessments in the areas of the missing components. This change requires a formal eligibility meeting including the full eligibility team to complete the MEEGS.

***i. Example of a Student Identified as DD Without the Required Components***

A student with a primary disability of DD and a suspected disability category of Autism has moved into an LEA that does not use the DD category. The child was identified in the previous district at the age of 4 as DD but has moved to the new LEA at age 5 to start Kindergarten in August. The new LEA reviews the evaluation conducted by the previous school district and realizes the determination was based on the five (5) developmental domains and not the specific required components for determining eligibility under the category of Autism. The new LEA must complete a RED and obtain the parent's consent for a reevaluation under the suspected disability of Autism (or if the team suspects another disability category, then add those required components as well) to make a determination of the child's primary disability category.

***ii. Example of a Student Identified as DD With the Required Components***

A student with a primary disability of Developmentally Delayed and a suspected disability category of Autism has moved into an LEA that does not use the DD category. The child was identified in the previous district at age 5 in kindergarten utilizing the specific required components for Autism. The new LEA reviews the evaluation conducted by the previous school district and determines that the required components for Autism were addressed. The group agrees that the evaluation is sufficiently comprehensive to make an eligibility determination. The new LEA would only be required to complete the RED and MEEGS utilizing existing data and not obtain parent consent for additional assessments. The group would meet to complete the formal eligibility based on existing data. However, if the LEA reviewed the previous district's evaluation and determined there were missing required components for determining eligibility for Autism then the LEA would need to obtain the parent's consent to conduct the reevaluation.

***iii. Example of a Student Identified with a Specific Disability Moves to an LEA with DD***

A seven (7) year old student with a primary disability category of Other Health Impairment (ADHD) moves into a new LEA that utilizes the DD category for all students ages 3 through 9. The new LEA must review the previous school district's evaluation to determine if all the required components have been addressed to make an eligibility determination for a "suspected" disability of Other Health Impairment (ADHD). If the group agrees the evaluation was sufficiently comprehensive to meet the eligibility requirements, then the group would meet to complete the formal eligibility based on existing data completing the RED and MEEGS forms with the parent.

If a student who is four (4) years old and moves in with a primary disability of Other Health Impairment (ADHD), then the new LEA who utilizes the DD category would need to complete a RED form and obtain parent consent to conduct a reevaluation utilizing the five (5) domain areas. The DD category requires that all children ages 3-5 (those who are not yet 5 years old on or before

September 1<sup>st</sup> of the start of the school year) must be evaluated utilizing the five domain areas (i.e., motor, cognitive/intellectual, adaptive behavior, social/emotional, and communication).

## **Legal Citations**

### **United States Code, Title 20: Education**

20 U.S.C. § 1401(3)-(30)	Child with a Disability.
20 U.S.C. § 1414	Evaluations, Eligibility Determinations, Individualized Education. Programs and Educational Placements.
20 U.S.C. § 1415	Procedural Safeguards.
<u>20 U.S.C. § 8101(21)</u>	<u>Definitions. Evidence-Based.</u>

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

34 C.F.R. § 300.8	Child with a Disability.
34 C.F.R. § 300.9	Consent.
34 C.F.R. § 300.15	Evaluation.
34 C.F.R. § 300.39	Special Education.
<u>34 C.F.R. § 300.101</u>	<u>Free Appropriate Public Education (FAPE).</u>
<u>34 C.F.R. § 300.111</u>	<u>Child Find.</u>
34 C.F.R. § 300.300	Parental Consent.
34 C.F.R. § 300.301	Initial Evaluations.
34 C.F.R. § 300.302	Screening for Instructional Purposes is Not Evaluation.
34 C.F.R. § 300.303	Reevaluations.
34 C.F.R. § 300.304	Evaluation Procedures.
34 C.F.R. § 300.305	Additional Requirements for Evaluations and Reevaluations.
34 C.F.R. § 300.306	Determination of Eligibility.
34 C.F.R. § 300.307	Specific Learning Disability.
34 C.F.R. § 300.308	Additional Group Members.
34 C.F.R. § 300.309	Determining the Existence of a Specific Learning Disability.
34 C.F.R. § 300.310	Observation.
34 C.F.R. § 300.311	Specific Documentation for the Eligibility Determination.
<u>34 C.F.R. § 300.320</u>	<u>Definition of Individualized Education Program.</u>
<u>34 C.F.R. § 300.321</u>	<u>IEP Team.</u>
<u>34 C.F.R. § 300.322</u>	<u>Parent Participation.</u>
<u>34 C.F.R. § 300.323</u>	<u>When IEPs Must be in Effect.</u>
<u>34 C.F.R. § 300.324</u>	<u>Development, Review, and Revision of IEP</u>
34 C.F.R. § 300.500	Responsibility of SEA and Other Public Agencies.
34 C.F.R. § 300.502	Independent Educational Evaluation.
34 C.F.R. § 300.503	Prior Notice by the Public Agency; Content of Notice.
34 C.F.R. § 300.504	Procedural Safeguards Notice.
<u>34 C.F.R. § 300.613</u>	<u>Access Rights.</u>

## CHAPTER 5. 6. INDIVIDUALIZED EDUCATION PROGRAM (IEP)

### Section 1. Special Education and IEPs

Special education means is defined as 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/other related services, 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*

*Dist. RE-1*, 137 S. Ct. 988 (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 surround the decision process. See Chapter 9- **11**, "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.

IEP Team Member	Definition and Role of Team Member
<p><b>Student's Parents or Adult Student</b> if Rights Have Transferred (Required Member)</p> <p><i>Special circumstances must be considered for children in foster care</i></p> <p>(Refer to Chapter 9 <b>11</b>, Section 2 for definition of a parent, and Chapter 8 <b>10</b>, Part 3 <b>1</b>, Section 2 <b>4</b> for more information about foster parents)</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 (when the 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. Prior to the meeting, the LEA must notify the adult student the parent has been invited to the IEP 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> <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> </ul>

IEP Team Member	Definition and Role of Team Member
	<ul style="list-style-type: none"> <li>Provides input regarding postsecondary goals and transition services needed to assist in reaching those goals.</li> </ul>
<b>Special Education Teacher/Provider</b> (Required Member)	<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>
<b>Speech-Language Pathologist Speech-Language Therapist Speech-Language Pathology Assistants (SLPAs)</b>  <b>Note: Refer to Chapter 13 15, Section 6 regarding Speech-Language Pathology Assistants (SLPAs) for more information.</b>	<ul style="list-style-type: none"> <li>If the Primary Disability is Speech Language Impairment, then the speech-language pathologist (SLP), a speech-language therapist (SLT) or a speech-language pathology assistant (SLPA) who also holds a teacher certificate may be the special education teacher of record.</li> <li>Leads the team in the development and writing of the IEP for a student receiving speech services in the category of DD/SLI or SLI.</li> <li>Has knowledge and expertise about communication/ language delays to assist in the development of the IEP.</li> <li>Responsible for overseeing the implementation of the IEP.</li> </ul> <p><b>NOTE:</b> SLPA must be under the supervision of the SLP. <u>The supervising SLP must approve the draft of the proposed Subsequent IEP. The supervising SLP may or may not be physically present at the IEP meeting as the SLPA conducts the IEP meeting but the SLP must be available by electronic means or by phone conference.</u></p>
<b>General Education Teacher of the Student</b> (Required Member)	<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> </ul>

IEP Team Member	Definition and Role of Team Member
	<ul style="list-style-type: none"> <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 general education teacher. The IEP team is not required to include more than one general 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>
<b>Administrator or Administrative Representative of the LEA</b> (Required Member)	<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>
<b>Related Service Provider</b> (When Appropriate)	<ul style="list-style-type: none"> <li>• Holds appropriate certification or state license (e.g., Occupational Therapist, Physical Therapist, etc.).</li> <li>• SLP, SLT, or SLPA must hold an Oklahoma Teacher Certificate to develop and/or sign the IEP as the special education teacher of record (TOR). <b>The SLPA without a standard teaching certificate may attend, participate in the meeting, sign the IEP as a team member, but will not be the teacher of record.</b></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>

IEP Team Member	Definition and Role of Team Member
	<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>
<b>Qualified Professionals who can interpret the instructional implications of evaluation results</b> (When Appropriate)	<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>
<b>Representative of Transition Agency(ies)</b> (When Appropriate)	<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 or adult student consent.</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>
<b>Part C Coordinator (SoonerStart Representative)</b> (When Appropriate)  <b>Part C Coordinator (SoonerStart Representative) – Cont'd</b> (When Appropriate)	<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>

IEP Team Member	Definition and Role of Team Member
Other Representatives (When Appropriate)	<ul style="list-style-type: none"> <li>Other individuals who have knowledge or special expertise regarding the student to assist in the IEP development. For example, an English Learner (EL) professional (an individual knowledgeable in second language acquisition skills) when a student has been identified as an English Learner and as a student with a disability.</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>

The LEA must ensure that the general education teacher(s), related service provider(s), and others who have responsibilities with implementing the IEP services and/or accommodations/modifications, have access to the student's IEP information throughout the school year.

IDEA 34 C.F.R. 300.323(d) states, "Accessibility of child's IEP to teachers and others. Each public agency must ensure that—

(1) The child's IEP is accessible to each regular education teacher, special education teacher, related services provider, and any other service provider who is responsible for its implementation; and

(2) Each teacher and provider described in paragraph (d)(1) of this section is informed of—

(i) His or her specific responsibilities related to implementing the child's IEP; and

(ii) The specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP."

There are many different ways the LEA may accomplish the requirement of IDEA 300.323(d). The LEA may determine to have each special education teacher of record (TOR) meet with the general education teacher(s), providers, etc. prior to school starting to review each student's IEP. The TOR may document this review of the student's IEP by having each general education teacher, provider, or other personnel sign the access sheet, including the purpose of the review. In another example, the LEA may want to utilize the special education software system that houses the electronic copies of the IEP to provide the general education teacher(s) access to the paperwork or provide the general education teacher(s) a copy of the "IEP At-A-Glance" document.

## ***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. IDEA Federal Register/Vol. 71, No. 156/ August 14, 2006/Rules and Regulations, page 46678 states, *“With respect to a draft IEP, we encourage public agency staff to come to an IEP Team meeting prepared to discuss evaluation findings and preliminary recommendations. Likewise, parents have the right to bring questions, concerns, and preliminary recommendations to the IEP Team meeting as part of a full discussion of the child’s needs and the services to be provided to meet those needs. We do not encourage public agencies to prepare a draft IEP prior to the IEP Team meeting, particularly if doing so would inhibit a full discussion of the child’s needs. However, if a public agency develops a draft IEP prior to the IEP Team meeting, the agency should make it clear to the parents at the outset of the meeting that the services proposed by the agency are preliminary recommendations for review and discussion with the parents. The public agency also should provide the parents with a copy of its draft proposals, if the agency has developed them, prior to the IEP Team meeting so as to give the parents an opportunity to review the recommendations of the public agency prior to the IEP Team meeting, and be better able to engage in a full discussion of the proposals for the IEP. It is not permissible for an agency to have the final IEP completed before an IEP Team meeting begins.”* The parent of a student with a disability must be afforded an opportunity to participate in meetings and to inspect, as well as review all education records with respect to the identification, evaluation, and educational placement of the student, including the provision of FAPE (34 C.F.R. § 300.501(a), (b)). The LEA must comply with a parent’s request to inspect and review any educational record(s) relating to their child without unnecessary delay and before any meeting regarding an IEP, and in no case more than 45 days after the request has been made (34 C.F.R. § 300.613).

A formal IEP meeting does **not** include any informal or unscheduled conversations involving public agency personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision. A formal IEP meeting also does **not** include preparatory activities that the LEA personnel would engage in without the parent to develop a proposal or a response to a parent’s proposal that may be discussed at a later formal IEP meeting (34 C.F.R. § 300.501(b)(3)).

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 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 C.F.R. § 300.322\(c\)](#). These include individual or conference telephone calls or videoconferencing, consistent with [34 C.F.R. § 300.328](#) (related to alternative means of meeting participation) ([Letter to Thomas 2008](#)).

**iv. *When Parents Fail to Respond or Cannot Persuade a Parent to Attend***

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** of the following methods of contact, one of the two must be the Invitation for 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 for Meeting*” form with sufficient notice in advance of the meeting.

If the parent cannot be persuaded to attend or the parent does not respond to the LEA after all the attempts to contact the parent, the LEA may 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.

***E. IEP Meeting: Planning and Considerations***

Invitation for Meeting	Mutually Agreed Upon Time and Place
<ul style="list-style-type: none"><li>• 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.</li></ul>	<ul style="list-style-type: none"><li>• Time and place indicated are reasonably convenient to the parent(s), student, LEA personnel, and others involved.</li><li>• 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.</li></ul>

Invitation for Meeting	Mutually Agreed Upon Time and Place
<ul style="list-style-type: none"> <li>• 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.</li> <li>• The Invitation for Meeting notice must include purpose, time, location of the meeting, and who will be in attendance by their position, as well as documenting other invitees.</li> <li>• If postsecondary transition will be discussed, the notice must include consideration of postsecondary goals and transition services.</li> <li>• Obtain parent or adult student consent to invite members of outside agency(ies) to attend IEP meetings, who are paying for or providing secondary transition services.</li> <li>• If the LEA develops a draft IEP prior to the formal IEP meeting, make certain from the beginning of the meeting to state these are preliminary recommendations for review and discussion with the parents. If a draft IEP has been developed, the LEA should provide the parents a copy of its draft proposal prior to the IEP team meeting.</li> </ul>	<ul style="list-style-type: none"> <li>• Attempts to arrange parent participation are maintained on the Contact Log.</li> <li>• A mutually agreed upon place could include at the school site, in a virtual conference, etc.</li> <li>• 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 or virtual meeting options.</li> </ul>

NOTE: It is **not** allowed for an LEA to have a final IEP completed before an IEP team meeting begins. The IEP must be in draft form.

### ***F. Excusal from the Meeting***

There are two circumstances that allow a required IEP team member to be excused in whole or in part from an IEP meeting (34 C.F.R. 300.321(e):

1. When an IEP team member's area of curriculum or related service is **not** being discussed, 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 agreement 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 software system.
2. When the IEP team member's area of curriculum or related services is being discussed, reviewed or revised at the meeting, the parent and the LEA may consent in writing to the excusal of the member from all or part of a meeting. 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.

### **G. 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**

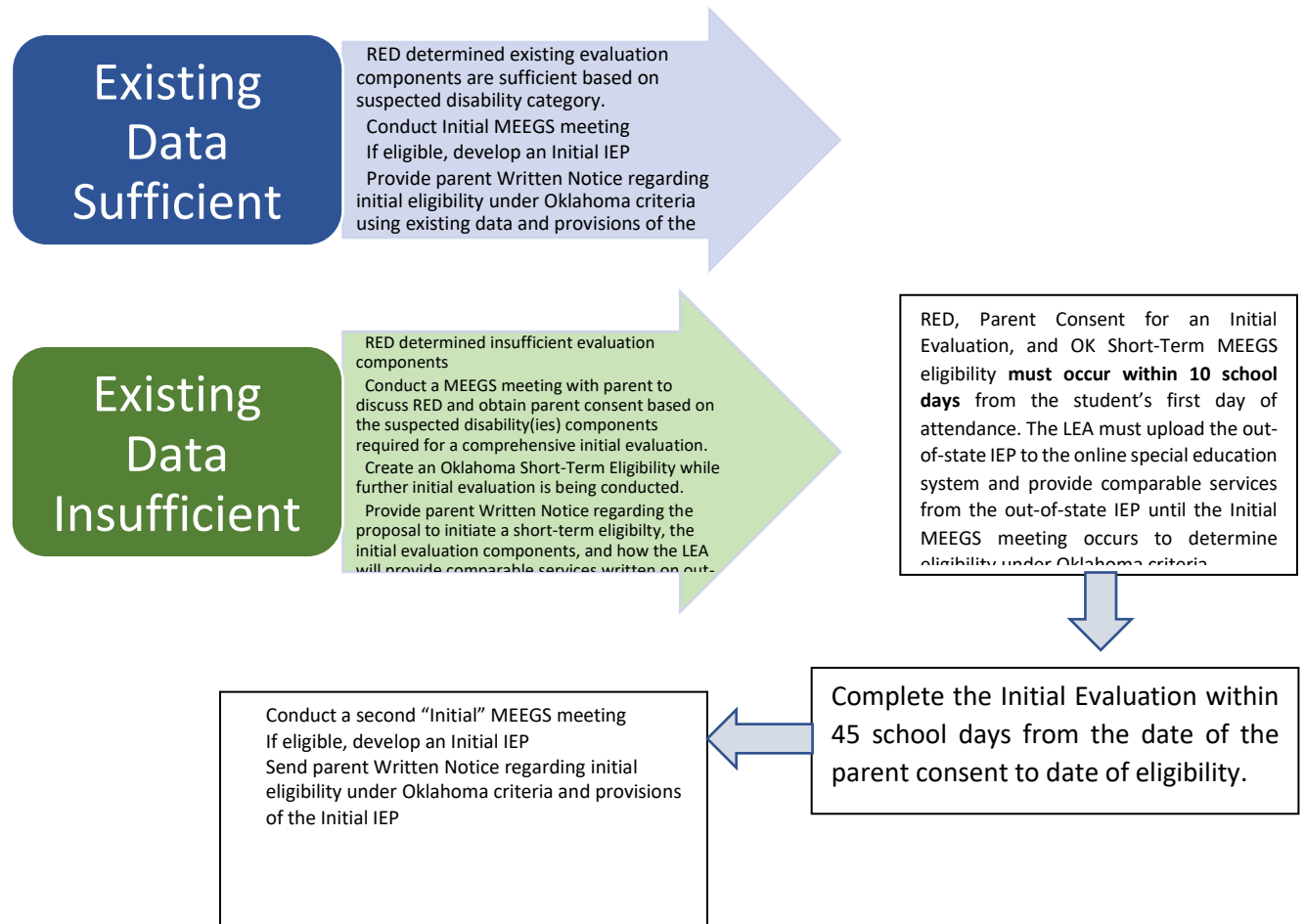
<b>IEP Type</b>	<b>Timeline</b>
<b>Initial</b>	30 calendar days from the date of initial eligibility determination (i.e., Date on Initial MEEGS signature page).

IEP Type	Timeline
<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.
<p data-bbox="191 426 511 499"><b>In-State Transfer for Move-In Students</b></p> <p data-bbox="191 520 511 562"><u>(34 C.F.R. § 300.323(e))</u></p> <p data-bbox="191 583 511 772">If no changes <u>are needed, then adopt student's IEP from the previous Oklahoma district.</u></p> <p data-bbox="191 1035 232 1066"><b>OR</b></p> <p data-bbox="191 1161 511 1266"><u>Develop and implement a new</u> Subsequent IEP if changes are made</p>	<p data-bbox="511 426 1430 499">An IEP must be in effect and finalized for move-in students within <b>10 school days</b> from the student's first day of attendance.</p> <p data-bbox="511 520 1031 562"><u>Adopt IEP from previous Oklahoma LEA:</u></p> <ul data-bbox="560 583 1430 1045" 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> </ul> <p data-bbox="511 1192 917 1224"><u>Develop a new subsequent IEP:</u></p> <ul data-bbox="560 1255 1430 1812" style="list-style-type: none"> <li>• Any changes to the existing IEP will require the development of a new Subsequent IEP and will <b>not</b> be considered an amendment;</li> <li>• <u>Contact the parent to schedule an IEP meeting to occur within 10 school days from the student's first day of attendance.</u></li> <li>• <u>Once the meeting is confirmed with the parent regarding the date/time, then send the parent, and the student if transition services will be discussed, an "Invitation for Meeting" form.</u></li> <li>• <u>Review the previous district MEEGS to determine if it is compliant. If the MEEGS is non-compliant then also conduct a reevaluation at the meeting with the parent. If the reevaluation is compliant, then a reevaluation is not necessary unless the LEA and parent decide otherwise.</u></li> </ul>



IEP Type	Timeline
<p><b>Federal Register Vol. 71 No 156, August 14, 2006, 46682</b></p> <p><b>"With regard to the comment that the stay-put provisions should be imposed by the new State if the parent disagrees with the new public agency about the comparability of services, stay-put would not apply, because the evaluation is considered an initial evaluation and not a reevaluation."</b></p>	<p><b>Additional Assessments/Evaluations Are Needed:</b></p> <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) to determine which evaluation components meet the requirements of a comprehensive <b>initial</b> evaluation (Mark Out-of-State Transfer on RED) and which Oklahoma required components are missing or insufficient to meet the required components for the suspect disability category.</li> <li>2. Obtain parent consent for the specific components needed based on the suspected category of disability(ies) required for a comprehensive initial evaluation.</li> <li>3. Complete the <b>Initial</b> 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.</li> <li>4. Provide parents with a Written Notice explaining the initial evaluation components needed to meet Oklahoma criteria, as well as how the LEA will <b>provide comparable services</b> written on the out-of-state IEP during the initial evaluation process.</li> <li>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.</li> </ol> </li> <li>● <b>Complete the initial evaluation within 45 school days.</b> <ol style="list-style-type: none"> <li>1. Schedule a second <b>"Initial"</b> MEEGS to determine eligibility.</li> <li>2. If eligible, then develop an <b>"Initial"</b> IEP.</li> <li>3. Provide the parent a Written Notice explaining the initial evaluation results and the proposal to initiate an <b>"Initial"</b> IEP.</li> </ol> </li> </ul> <p>See Chapter <del>12</del>. <b>14.</b> "Transfers and Move-In Students", Section 2(B) for more information regarding students who move-in from out-of-state on an IEP.</p>

## Out-of-State Transfer Process-Remove Graphic Flow Chart



### A. Timeline for an Oklahoma Out-of-Date IEP

If a student with a disability enrolls with an out-of-date IEP from a previous Oklahoma school district, then the LEA must make certain the student has either: 1) **not** been exited from special education services through the formal MEEGS eligibility determination process, or 2) the parent of this student has **not** revoked consent to all special education services. If these conditions have been investigated and determine the student was not exited nor did the parent revoke consent, then the student continues to be considered a student with a disability and the LEA must conduct a subsequent IEP. This scenario applies to students with disabilities on an IEP who withdrew from public school and were homeschooled by their parents or were attending private school who are now re-enrolling in public school, as well as students who transferred within Oklahoma LEAs before an IEP could be developed to meet the subsequent IEP timeline.

When a student with a disability enrolls in a new receiving LEA with an out-of-date IEP as discussed above, then the LEA must hold an IEP meeting within 10 school days of the student's first day of attendance to develop a new subsequent IEP. During this meeting, the LEA must also determine whether the eligibility is up-to-date and if a three-year reevaluation is necessary ~~within the current school year~~. Until a new subsequent IEP is developed, the new receiving LEA must provide the student with services comparable to those in the previous out-of-date IEP.

If the parent revoked consent in writing ~~to all special education services~~, or the student had previously been reevaluated and determined no longer eligible, then the student is considered non-disabled. Any new requests for an evaluation for this student would require an "initial" evaluation.

## 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., applied problems, written expression, reading fluency, etc.)
  - Developmental (e.g., communication, motor, cognitive, social/emotional, etc.)
  - Functional (e.g., self-care, social skills, daily living, communication, social/emotional, etc.)
- Impact of the disability on involvement and progress in the general education curriculum; and

- For preschool children, the impact of the disability on participation in age-appropriate activities.

## ***B. Consideration of Special Factors***

Consideration of special factors must be documented in the IEP to ensure the student receives a FAPE. These factors include limited English proficiency, blindness or visual impairment, communication, 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. Some common assistive technology devices are tiered as exemplified below:

Low Tech	Mid Tech	High Tech
Pencil grips	Communication board	E-Reader
Raised line paper	Switches	Touchscreen devices
Slanted surfaces	Talking calculators	Speech to text programs
Magnifiers	Alternative keyboards	Word prediction

Refer to [Oklahoma ABLE Tech](#) for additional information.

- **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. For example, a student with a primary disability of Speech or Language Impairment may have difficulty communicating their wants and needs due to a severe articulation delay which may cause maladaptive behaviors. Therefore, the IEP team would consider the use of positive behavioral interventions and supports, and other strategies, to address the student's behavior.

### ***C. Parent Concerns and Input***

Parent concerns and **input** regarding their student's academic progress, behavior, performance on goals, and any other relevant information should be documented as well as addressed through the IEP process. The LEA must consider the concerns of the parents for enhancing the education of their child by either addressing 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, then attach it to the IEP and indicate in writing how each of the parent's concerns has been addressed **(34 C.F.R. § 300.324(a)(1)(ii))**.

### ***D. 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 **at least two** short-term objectives/benchmarks **per goal** (34 C.F.R. § 300.320(a)(2)(ii)).

### ***E. Goals and Benchmark/Objectives for Related Services***

An OSEP policy letter addressed to [Dr. Hal Hayden \(October 3, 1994\)](#) 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 if required 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."*

In the same manner discussed above, related service providers must develop goals and **at least two** benchmarks/short-term objectives **per goal** for students who take alternate assessments aligned to alternate achievement standards. (34 C.F.R. § 300.320(a)(2)(ii) and 20 U.S.C. § 1414(d)(1)(A)(i)(1)(cc)).

### ***F. 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 time frame. 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) *"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).
- IEP Teams must monitor and inform the parent of the student's progress of the annual transition goals, as well as any short-term objectives/benchmarks, to demonstrate movement toward their postsecondary goals ([OSEP Letter to Pugh](#)).

### ***G. Type of Service/Placement and Support Components***

Each student's IEP must include:

- Specially Designed Instruction;
- 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 of 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 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 appropriate progress in the general education curriculum as associated with their IEP goal(s). 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.

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 (34 C.F.R. § 300.320(a)(2)). 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.). 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. Depending on the type of instruction or lesson plan a related service provider may provide co-teaching (e.g., SLP co-teaching a lesson on vocabulary at the elementary level).

### ***Direct Instruction:***

The student receives primary instruction from a special education teacher who has the special education credential(s) and the required OSDE content credential(s) regarding the specific

secondary content area or for elementary or early childhood. **Related service providers may also provide direct instruction for students.** 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, **but not an exhaustive list**, regarding related services that a student might need **based on their unique circumstances** 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 a qualified social worker, psychologist, **school psychologist**, school counselor, 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.

***Nursing Services:*** Include school health services and school nurse services, which means health services that are designed to enable a child with a disability to receive FAPE as described in the child’s IEP. School nurse services are services provided by a qualified school nurse. School health services are services that may be provided by either a qualified school nurse or other qualified person (34 C.F.R. § 300.34(c)(13)).

Delegation of specific nursing tasks in the school setting may be assigned through a site administrator to the Unlicensed Assistive Person (UAP). If the LEA employs a qualified school nurse

(i.e., a Registered Nurse-RN), then the qualified school nurse must supervise all delegated nursing tasks

For example:

A school nurse, or in the absence of such nurse, an administrator or designated school employees, pursuant to the written authorization of the parent or guardian of the student may:

- Administer a nonprescription medicine;
- Administer a filled prescription medicine; and/or
- Apply sunscreen-a compound topically applied to prevent a sunburn (70 O.S. § 1-116.2);

The school nurse at each school in which a student with diabetes is enrolled shall assist the student with the management of their diabetes care as provided for in the diabetes medical management plan for the student. If a school does not have a school nurse assigned to the school, the principal shall make an effort to seek school employees who may or may not be health care professionals to serve as volunteer diabetes care assistants to assist the student with the management of their diabetes care (70 O.S. § 1210.196.4);

Beginning January 1, 2022, each school district board of education shall have at least one school employee at each school who has met the training requirements necessary to:

- Administer or assist with the self-administration of a seizure rescue medication or medication prescribed to treat seizure disorder symptoms as approved by the United States Food and Drug Administration and any successor agency; and
- Recognize the signs and symptoms of seizures and the appropriate steps to be taken to respond to these symptoms (70 O.S. § 1210.183).

"School nurse" as defined by 70 O.S. § 1-116(7), "means a person employed full time by a board of education who is a registered nurse licensed by the Oklahoma State Board of Nurse Registration and Nursing Education and is certified the same as a teacher by the State Board of Education. Provided, that any person who is employed as a full-time school nurse in any school district in Oklahoma who is not registered on July 2, 1971, may continue to serve in the same capacity; however, such person shall, under rules adopted by the State Board of Education, attend classes in nursing and prepare to become registered."

A Registered Nurse (RN) is a qualified school nurse who may practice under the full scope of nursing services and must maintain a current Oklahoma Teacher Certificate. The focus of the school nurse is to promote and maintain the health and well-being of students within the school community. This encompasses providing basic medical care, administering medications, conducting health screenings, promoting health education, and collaborating with parents, teachers, and healthcare professionals to ensure students' holistic health needs are met.

A Licensed Practical Nurse (LPN) employed by the LEA is **not** a qualified school nurse. An LPN must work under the supervision or direction of a Registered Nurse (RN), Licensed Physician, or Dentist (59 O.S. § 59-567.3a(4) Definitions (as used in the Oklahoma Nursing Practice Act). The focus of the Licensed Practical Nurse (LPN) in the school setting is to provide skilled nursing care, including

administering medications, assisting with treatments, monitoring student health conditions, and collaborating with the school nurse (RN), teachers, and healthcare providers to support the health and safety of students.

***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:*** Include speech sound disorders, voice, fluency, articulation, language and other communication services provided by a qualified speech-language

pathologist (SLP) or a speech-language pathologist assistant (SLPA) or possibly a speech-language therapist (SLT) to support a student's communication needs.

If the primary disability is not speech language impairment, then speech-language pathology services may be considered as a related service. Services include, but are not limited to, articulation or speech sounds, language, fluency, voice or tone, social communication skills.

### ***iii. Definition of Location***

Location is where the IEP team determines the special education and related services will be delivered. Location options are as follows: Correctional Facility, Home/Hospital, Parentally Placed Private School, Public/Private Residential, Public/Private Separate Day School, General Education Setting, General Education – Synchronous, General Education – Asynchronous, Special Education Setting, Special Education – Synchronous, and Special Education – Asynchronous. 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 6-7. "Least Restrictive Environment (LRE)" for more information on the location/setting of services for IEP teams to review when considering the child's LRE. Refer to [Section 3. "IEP Development", O. "Contingency Plan"](#) in this chapter for a definition of synchronous and asynchronous.

### ***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 appropriate (34 C.F.R. § 300.42). Examples include an educational deaf interpreter, training for the extended school year staff, training for transportation staff, transition services, assistive technology, adapted materials, and travel training services.

Supplementary aids and services may also include the following, but is not limited to, assistance of a related service provider, an itinerant special education teacher, or a paraprofessional. Additionally, 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, only requiring the student to complete part of the standard grade-level content, different test questions, and material at a different reading level yet still on grade-level content.

The determination regarding modification must be conducted on an individualized basis through the IEP team process. The IEP team should take into consideration 34 C.F.R. § 300.320(a)(4) which requires a statement of the program modifications or supports for school personnel that will be provided to enable the child—

(i) To advance appropriately toward attaining the annual goals;

(ii) To be involved in and make progress in the general education curriculum in accordance with paragraph (a)(1) of this section, and to participate in extracurricular and other nonacademic activities; and

(iii) To be educated and participate with other children with disabilities and nondisabled children in the activities described in this section;

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 (LRE). 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 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.~~

**When considering the general education setting IDEA 34 C.F.R. § 300.116(d) and (e) states:**

**(d) In selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs; and**

**(e) A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum.**

Refer to Chapter 6. **7.** “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.

**The IEP team must document based on 34 C.F.R. § 300.320(a)(5) an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in paragraph (a)(4) of this section:**

### ***vii. 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 ( [35 C.F.R. § 300.160\(a\)](#)). 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. [The alternate assessment is only for students with the most significant cognitive disabilities whose performance must be measured against alternate academic achievement standards.](#) 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 Website.

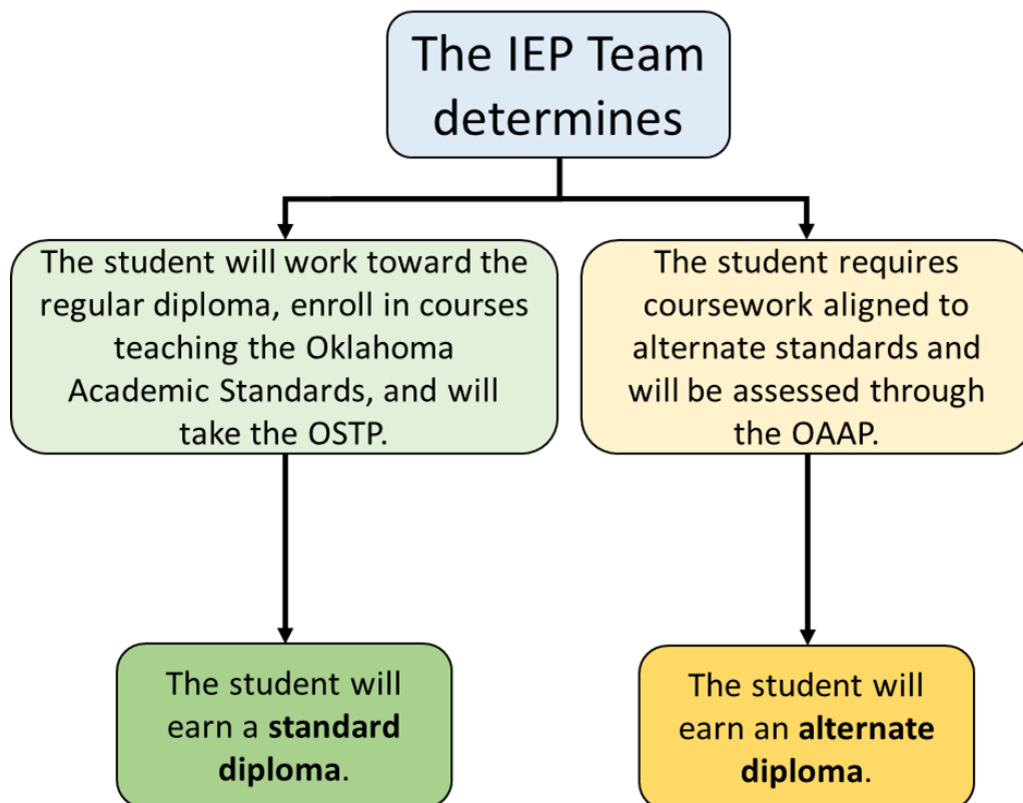
[All students with and without disabilities must participate in either the state-wide assessments for the Oklahoma State Testing Program \(OSTP\) in order to graduate with a regular standard diploma, or if they are a student with a significant cognitive disability and the IEP team determines the OSTP is not appropriate, then the student must participate in the Oklahoma Alternate Assessment Program \(OAAP\) in order to graduate with an alternate diploma \(70 O.S. § 1210.508\).](#)

### ***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 [annually](#) 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 who are taught to alternate academic achievement standards and are participating in the OAAP aligned with alternate academic achievement standards in high school, will earn an alternate diploma not a standard diploma \(34 C.F.R. § 300.102\(a\)\(3\)\(iv\)\).](#)

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 (10<sup>th</sup> Circuit 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 the IEP team is unsure or when ESY services are needed.

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, **7**, “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, then removing a student from the general education environment for more intensive supports in a special education setting may not be necessary or 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, [11](#), "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 (e.g., An H-strap seat belt used with a student on a bus is not a mechanical restraint because it is considered a motor vehicle safety restraint as stated in OAC 210:15-13-9(a)(5)), 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.
- Students attending the Oklahoma School for the Deaf or the Oklahoma School for the Blind. See Chapter 9., Part 2. "Oklahoma School for the Blind and Oklahoma School for the Deaf", Section 1 "E", and Section 2 "E" Transportation for more information.
- Students temporarily placed in a shelter such as a state-licensed children's emergency resource center or state-operated emergency shelter (70 O.S. § 1-113). See Chapter 10 Residential and Other Non-Traditional Placements.

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 Service Agreement is entered into between two districts so the student will receive their special education and related services in the receiving district, then the resident district is responsible for the transportation. See Chapter ~~12~~ 14. "Transfers and Move-in Students" for more information regarding transportation, transfers, and IEP Service agreements.

LEAs may cross school district boundary lines based on the exception provided within 70 O.S. § 9-105.

## ***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.~~ Secondary transition planning holds such significance for students' success that it can be gauged through four essential 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 [for Oklahoma it is aged 15 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."*

### ***Indicator 14***

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 ("exitors"), 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 educators and districts can improve their local response rate:

- **Update student and family contact information.** Ensure that student and family contact information is kept up-to-date This, including first and last names, address(es), phone numbers with area codes, and long-term emails (excluding school emails). Assisting students in setting up long-term emails is a beneficial transition activity. ~~The goal is to make sure that we have~~ The main objective is to have accurate student contact information, including a long-term email and the contact information of someone who would always be able to can always 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~~ receive their Summary of Performance and Written Notice. Consider adding new ~~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.** Make sure students understand that about a year after they graduate or exit, they will be contacted by email, text message, and/or phone by someone from their district or someone representing the OSDE-SES. Educators and district staff can show them the survey questions and explain the importance of the survey, such as how it impacts future students and programs. ~~The LEA can show the parent and student the PSO Guidance Brief with the sample postcard and survey questions. Make sure students understand someone representing the OSDE-SES (or if the LEA is conducting their own PSO survey) will contact them (e.g., email, phone, and/or mail) to find out what they have been doing after high school.~~
- **Conduct PSO Surveys created by the LEA to get the highest response rates.** ~~Contact OSDE-SES for more information regarding how to write survey questions from the LEA.~~ **Opt-in to contact your district 'exiters.'** The best way to increase your response rates is to have district staff survey former students. Students and family members are more likely to respond to the survey request if the email, text, or phone call comes from a former educator or school staff member. Reach out to former students who have exited and provide them with the PSO Survey to gather information about

their activities and experiences since leaving. Contact the OSDE-SES for more information on how to opt-in.

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 provide individualized transition services to assist students in building the skills and supports they need to make progress toward their postsecondary goals when transitioning from school to post-school environments. Successful transition planning requires support from multiple sources so students and their families can make choices, develop connections, and access services prior to leaving high school.

Transition education and services should be grounded in quality research to improve student outcomes. Therefore, the OSDE-SES recommends that districts base transition programs and services on the [Predictors of Post School Success](#) from the [National Technical Assistance Center on Transition: The Collaborative](#). ~~The Predictors are evidence-based, research-based, and promising services, supports, and/or acquired skills that have been identified through correlational research to be associated with improved post-school outcomes for students with disabilities.~~ The predictors are evidence-and research-based services, supports, and/or acquired skills identified to be associated with improved post-school outcomes for students with disabilities through correlational research.

IEP Teams should focus on the transition skills and services that students need to close the gaps that exist between the student's transition from school to adult life in relation to postsecondary goals. Transition services must be individualized and should include services that are likely to enable the student to achieve their postsecondary goals in education/training, employment, independent living, and community participation.

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 **must** be invited to the IEP meeting and **the IEP team must** 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. Alternate Diploma***

A school district may issue an alternate diploma to a student who meets the definition of a student with the most significant cognitive disabilities and who participates in the Oklahoma Alternate Assessment Program (OAAP) aligned with alternate academic achievement standards beginning in

the 2023-2024 school year. An alternate diploma shall not terminate a Free and Appropriate Public Education (FAPE) for students with an Individualized Education Program (IEP) unless they reach the maximum age of FAPE.

#### ***iv. ~~iii~~ Individual Career and Academic Planning (ICAP)***

ICAP for students with disabilities must take into account and work in cooperation with the student's Individualized Education Program (IEP) or Section 504 Plan. (70 O.S. § 1210.508-4). They must remain separate documents, but parts of the ICAP should be integrated into the transition plan of the IEP. The ICAP and the IEP are complementary and should inform one another. An IEP Team should take the information gathered during the ICAP process into account when developing the transition plan. For example, if a student takes a Career Interests Inventory as part of their ICAP, the IEP team could include that information on the IEP as a transition assessment and the results could be used to develop the Education/Training and Employment postsecondary goals if the results yielded meaningful information that aligns with the student's preferences and interests. Likewise, students' postsecondary and workforce ICAP goals should align with their Education/Training and Employment postsecondary goals in the IEP. There should also be alignment in the intentional sequence of courses in the ICAP and the course of study in the IEP. **Students taught to alternate achievement standards participating in the Oklahoma Alternate Assessment Program (OAAP) are not required to complete the ICAP but are encouraged to participate in the process.** For more information about ICAP for Students with Disabilities, please refer to [Oklahoma's Secondary Transition Education Handbook](#), visit [OK Edge](#), and review the ICAP Guidance Brief documents: [ICAP FAQs for the IEP](#) and [ICAP for Students with Significant Needs](#).

#### ***iv. 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. **This may include an Oklahoma Department of**

Rehabilitation Services (OKDRS) Counselor, Licensed Professional Counselor or other Mental Health provider, Career Technology Instructor or Representative, Community Service Provider, and/or others. 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. The signed Parent Consent form must be kept in the student's confidential file (34 C.F.R. 300.321(b)(3)).

### 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 based on the results from transition assessments). 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:

- The rate of student progress towards reaching post-secondary goals;
- Data to support necessary updates to existing postsecondary goals; and
- Data to assist in the development of annual transition goals, transition services/coordinated activities, and courses 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 ~~should~~ **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](#) and the [Guidance Rubric for Considering Student Eligibility for the Oklahoma Alternate Assessment \(OAAP\)](#) 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.

#### 4. 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 exiting high school secondary school and special education upon receiving their diploma, or if continuing for FAPE, 18-22 extended transition program/services, or aging out of special education.** 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.)

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). **Therefore**, all students must have postsecondary goals in the areas of education/training and employment. ~~It is strongly recommended~~

that ~~Students~~ Students who participate in the OAAP and are taught to aligned with alternate academic achievement standards, including students participating in 18-22 extended transition programs/services **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. It is appropriate to develop independent living and community participation goals when results from the transition assessments indicate students' needs in these areas. Students should have input and assist in writing their postsecondary goals.

## 5. 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 **with disabilities** must have annual transition goals in the areas of education/training and employment. ~~Students who participate in the Oklahoma Alternate Assessment Program (OAAP) should 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.

Students ~~taught to~~ **earning an alternate diploma aligned with** alternate **academic** achievement standards, **including those participating in 18-22 transition programs/services, must** also have annual transition goals in the areas of independent living and community participation. In addition, **all annual transition goals for students with the most significant cognitive disabilities participating in the** ~~taught to alternate academic achievement standards and~~ **assessed by OAAP aligned with alternate academic achievement standards** must include **at least two** short-term objectives/benchmarks **per goal**.

IEP Teams must monitor the student's progress of the annual transition goals, **as well as any short-term objectives/benchmarks**, to demonstrate movement toward their postsecondary goals ([OSEP Letter to Pugh](#)).

## 6. 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 ([Refer to the Secondary Transition Handbook for more information](#)). These services are based on the individual student's needs, taking into account the student's strengths, preferences and interests. **Each annual transition goal requires a transition service to address the goal**. 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 activities that the student might benefit from or participate in to achieve each annual transition goal. Coordinated activities **are based on the individual student's needs, taking into account the student's strengths, preferences, and interests. These activities** must be updated annually and ~~these activities must not go beyond the ending date of the Subsequent IEP, - These activities are based on the individual student's needs, taking into account the student's strengths, preferences and interests.~~

## 7. Courses of Study

The courses of study focus 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~~ **They** relate directly to the student's postsecondary outcome goals, annual transition goals, and transition services. The courses of study identify the specific courses that a student will take, whether special education or general education, **as part of a standard or alternate diploma pathway, or if returning for FAPE in an extended transition program/services,** that demonstrate progress toward postsecondary and annual goals. The OSDE-SES requires the **specific** names of the courses be listed for the student's current and remaining years in school for compliance. **Beginning in the 12th grade year, the IEP team is also required to list the courses of study in the courses of study panel for students** ~~A courses of study panel is also required to list the courses beyond 12th grade for students with IEPs indicating the student participated in the OAAP who are continuing to receive FAPE through extended transition programs/services. IEP teams must include courses of study on the IEP for students participating in extended transition programs/services.~~ The courses of study ~~is~~ **are** updated annually and if the postsecondary goals change, the courses of study may change.

**When determining the courses of study,** ~~the~~ **the** IEP team should consider the entry requirements of desired postsecondary educational programs, **athletic program requirements, and** scholarship requirements, to ensure the student is on track to achieve their postsecondary goals.

In order to receive a **standard diploma,** ~~students must meet all the requirements including enroll~~ **and participating in courses of study taught to fully aligned with the Oklahoma Academic Standards (OAS).** These may include college preparatory/work ready courses or core curriculum courses. Even though completion of either curriculum will result in a standard diploma, the core curriculum does not meet some college entrance requirements or requirements for **Oklahoma's Promise.** ~~Courses taught to aligned with alternate academic achievement standards cannot count toward a standard diploma. The OAAP does not meet the assessment high school graduation requirement for the standard diploma.~~

As determined by the IEP team, ~~s~~ **Students who qualify and participate in the OAAP in high school are on the alternate diploma pathway. Students on the alternate diploma pathway must still be educated in the least restrictive environment. Students on this pathway enroll and participate in courses of study taught to aligned with alternate standards/essential elements and/or courses in which their performance must be measured against alternate academic achievement standards. Courses in the core curriculum may be substituted for alternate diploma courses. Students participating in core curriculum general education courses, whose performance in a course is measured against alternate academic achievement standards to meet graduation credit requirements, will earn the Alternate Diploma. Courses in the core curriculum may also be substituted for courses required for the alternate diploma. The least restrictive environment (LRE) still applies to students seeking an alternate diploma.**

## 8. OK Promise, Oklahoma Access and Achievement Program, and Oklahoma Tuition Aid Grants

The Oklahoma's Promise (70 O.S. § 2603) offers ~~allows~~ Oklahoma students who meet specific academic, curricular, conduct, and financial requirements to earn a college or technology center tuition scholarship for certain programs. ~~for college tuition to an Oklahoma college/university.~~ Students must graduate with a standard high school diploma and must meet the traditional admission standards for the college or technology center. 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 IEP including the transition services plan. For more information on Oklahoma's Promise program visit [OK Promise](#).

Students attending qualifying Comprehensive Transition Programs (CTPs) through Inclusive Postsecondary Education (IPSE) programs in Oklahoma have opportunities for tuition and scholarship funding through the Oklahoma Access and Achievement Program and the amended Oklahoma Higher Education Tuition Aid Act.

- HB 3792 creates the Oklahoma Access and Achievement Act and the Oklahoma Access and Achievement Program to provide awards to eligible students with intellectual disabilities attending OK CTP programs. It effectively expands Oklahoma's Promise to include students attending OK CTP designated programs. It is funded through the Oklahoma Higher Access Learning Trust Fund.
- SB 1624 amends the Oklahoma Higher Education Tuition Aid Act to allow resident students enrolled in OK CTP programs to be eligible for the Oklahoma Tuition Aid Grants (OTAG). Eligible programs of training include comprehensive transition and postsecondary programs approved by the United States Department of Education.

For more information about IPSE and CTPs, please contact the [OKIPSE Alliance](#).

## 9. Curriculum Participation

Oklahoma offers the College Preparatory/Work Ready and the Core Curriculum for students seeking a standard diploma that is fully aligned with grade-level regular standards—Oklahoma Academic Standards. “School districts shall develop and implement curriculum, courses and instruction in order to ensure that students meet the skills and competencies as set forth in this section and in the subject matter standards adopted by the State Board of Education.” (70 O.S. § 11-103.6) and the Alternate Standards/Essential Elements Curriculum for students seeking an alternate diploma, are taught to alternate achievement standards, and participate in the OAAP

A school district may issue an alternate diploma to a student who meets the definition of a student with the most significant cognitive disabilities and who participates in the Oklahoma Alternate Assessment Program (OAAP) aligned with alternate academic achievement standards beginning in the 2023-2024 school year. An alternate diploma shall not terminate a Free and Appropriate Public Education (FAPE) for students with an Individualized Education Program (IEP) unless they reach the maximum age of FAPE.

~~(70 O.S. § 11-103.6).~~

~~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).~~

### **College Preparatory/Work Ready and Core Curriculum Lead to Standard Diploma**

Successful completion of either the College Preparatory/Work Ready or the Core Curriculum will result in a student receiving a standard diploma. However, the Core Curriculum does not meet some college entrance requirements or requirements for 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 9th grade are automatically enrolled in the College Preparatory/Work Ready Curriculum unless the parent signs a form for their child to opt-out of these courses. To participate in the Core Curriculum, the parent must complete an opt-out form provided by the school indicating they understand these core curriculum courses may not meet some of the college entrance requirements. The IEP must indicate the curriculum option (either College Preparatory/Work Ready or Core Curriculum) and it must match the student's educational records in their cumulative folder (70 O.S. § 11-103.6) for students seeking a standard diploma.

### **Alternate Assessment and Alternate Standards Lead to Alternate Diploma**

Students who complete courses aligned with Alternate Standards/Essential Elements and/or courses in which their performance must be measured against alternate academic achievement standards to meet graduation credit requirements will earn the Alternate Diploma. The IEP team, using the Criteria Checklist for Participation in the OAAP, determines whether a student needs to be taught to aligned with alternate academic achievement standards and will determine if the student will participate in an alternate assessment (OAAP).

No opt-out form is necessary for students on the alternate diploma pathway taught to participating in the OAAP aligned with alternate academic achievement standards/Essential Elements because O.S. § 11-103.6 only applies to the standard diploma. The opt-out form only applies to college preparatory/work ready courses for those students on the standard diploma pathway (70 O.S. § 11-103.6). Students graduating with an alternate diploma are still eligible for FAPE until they reach maximum age of through the school year in which they turn 22 or older on or before September 1 of a school year. Based on Oklahoma Statute (70 O.S. § 5-132.1(B)), a

student reaches maximum age when they are 22 or older on September 1 of a school year (70 O.S. § 1-114); and therefore, are no longer eligible for FAPE in Oklahoma. The LEA may deny admittance of persons over the age of 21 on or before September 1st (70 O.S. § 5-132.1).

## 10. 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 end of 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 standard 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.

The projected date of graduation is the month and year that the student will most likely graduate with a standard or alternate diploma (e.g., within four years of high school). It is a vital part of the IEP/Transition Services Plan and must be completed annually. The IEP Team should give thoughtful consideration to determining the anticipated graduation date and any support the student may need to obtain a high school diploma. Students pursuing a standard diploma or an alternate diploma, should graduate in four years with their cohort. Students who graduate with a standard diploma are no longer eligible for FAPE. If a student graduates with an alternate diploma, the projected date of graduation is the anticipated date the student will receive their alternate diploma, even though the student will return to complete their extended transition program/services for FAPE.

Students who are taught to alternate academic achievement standards and assessed through participate in the OAAP aligned with alternate academic achievement standards graduate with an alternate diploma when they have earned the required credits. If the student has not turned 22 on or before September 1, the student is offered continued enrollment following graduation with an alternate diploma and the district continues to provide a FAPE until the student reaches maximum (70 O.S. § 1-114). FAPE must be offered, but returning to school after earning an alternate diploma

is a decision of the IEP team. It is not required that a student return for an additional four years or even one year.

A GED is not considered a standard high school diploma. Students enrolled in GED programs, but are not enrolled/attending public schools and are therefore not eligible for FAPE regarding special education and related services. The GED is a certificate of high school “equivalency” yet is not considered a standard diploma. However, Therefore, a student who has 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 in public school to work toward obtaining credits for a standard diploma. Based on Oklahoma Statute (70 O.S. 5-132.1(B)), The LEA may deny admittance of persons over age twenty-one (21) on or before September 1st of that school year (70 O.S. § 5-132.1(B)).

If a student moves in from out-of-state with an alternate diploma and is twenty-one (21) years 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 end of the school year in which they turn 22, or reach maximum age of 22 or older on or before September 1 of a school year, whichever comes first. Based on Oklahoma Statute (70 O.S. § 5-132.1(B)), a student reaches maximum age when they are 22 or older on September 1 of a school year; and therefore, are no longer eligible for FAPE in Oklahoma.

It is important for IEP teams to have detailed conversations with students and families annually about these transition components to ensure their participation and understanding of assessment and curriculum participation options, diploma pathways, projected dates of graduation and program completion, and the end or continuation of FAPE after they graduate with an alternate diploma. until they reach maximum age of 22 or older on or before September 1 of a school year for the student's individual circumstances through the school year in which they turn 22 or reach maximum age.

## 11. 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.

Vocational education means organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment or for additional preparation for a career not requiring a baccalaureate or advanced degree, including programs provided at the LEA.

Utilizing the student's postsecondary goals, the IEP team should provide information to students and parents regarding opportunities for vocational education (e.g., high school vocational education courses, including STEM/STEAM offerings, internships, school-based training, work-study programs, technology education, area career technology center programs). It is important to have detailed

conversations with students and families annually about vocational education so they understand the range of options and/or services that may be available to assist students with reaching their postsecondary goals. The results of these discussions are documented on the IEP.

OK Career Technology Education (CTE) is Oklahoma's network of 29 technology centers on 60 campuses serving both high school and adult learners with specialized career training in more than 90 instructional areas. It represents a major vocational education access point for students with disabilities.

Many vocational education opportunities are unique programs and partnerships established by school districts and community vocational providers. For educators to understand the range of vocational education options and/or services that may be available and provide information to students and parents, they need to collaborate closely with their local CTEs and DRS Counselors. As appropriate, the discussion should include admission requirements and dates applications are due.

## **12. Vocational Rehabilitation (Department of Rehabilitation Services)**

The Oklahoma Department of Rehabilitation Service (DRS), also referred to as Vocational Rehabilitation (Voc. Rehab.), may provide numerous services to qualified 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 and student regarding the DRS for vocational services education, including services of work adjustment training, school-to-work-study, 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~~ should 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 for students on the [OKDRS](#) ~~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 contact [OKDRS](#) and refer to the [Oklahoma's Secondary Transition Education Handbook](#) for more information and resources on this topic.

## **12-13. Transfer of Rights**

Oklahoma's age of majority is 18 years of age. At age 18, the educational legal rights previously held by parents transfer to the **adult** 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 **adult** student on their 18<sup>th</sup> birthday. Beginning at age 18, the LEA is to send all notices to both the parent and the adult student, but the student will provide informed written consent for any action requested by the LEA. When the student turns 18, they become the educational decision-maker. However, while the **adult** student is eligible under the IDEA, the parent retains the rights to all notices of meetings, notices of changes in program or placement, and notices of evaluations.

Where there are concerns about the student's ability to participate in the process of educational decision-making, school district personnel should continue to work closely with the parents(s)/legal guardian(s) to ensure appropriate decisions are made, and that the student has maximum opportunity to participate in their IEP.

Prior to the student turning 18, LEAs may also inform the parent of other options or where to get more information regarding: power of attorney, guardianship, supported decision making, appointment of a surrogate parent, or other similar options. For example, it may be that for some students, a guardianship, or a more limited form of transfer of rights would be necessary.

IDEA states, "A State must establish procedures for appointing the parent of a child with a disability, or, if the parent is not available, another appropriate individual, to represent the educational interests of the child throughout the period of the child's eligibility under Part B of the Act if, under State law, a child who has reached the age of majority, but has not been determined to be incompetent, can be determined not to have the ability to provide informed consent with respect to the child's educational program (34 C.F.R. § 300.520(b))."

If it has been determined that an adult student does not have the ability to provide informed consent and does not have an individual to act as a parent (such as a court appointed legal guardian, power of attorney, guardianship or limited guardianship for educational decision making, etc.), then the LEA must provide a surrogate parent not more than 30 days after the determination is made. The LEA must ensure that the rights of the adult student are protected. The LEA must select a surrogate parent based on the criteria set forth in IDEA 34 C.F.R. § 300.519(d):

- Is not an employee of the SEA, the LEA, or any other agency that is involved in the education or care of the child;
- Has no personal or professional interest that conflicts with the interest of the child the surrogate parent represents; and
- Has knowledge and skills that ensure adequate representation of the child.

The LEA is responsible for providing the surrogate parent training as outlined in Chapter 10, Section 4(A)(iii) and Chapter 11, Section 2(B) "Surrogate Parent". The surrogate parent will be responsible

for representing the adult student relating to matters such as evaluation, placement, and provision of FAPE.

NOTE: Even if the biological parent/adopted parent has not been appointed the adult student's legal guardian by court and it has been determined the adult student does not have the ability to provide informed consent, the LEA and parent may agree to the parent continuing to make all IDEA decisions on behalf of the adult student to represent the educational interests of the child throughout the period of eligibility for FAPE. Unless a court has decided otherwise, when a biological or adopted parent is acting as the parent, that parent must be treated as the IDEA parent by the LEA.

#### 14. Transcripts

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 a student's 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 or alternate high school diploma.

Some new course titles required for graduation with an alternate diploma make use of the word "alternate". Districts may but are not required to use these titles on the transcript. They may also identify on the transcript that the student was conferred an alternate diploma, but this is not a requirement. In a memo from the U.S. Department of Education, Office of Civil Rights Q&A issued in October 2008 it states: "Question #8. May a transcript for a student with a disability indicate, either through specific notations or the use of asterisks or other symbols, that a student took classes with a modified or alternate education curriculum?" "In general, yes. While a transcript may not disclose that a student has a disability or has received special education or related services due to having a disability, a transcript may indicate that a student took classes with a modified or alternate education curriculum. This is consistent with the transcript's purpose of informing postsecondary institutions and prospective employers of a student's academic credentials and achievements."

Classes/courses for 18-22 Extended Transition Program students are not required to be on a transcript because the student has completed the requirements for the alternate diploma (which is a "degree program"), thus the transcript is "closed," and classes/courses are now Pass/Fail.

#### 15. Graduation and Diplomas

##### Requirements and Progress Toward Graduation

Graduation means meeting the minimum state and/or LEA credit requirements for receipt of a standard high school diploma or an alternate high school diploma. 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)), and should document this decision in the IEP document. 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 and administration for local and state credit requirements to confirm graduation status.

#### 14. Progress Toward Graduation

Students' progress toward meeting graduation requirements for a standard or alternate diploma the student receiving special education services should be closely monitored to ensure students they 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 need opportunities to practice self-determination and take an active role in the implementation of their IEP/transition plan to ensure they are completing activities to support achieving their postsecondary 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 state graduation requirements, refer to the [High School Graduation Resources](#) located on the OSDE website and the [Alternate Diploma Resources](#).

#### Standard Diploma

Once a student has been issued a standard high school diploma because they have completed all the requirements for graduation, then the student is no longer eligible for any services under IDEA. LEA's obligation to provide FAPE ends, and all of the IEP services cease under IDEA requirements. 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. Although graduation with a standard diploma is considered a change of placement, a reevaluation is not required.

## **Alternate Diploma**

Students earn their alternate diploma when they meet the requirements. However they continue to be eligible for FAPE. As is the case for all students, in addition to core credits, elective coursework is required to reach the state minimum of 23 credits for graduation. Completion of an Individualized Career and Academic Plan (ICAP), Personal Financial Literacy, the U.S. Naturalization Test, and CPR/AED requirements are optional and will be IEP team decisions. See the new Alternate Diploma Graduation Checklist for more information. Students who reach maximum age of eligibility do not receive an alternate high diploma unless they also meet state/LEA graduation credit requirements at the time of exiting.

The LEAs issue the diplomas to students who have completed all graduation requirements, not the SDE. There is no requirement at the state level regarding the use of the word “alternate” to be used on the graduation diploma document. The OSDE prefers the single word “diploma” which does not delineate whether or not the student with a disability is receiving a standard diploma or an alternate diploma. The verbiage used on the district-issued diploma is a decision of the LEA.

## **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.

Students on the alternate diploma pathway should graduate with their alternate diploma in four years and participate in all Senior activities and graduation ceremonies with their cohort. Students are afforded continued enrollment, even though they participated in the graduation ceremony earning an Alternate Diploma. This also includes any move-in students who were participating in alternate assessment aligned with alternate academic achievement standards.

In the event a student on an IEP on the standard diploma pathway 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 a standard high school diploma and exits.

## 16. Adjusted/Extended Cohort Graduation Rates

All students with disabilities are assigned and belong to a cohort year, regardless of their diploma pathway. Procedures for adjusted/extended cohorts, that apply to all students not completing graduation requirements with their cohort year, also apply to students with disabilities pursuing a standard diploma.

However, students pursuing an alternate diploma have the opportunity for an **alternate diploma cohort adjustment** if they did not graduate with their four-year cohort, if they are continuously enrolled from the previous school year to the current school year, and if they were not counted as a dropout for the previous school year. A cohort adjustment means their cohort year rolls forward, if the student is continuously enrolled and actively working toward an alternate diploma, in which case the student will not be counted against schools' graduation rate as a non-graduate. For students pursuing the alternate diploma, the year they graduate (or drop out) is their cohort year.

The example below illustrates how an alternate diploma cohort adjustment is applied:

- "A 12<sup>th</sup> grade alternate diploma pathway student belongs to cohort year 2024 -- meaning the student's expected, four-year graduation year is 2024. If the student **does not meet all graduation requirements for an alternate diploma by the end of SY2024** or by 9/30 of the following school year (this is considered the "summer session"), then:
  - **If the student does not return at all**, they will be **counted as a non-graduate** for the SY2024 four-year rate, their school's five-year cohort rate for SY2025, and their school's six-year cohort rate for SY2026. In total, this student will count as a non-graduate three times over 3 years.
  - **If the student does return in SY2025**, their new alternate diploma cohort year rolls forward to 2025, and they are not counted against the school's graduation rate as a non-graduate. **If the student completes their graduation requirements and graduates in May of SY2025**, then this student **will count as a four-year graduate for SY2025**. In this case, the student will have not counted at all for 2024 and will be counted as a graduate for 2025 at the four-year graduation rate; likewise if this same student completes graduation requirements and graduates in 2026 instead, the student would count for the 2026 four-year graduation rate.

For alternate diploma pathway students, the year in which they complete graduation requirements and graduate is their cohort year, as long as they are continuously enrolled and pursuing an alternate diploma.

## 1. Graduating or Aging Out 16

### 17. FAPE and the Discontinuation of Services

Under the IDEA and OK State Special Education Policies and Procedures, the district's obligation for FAPE ends when 1.) the student meets the district's requirements that apply to all students for a receipt of a **standard/regular** high school diploma, or 2.) **at the end of the school year in which the student reaches maximum age of 22 or older on or before September 1 of a school year turns 22 years of age or reaches maximum age.** Although this is considered a change of placement, a reevaluation is not required.

When a student **exits**, the LEA must provide the parent and adult student with Written Notice and a Summary of Performance (SOP) of ~~their~~ the student's 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](#).

- ~~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~~
- Summary of Performance

Prior to the student exiting by graduating with a standard diploma, the LEA must provide:

- **Written Notice:** Provide the parent and adult student with **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.
- **Summary of Performance (SOP):** Provide the student with a **SOP** of their academic achievement and functional performance along with recommendations to assist the student in meeting postsecondary goals.

Prior to the student exiting by reaching **maximum age**\* (~~through the end of the school year in which they turn 22~~), the LEA must:

- **Written Notice:** Provide the parent and adult student with **written notice** that the LEA's obligation to provide FAPE, including special education and related services ends when the student reaches maximum age.
- **Summary of Performance (SOP):** Provide the student with a **SOP** of their academic achievement and functional performance along with recommendations to assist the student in meeting postsecondary goals.

\*Based on Oklahoma Statute (70 O.S. § 5-132.1(B)), a student reaches **maximum age** when they are 22 or older on September 1 of a school year; and therefore, are no longer eligible for FAPE. The LEA may deny admittance of persons over the age of 21 on or before September 1st (70 O.S. § 5-132.1).

If a student is graduating with an alternate diploma, but is choosing not to return for FAPE, the LEA must:

- **Written Notice:** Provide the parent and adult student with written notice that documents the district's offer of continued enrollment for FAPE until the student reaches maximum age of 22 or older on or before September 1 of a school year. in which the student turns 22 or reaches maximum age (the student can re-enroll).
- **Summary of Performance:** Provide the student with a SOP of their academic achievement and functional performance along with recommendations to assist the student in meeting postsecondary goals.

If a student is graduating with an alternate diploma and is returning for FAPE, the LEA must:

- **Written Notice:** Provide the parent and adult student with written notice that documents the district's offer of continued enrollment for FAPE until the student reaches maximum age of 22 or older on or before September 1 of a school year. in which the student turns 22. Document the team's decision about continued enrollment and services.
- **Summary of Performance:** The SOP is not required at this time. It will be completed when the student exits.

For more detailed information, refer to the [Alternate Diploma For Educators](#).

#### **15. 17**

#### **18. Considerations for Students Participating in Extended Transition Programs/Services**

### **FAPE, IDEA and Oklahoma Special Education Policies and Procedures**

Districts must make FAPE available to each student who graduates with an Oklahoma alternate diploma or an alternate diploma from another state through the school year in which the student turns 22. Based on Oklahoma Statute (70 O.S. § 5-132.1(B)), a student reaches maximum age when they are 22 or older on September 1 of a school year (70 O.S. § 1-114); and therefore, are no longer eligible for FAPE in Oklahoma. The LEA may deny admittance of persons over the age of 21 on or before September 1st (70 O.S. § 5-132.1).

**All IDEA and Oklahoma Special Education Policies and Procedures still apply for students participating in the extended transition programs/services and must be followed.**

Students must have a current IEP based on Present Levels of Academic Achievement and Functional Performance and it must be updated annually. Progress reports must be issued to indicate the progress the student is making toward their postsecondary and annual goals. The IEP team must consider an evaluation every three years.

## **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 with a disability (34 C.F.R. §§ 300.114 and 300.115). An appropriate LRE is one that enables the student with a disability to make reasonable gains toward goals identified in the IEP. The IEP Team must identify and consider all the relevant needs of the adult 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.

## **Individualized Quality Transition Services**

IEP Teams should focus on the transition skills and services, to include areas of academic and functional performance, that students need to close the gaps that exist between the student's transition from school to adult life in relation to postsecondary goals. Transition services must be individualized and should include services that are likely to enable the student to achieve their postsecondary goals in education/training, employment, independent living, and community participation. The focus of Extended Transition Programs should be on Community-Based Instruction (CBI) and Work-Based Learning Experiences (WBLE). High School Secondary Transition Programs should also begin using CBI and WBLE for Career Readiness and Life Skills activities. Students need opportunities to generalize the skills they work on in the classroom to the community and workplace settings. As mentioned previously, LRE still applies and IEP teams must determine FAPE for each student based on unique needs.

## **Enrollment and Attendance**

In order to receive special education in extended transition programs/services, students must be enrolled and attendance must be taken for the district to receive funding. Students attending 18-22 Extended Transition Programs at another site will remain enrolled at their home site. For specific information about entry/exit codes, please refer to the [Alternate Diploma Guidance Brief for Districts](#).

Students are allowed to attend the same length of day and week as students without a disability to receive a FAPE. Districts must not make blanket decisions. For example, it would not be appropriate to determine that students may only attend an extended transition program for two days per week. However, as with any student with a disability, the IEP Team may determine a shortened day/week is appropriate to address the student's unique disability-related needs. If the student attends the days/hours per week outlined in the IEP, the student is counted present for the entire school day, since that is the student's school day. Use the rule of "present until absent and absent until present" in reporting absences.

Returning to school after earning an alternate diploma is a decision of the IEP team. It is not required that a student return for an additional four years or even one year. IEP team decisions should rely heavily on student and family preferences and be based on the postsecondary plans and goals of the student. Simply put, the district must make FAPE available to each student who graduates with an alternate diploma, but the student is not required to return after graduation if the IEP team determines otherwise. Continued enrollment does not need to be consecutive.

~~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.~~

~~Refer to the [Summary Of Performance Guidance Brief](#) and Chapter 7. "Non-Discriminatory Practices" for more information.~~ 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. [5](#). "Evaluation and Eligibility."

### ***O. Contingency Plan***

A contingency plan may be put into effect upon a building site or district-wide closure, or may be initiated by the IEP team, including the parent, in the event of health/medical reasons. ~~, or other reason.~~ **The intent of a contingency is to ensure the continuation of services to receive FAPE in order to meet the student's unique disability-related needs when school attendance is not possible. Staffing shortages/personnel issues are not acceptable use of contingency plans.** The IEP team that determines to write a contingency plan must include it as part of the IEP services that would go into effect upon a certain event or reason. The LEA will provide a written notice to parents at the time, noting the specific dates the contingency plan will be in effect.

### **20 U.S.C. 1415(b)(3)**

*"(3) Written prior notice to the parents of the child, in accordance with subsection (c)(1), whenever the local educational agency—*

- (A) proposes to initiate or change; or*
- (B) refuses to initiate or change,*

*the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to the child.”*

The Contingency Plan may need to be modified under some circumstances as determined by the IEP team.

**Synchronous** virtual learning occurs when students engage with a teacher and learn content simultaneously, but each may be in separate locations. The synchronous framework enables the exchange of information in real-time (i.e., live interaction online) between student and provider via audio and video. An example of a synchronous framework could be a live virtual session between a special education teacher and a small group of students online learning basic reading skills as a part of their direct instruction time listed on the IEP (special education – synchronous).

**Asynchronous** virtual learning occurs when students and teachers are not learning simultaneously together in the same place. Teachers provide lessons and assignments, and students complete the work at their own pace and in their own space. Asynchronous has been referred to as store-and-forward data transmission (e.g., video clips, digital images, virtual technologies, Learning Management Systems-LMS, hands on tasks, paper/pencil, and other forms).

**Hybrid** frameworks include a combination of synchronous, asynchronous, and/or in-person services.

An asynchronous instruction may not be appropriate for some students with disabilities who struggle with time management or self-motivation to complete tasks at their own pace. Students may need a combination of asynchronous assignments and a synchronous scheduled time to provide a summary of key factors, provide feedback to questions, and to provide further reteaching of concepts that are difficult to understand. Also, some students may need to have both online and in-person instruction, but the IEP team must determine the student’s educational needs and abilities to determine what is the best framework for instruction.

See [Guidance Brief on Distance Learning](#) for additional information.

## Section 4. IEP Reviews

### ***A. Annual IEP***

Each student’s IEP is reviewed at least annually and must be in effect at the beginning of the school year. Meetings may be held any time throughout the school year and Written Notice provided prior to the implementation of changes to special education services, related services, or educational placement 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 changes to a student's IEP after the annual Subsequent IEP meeting, the parent and the LEA may agree not to convene an IEP meeting for these purposes of making such changes, and instead may develop an amendment to the student's current IEP without the team's signatures. There must be documentation in the parent contact logs documenting that the parent was in agreement not to hold a formal IEP meeting with school personnel to make the amendment(s) to the IEP. A revised copy of the IEP with amendments finalized will be provided to the parent. If the

parent and the LEA determine to have a formal IEP meeting to amend the IEP, then the team members must sign the new amended IEP.

Following any 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(s) to the IEP.

An IEP amendment date does not change the annual Subsequent IEP due date for review and revisions.

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.

#### Examples of a need to amend the IEP prior to a subsequent IEP timeline:

- When a student's behavior is not considered a manifestation of the student's disability (i.e., was not caused by nor had a direct and substantial relationship to student's disability; or the behavior in question was not the direct result of the LEA's failure to implement the IEP) and is being suspended long-term, then the IEP team must meet to amend the IEP to document the services the student will receive during the long-term suspension. The IEP team must consider options for the student to make progress with the general education curriculum and receive special education and related services during the long-term suspension days.
- Any lack of progress with the student's IEP goals/objectives or benchmarks and in the general education curriculum, the IEP team must meet to review and consider any amendments that may be necessary, if any (34 C.F.R. § 300.324(b)(1)).
- If a student is in high school and has earned all credits necessary for math, but is on an IEP for an educational need in the area of math calculation and math problem solving, then the IEP team may meet to determine if there are other coursework that may require math skills to be successful (e.g., technology courses involving math calculation and concepts/application/applied problems). However, if the student no longer needs specially designed instruction for math skills, then the IEP team may conduct a reevaluation to determine if the student continues to be a student in need of specially designed instruction and/or special education and related services.

## **Section 5. 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, 137 S. Ct. 988 (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 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 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.

## **Section 6. Service Animals**

### **Service Animals - Americans with Disabilities Act (ADA)**

The U.S. Department of Justice, Civil Rights Division, revised the Americans with Disabilities Act (ADA) for title II (State and local government services) and title III (public accommodations and commercial facilities) in 2010 and went into effect March 15, 2011, regarding service animals. The ADA defined a service animal as "dogs that are individually trained to do work or perform tasks for people with disabilities" (28 C.F.R. § 35.104). A service animal may also be defined as a miniature horse trained to do work or a task for an individual with a disability. Examples of work or tasks are listed by the U.S. Department of Justice, Civil Rights Division as:

- "A person who uses a wheelchair may have a dog that is trained to retrieve objects for them.
- A person with depression may have a dog that is trained to perform a task to remind them to take their medication.
- A person with PTSD may have a dog that is trained to lick their hand to alert them to an oncoming panic attack.
- A person who has epilepsy may have a dog that is trained to detect the onset of a seizure and then help the person remain safe during the seizure."

Emotional support, comfort, or other therapy animals are **not** defined as a service animal and not covered under ADA.

*Fry v. Napoleon Community Schools*, 580 U.S. 154 (2017), a United States Supreme Court case ruled that the use of a service animal does not relate to the denial of FAPE. Instead, the right to the use of a service animal falls under the ADA title II and title III, not under IDEA. Therefore, the individual with a disability does not have to have a service animal documented on the IEP to utilize the service animal within the school building or at school sponsored functions. In fact, title II and title III of ADA must permit the use of a service animal to accompany a person with a disability to do work or a task in all areas where members of the public are generally allowed to enter.

## **Section 7. Prohibit Requiring Prescription**

The OSDE prohibits LEA personnel from requiring a child to obtain a prescription for a substance covered by the Controlled Substances Act (21 U.S.C. 812(c)) as a condition of attending school, receiving an evaluation under 34 C.F.R. §§300.300 through 300.311, or receiving services under the IDEA as described in 20 U.S.C. § 1412(a)(25)(A)-(B); 34 C.F.R. §300.174.

### ***Legal Citations***

#### **United States Code, Title 20: Education**

20 U.S.C. § 1414	Individualized Education Programs.
20 U.S.C. § 1412(a)(5)	Least Restrictive Environment.
20 U.S.C. § 1414(d)(4)	Review and Revision of IEP.
20 U.S.C. § 1412(a)(25)	Prohibition on Mandatory Medication.
20 U.S.C. § 1415(b)	Types of Procedures.

#### **United States Code, Title 21: Food and Drugs**

21 U.S.C. § 812	Schedules of Controlled Substances.
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#### **Code of Federal Regulations, Title 28: Judicial Administration**

28 C.F.R. § 35.130	General Prohibitions Against Discrimination.
28 C.F.R. § 35.104	Definitions.

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

34 C.F.R. § 104.4	Discrimination Prohibited.
34 C.F.R. § 300.5	Assistive Technology Device.
34 C.F.R. § 300.6	Assistive Technology Service.
34 C.F.R. § 300.9	Consent.
34 C.F.R. § 300.22	Individualized Education Program.
34 C.F.R. § 300.34	Related Services.
34 C.F.R. § 300.39	Special Education.
34 C.F.R. § 300.42	Supplementary Aids and Services.
34 C.F.R. § 300.43	Transition Services.

## Legal Citations

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

34 C.F.R. § 300.101	Free Appropriate Public Education.
34 C.F.R. § 300.102	Limitation—Exception to FAPE for Certain Ages.
34 C.F.R. § 300.106	Extended School Year Services.
34 C.F.R. § 300.114	LRE Requirements.
34 C.F.R. § 300.115	Continuum of Alternative Placements.
34 C.F.R. § 300.174	Prohibition on Mandatory Medication.
34 C.F.R. § 300.300	Parental Consent.
34 C.F.R. § 300.301	Initial Evaluations.
34 C.F.R. § 300.302	Screening for Instructional Purposes is Not Evaluation.
34 C.F.R. § 300.303	Reevaluations.
34 C.F.R. § 300.304	Evaluation Procedures.
34 C.F.R. § 300.305	Additional Requirements for Evaluations and Reevaluations.
34 C.F.R. § 300.306	Determination of Eligibility.
34 C.F.R. § 300.307	Specific Learning Disability.
34 C.F.R. § 300.308	Additional Group Members.
34 C.F.R. § 300.309	Determining the Existence of a Specific Learning Disability.
34 C.F.R. § 300.310	Observation.
34 C.F.R. § 300.311	Specific Documentation for the Eligibility Determination.
34 C.F.R. § 300.305	Additional Requirements for Evaluations and Reevaluations.
34 C.F.R. § 300.320	Definition of Individualized Education Program.
34 C.F.R. § 300.321	IEP Team.

### **Code of Federal Regulations, Title 34: Education (Cont'd)**

34 C.F.R. § 300.322	Parent Participation.
34 C.F.R. § 300.323	When IEPs Must be in Effect.
34 C.F.R. § 300.324	Development, Review, and Revision of IEP.
34 C.F.R. § 300.328	Alternative Means of Meeting Participation.
34 C.F.R. § 300.501	Opportunity to Examine Records; Parent Participation in Meetings.
34 C.F.R. § 300.519	Surrogate Parents.
34 C.F.R. § 300.520	Transfer of Parental Rights at Age of Majority.
34 C.F.R. § 300.613	Access Rights.

### **Oklahoma Statutes, Title 70: Schools**

70 O.S. § 1-113	School District Residency.
70 O.S. § 1-114	Free Attendance Right to Attend School Free of Charge.
70 O.S. § 1-116	Positions in School System - Definitions.
70 O.S. § 1-116.2	Application of medicine or sunscreen to students - Vaccinations.
70 O.S. § 5-132.1	Certain Persons 21 Years of Age or Older May be Allowed to Complete High School.
70 O.S. § 9-105	Boundaries of Areas of Transportation - Definite Routes.

## Legal Citations

### **Oklahoma Statutes, Title 70: Schools**

70 O.S. § 11-103.6	State Board of Education-Adoption of Curriculum Standards-Option for High School Graduation-Adoption and Approval of Promotional System.
70 O.S. § 24-101.4	Disclosure of Disciplinary and Non-Directory Educational Records.
70 O.S. § 1210.183	Seizure-Safe Schools Act - Health Plan for Students with a Seizure Disorder.
70 O.S. § 1210.196.4	School Nurse to Administer Management Plan - Volunteer Diabetes Care Assistant - Refusal to Serve as Assistant.
70 O.S. § 1210.508	Statewide Student Assessment System.
70 O.S. § 1210.508-4	Individual Career Academic Plan (ICAP).
70 O.S. § 2603	Eligibility Requirements.

### **Oklahoma Statutes, Title 59: Professions and Occupations**

59 O.S. § 59-567.3a(4)	Definitions. Licensed Practical Nursing.
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### **Oklahoma Statutes, Title 13: Common Carriers**

13 O.S. § 176.2	Definitions.
13 O.S. § 176.4	Acts Not Prohibited.

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

OAC § 210:15-13-9(a)(5)	Definitions. Mechanical Restraints.
OAC § 210:35-25-2(5)	Student Entrance and Progression Through the System.

## CHAPTER 6. 7. 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 with a disability (34 C.F.R. §§ 300.114 and 300.115).

An appropriate LRE is one that enables the student with a disability 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 with a disability 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 day school, 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 satisfactorily (IDEA 34 C.F.R. § 300.114(a)(2)(ii)).

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 general education classroom with the use of supplementary aids and services be achieved satisfactorily for this student?
2. If education in the general education 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?

This two-part standard for determining LRE applies to students with disabilities upon the "initial" placement into special education and related services, as well as students with disabilities already on an IEP currently receiving services.

In making this determination, consider at least the following four factors:

1. What steps has the school district taken to accommodate the child in the general education classroom, including the school district's consideration of a continuum of placements and support services?
2. What academic benefits will the child receive in the general education classroom as compared to those the child will receive in the special education classroom?
3. What is (or what is expected to be) the child's overall educational experience in general education, including non-academic benefits?
4. What effect will the child's presence in the general education classroom have on that classroom?

## Section 2. LRE & Continuum of Alternative Placements

### *A. Alternative Placement Considerations*

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, including supplementary aids and 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):

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 they would attend if the student did not have a disability, unless the IEP requires a different arrangement.
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 ABLE 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 to the maximum extent appropriate but not removed from the general education classroom "solely" because of the need for modifications in the general education curriculum. (34 C.F.R. 300.116(e)). The IEP team should take into consideration any potential harmful effect on the child, any effect the child's presence in the general education classroom have on the learning of others, and the effect on the quality of services for the child to determine that even with the use of accommodations, modifications, supplementary aids and services the student cannot achieve satisfactorily (34 C.F.R. 300.116(d)). ~~, yet not modified to the point the curriculum is no longer the same content.~~ Refer to Chapter 5. **6.** "Individualized Education Program (IEP)", Section 3. "IEP Development", G. "Type of Service/Placement and Support Components", v. "Definition of Accommodations", and vi. "Definition of Modifications" for more information.

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 support.

6. **Students with significant cognitive and adaptive behavior delays, taught to alternate standards, participating in the state-wide OAAP aligned with the alternate academic achievement standards, working toward earning an alternate diploma, the IEP team must still consider the student's unique circumstances, including what accommodations, modifications, supplementary aids and services the student needs to achieve satisfactory in the general education curriculum to the maximum extent appropriate. 34 C.F.R. §**

300.116(d) and (e) states, “(d) In selecting the LRE, consideration is given to any potential harmful effect of the child or on the quality of services that he or she needs; (e) A child with a disability is not removed from education in age-appropriate regular classrooms **solely** because of needed modifications in the general education curriculum.” The IEP team’s consideration of the two part standard from the *L.B. v. Nebo School District*, 379 F.3d 966 (10th Cir. 2004), a decision binding in Oklahoma, as mentioned in section one of this chapter, will assist in selecting the LRE. when determining each individual’s LRE.

**7. Alternate Diploma.** When a student with significant cognitive and adaptive delays graduates with an alternate diploma, credit acquisition ceases. The student may choose to return and enroll to continue to receive FAPE until he or she reaches maximum age through the entire school year in which the student turns 22 years old. Based on Oklahoma Statute (70 O.S. § 5-132.1(B)), a student reaches maximum age when they are 22 or older on September 1 of a school year; and therefore, are no longer eligible for FAPE in Oklahoma. The LEA may deny admittance of persons over the age of 21 on or before September 1st.

- IEP teams must determine LRE on a case-by-case basis according to the student’s unique needs, including the transition services required to help the student make progress toward meeting postsecondary goals.
- In addressing LRE, IEP teams should consider including opportunities for a student who received an alternate diploma to participate in offerings at the comprehensive high school, career technology centers, and in the community. This would include opportunities in the LRE that align with the student’s transition plan, including preferences, interests, and post-secondary goals.
- For students who have received an alternate diploma, who participate in extended transition programs/services, the IEP team must continue to consider opportunities for participation with non disabled peers.

## ***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***

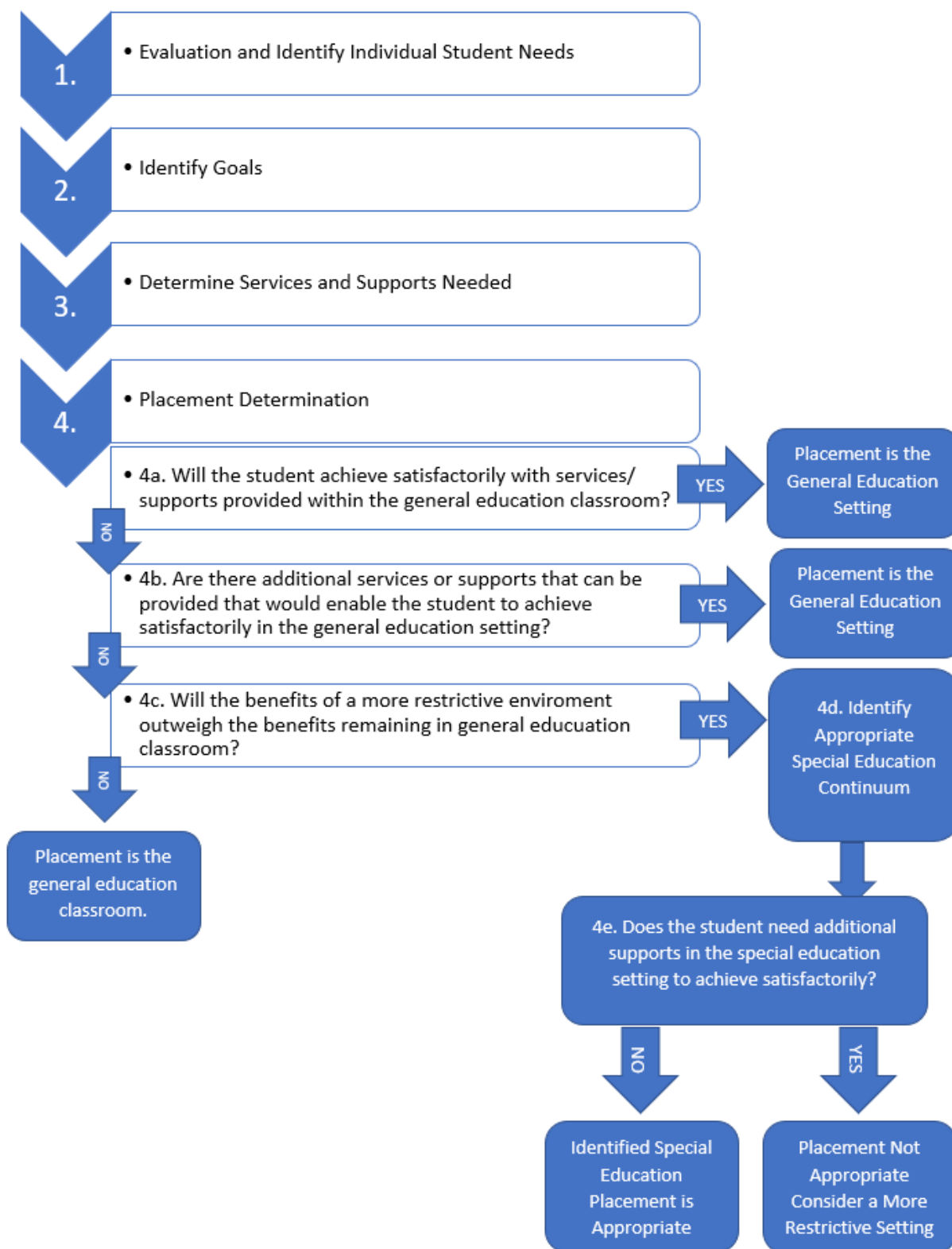
The following federal data reporting requirements charted below may guide IEP teams in making LRE decisions and may allow for consistency when LEAs are conducting Child Count. The following

are some examples of alternative placements or location of services for students (Kindergarten through 21) with disabilities:

Alternative Placements	Examples
<b>General Education Full-Time</b> (Inside the general education class more than 80% of the day)	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.
<b>Special Education Services Part-Time</b> (Inside the general education class 40%-80% of the day)	<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 written expression and math 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>
<b>Special Education Services Full-Time</b> (Inside the general education class less than 40% of the day)	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.
<b>Public/Private Separate Day School Facility</b>	<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> <p><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.</p>
<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>	<p>The child receives education (1) through home instruction, or (2) in a hospital program.</p> <p>(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</p>

Alternative Placements	Examples
	<p>provide specially designed instruction conducted in the student's home.</p> <p>(2) Students who are placed in a hospital receive their core instruction and special education services from the LEA where the hospital is located.</p>
<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 Individualized Services 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)). 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\(F\)](#), and Chapter 8-10. "Private, Charter, Residential and Other **Non-Traditional** Settings," Part 3, Section 1. "Residential Facilities" for more information);
- 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***

### **United States Code, Title 20: Education**

- |                        |                                    |
|------------------------|------------------------------------|
| 20 U.S.C. § 1412(a)(5) | Least Restrictive Environment.     |
| 20 U.S.C. § 1414       | Individualized Education Programs. |

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

- |                     |   |
|---------------------|---|
| 34 C.F.R. § 300.114 | LRE Requirements.                             |
| 34 C.F.R. § 300.115 | Continuum of Alternative Placements.          |
| 34 C.F.R. § 300.116 | Placements.                                   |
| 34 C.F.R. § 300.117 | Nonacademic Settings.                         |
| 34 C.F.R. § 300.118 | Children in Public or Private Institutions.   |
| 34 C.F.R. § 300.119 | Technical Assistance and Training Activities. |

### **Oklahoma Statutes, Title 70: Schools**

- |                       |                            |
|-----------------------|----------------------------|
| 70 O.S. § 24-101.3(F) | Out-of-School Suspensions. |
|-----------------------|----------------------------|

## ~~CHAPTER 7. NON-DISCRIMINATORY PRACTICES~~ ~~(MOVED CHAPTER 7 CONTENT)~~

Moved all content to Chapter 6 IEP (was Chapter 5) to condense information

### ~~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 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 end of the school year in which they turn 22, whichever comes first.~~

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

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- ~~● 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.~~
- ~~● 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](#).~~

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### ~~**iii. Student Reaches Maximum Age**~~

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~~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 (70 O.S. § 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 through 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.~~

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~~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 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 (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.~~

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**~~1. Transfer to another LEA~~**

~~When a student transfers to a new receiving LEA, the sending LEA will make reasonable efforts to promptly forward the student's special education records electronically or by mail upon request from the receiving 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 8: "Private, Charter, Residential, and Other Settings", Part 1. "Private Schools"](#) for more information.~~

**~~3. Withdrawal to Homeschool~~**

~~When a parent withdraws a student from public school to homeschool the student, the LEA is no longer obligated to provide special education and related services and the parent will be fully responsible for the student's instruction and educational programming. However, the LEA of residence is still obligated for Child Find responsibilities.~~

**~~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. "Informed Consent", 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** Moved to Chapter 6 Section 5

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.~~

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~~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*, 137 S. Ct. 988 (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.~~

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~~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 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 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.

## Moved to Chapter 6 Legal Citations

### **Legal Citations**

#### **United States Code, Title 20: Education**

20 U.S.C. § 1414(d)(4) Review and Revision of IEP.

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

34 C.F.R. § 104.4 Discrimination Prohibited.

34 C.F.R. § 300.9 Consent.

34 C.F.R. § 300.102 Limitation Exception to FAPE for Certain Ages.

34 C.F.R. § 300.300 Parental Consent.

34 C.F.R. § 300.305 Additional Requirements for Evaluations and Reevaluations.

#### **Code of Federal Regulations, Title 28: Judicial Administration**

28 C.F.R. § 35.130 General Prohibitions Against Discrimination.

#### **Oklahoma Statutes, Title 70: Schools**

70 O.S. § 5-132.1 Certain Persons 21 Years of Age or Older May be Allowed to  
Complete High School.

70 O.S. § 1-114 Free Attendance.

70 O.S. § 11-103.6 Option for High School Graduation.

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

OAC § 210:35-25-2(5) Student Entrance and Progression Through the System.

## CHAPTER 8. PRIVATE SCHOOLS, AND HOMESCHOOL 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.

Private and parochial schools may become accredited by the State Board of Education, similar to public school accreditation. However, private school accreditation is optional. A private school may become accredited by a private school accrediting association approved by the State Board of Education. The State Board of Education has a process to accept private school accreditation applications submitted by an accrediting association (O.S. §70-3-104(7)). All private schools regardless of accreditation by the State, are considered private schools regarding an LEA's obligation to provide equitable services in compliance with IDEA

~~Accreditation is optional for private schools in the State of Oklahoma. Private and parochial schools may 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 with Disabilities:** Parentally placed-private school children refer to students with disabilities who have been enrolled by their parents in a private school that meet the definition of an elementary or secondary school, including religious schools. ~~"Parentally placed private school children with disabilities means children with disabilities enrolled by their parents in private, including religious, schools or facilities that meet the definition of elementary school in 34 C.F.R. § 300.13 or secondary school in 34 C.F.R. § 300.36, other than children with disabilities covered under 34 C.F.R. §§ 300.145 through 300.147 (34 C.F.R. § 300.130)."~~

**Elementary School:** *"The term 'elementary school' means a nonprofit institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined under State law (34 C.F.R. § 300.13)."*

**Oklahoma State Law – Elementary School District:** *"Elementary school districts shall offer grades kindergarten through eight and are those which have not met the minimum standards for, and have not been designated as, independent school districts by the State Board of Education. On and after July 1, 1991, every place in the Oklahoma Statutes which refers to 'dependent school district' shall mean 'elementary school district' (70 O.S. § 5-103)."*

**Secondary School:** *“The term ‘secondary school’ means a nonprofit institutional day or residential school, including a public secondary charter school, that provides secondary education, as determined under State law, except that it does not include any education beyond grade 12 (34 C.F.R. § 300.36).”*

**Oklahoma State Law – Public Schools Definition:** *“The public schools of Oklahoma shall consist of all free schools supported by public taxation and shall include nurseries, kindergartens, elementary, which may include either K-6 or K-8, secondary schools and technology center schools, not to exceed two (2) years of junior college work, night schools, adult and other special classes, vocational and technical instruction and such other school classes and instruction as may be supported by public taxation or otherwise authorized by laws which are now in effect or which may hereafter be enacted (70 O.S. § 1-106).”*

## 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. ~~B.~~ Consultation**

Consultation is a mandatory process that involves discussions annually between the LEA, private school officials, and parent representatives on issues relating to the equitable participation of eligible private school children with disabilities in federally funded special education and related services (34 CFR 300.135).

IDEA requires LEAs to provide ongoing consultation with private school officials and the parents of parentally placed private school students attending private schools within the district’s boundaries. Timeliness is critical to effective consultation and requires collaboration between the LEA and private school officials in developing a timeline and selecting dates for consultation. Consultation may include individual or group meetings, interviews, or other effective and efficient strategies. The law does not require the use of a specific consultation strategy.

LEAs must consult in a timely and meaningful way with private school and parent representatives during the design and development of special education and related services for parentally placed private school children with disabilities. IDEA does not specify what constitutes “meaningful consultation,” but for consultation to be meaningful, it must be timely and ongoing throughout the school year (34 CFR § 300.134). ~~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 (34 C.F.R. § 300.134(c). “Consultation must be an ongoing process, not solely an annual meeting”~~ See JOSEPH's [Question and Answers of Serving Children with](#)

[Disabilities Placed by their Parents in Private Schools](#) pgs. 13-14. Questions B-1 and B-2). Timeliness is critical to effective consultation, 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 consultation process among representatives of the agency, the private schools, and the parents of parentally-placed private school children will take place, including 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 meaningfully 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 through 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. **By signing the affirmation, the** 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. LEAs should maintain copies of the written affirmation forms obtained during each of the consultation meetings to document that the consultation process has occurred throughout the school year.

If the LEA **has not obtained** a written affirmation signed by appropriate private school officials, the OSDE-SES may request that the LEA provide a reason for **failing to obtain** the ~~lack of~~ affirmation. If ~~the reason is that~~ there is a disagreement between the LEA and private school officials who attended the consultation meetings but declined to sign, the OSDE-SES ~~could~~ **may facilitate a** resolution ~~of the differences~~.

It is the responsibility of the LEA to ~~reach out to~~ **communicate with** private school representatives who did **not** attend the consultation meetings by sending a letter, along with documents discussed **at the consultation meeting**, ~~including the~~ **and a** 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) (34 C.F.R. § 300.135).

All documents (e.g., list of all private schools located within the LEA, invitation of consultation meetings, 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.

## **B. ~~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's residency is out-of-state (34 C.F.R. § 300.131(f)). However, a parent 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. The district follows the same process for evaluating a parentally-placed private school student as evaluating a public school student of residence.

Throughout the school year 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 private school children suspected of having a disability. 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 students from out-of-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 eligibility determined 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 also responsible for providing a FAPE to the child should they enroll. The resident district of residence 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 Fig, 52 IDELR 136, OSEP January 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 a child is determined to be eligible for special education and related services, considering their the LEA in which the private school is located child must be considered whether the child is eligible for possible equitable services under an Individualized Services 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 or complete the RED and provide the parent a Written Notice as to the reasons why the LEA is refusing to initiate an initial evaluation. Parent consent is required for LEAs to share information whenever a student is attending a private school (34 C.F.R. § 300.622(b)(3)).

The Child Find process must be completed in a period of time comparable to that for students attending public schools (34 C.F.R. §300.131(e)). 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 in which the private school is located must obtain parent consent for release of confidential information to communicate directly with the private school personnel. When conducting an initial

evaluation for a student attending a private school, the 45 school day timeline applies and is calculated from the date of parent consent based on the public school district's school calendar when conducting an initial evaluation for students attending private schools.

LEAs who utilize a student's response to scientific, evidence-based intervention framework as part of the SLD determination for a Specific Learning Disability (SLD) process, are encouraged to provide collaboration, training, observations, modeling, and support for 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 a child qualifies for special education and related services, the LEA of residence must document an 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 a Written Notice to the parent an explanation of LEA's proposal, including the parent's declined of the IEP services because of offered due to their refusal to enroll their child in the public school.

~~If a student is a resident of one LEA, but attends a private school located within 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 must 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 determines which 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.~~

### **C. Equitable Services**

The Local Education Agencies' (LEA) obligations to parentally placed private school students with disabilities are different from its responsibilities to those eligible students 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 in which the private school is located 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 that their eligible student will not receive FAPE from their ~~resident~~ school district of residence. 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 Individualized Services Plan (ISP) 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 refer to [Part 1., Section 4. "Placements"](#) and [Section 6. "Funding"](#) of this chapter.

## Section 5.3. Services

### A. Services with an Individualized Services Plan (ISP)

When a parentally-placed private school student in kindergarten through grade 12 has been designated to receive special education and related services by the LEA in which the private school is located, the LEA develops an Individualized Services Plan (ISP), which describes the specific special education and related services the child will receive from the school district, in light with consideration of the services the school district has determined will be provided through the consultation process (34 C.F.R. §§ 300.137 and 300.138).

The ISP is developed at an ISP meeting, which includes 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~~ All eligible students with a disability, in kindergarten through grade 12, parentally-placed in a private school located within the LEA's boundary, and ~~designated~~ determined to be eligible 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 **to be provided**. 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 (~~34 C.F.R. §§ 300.137 and 300.138~~) that the LEA has elected to provide to **eligible parentally-placed private school** students, the ISP must meet ~~similar~~ requirements **similar to those** 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.) (**34 C.F.R. §§ 300.137 and 300.138**).

- An ISP must **be** in effect at the beginning of each school year and accessible to each person responsible for its implementation.
- ISPs ~~are~~ **must be** reviewed and revised at least annually **to review** ~~regarding~~ student progress toward goals and in the general education curriculum.
- ISP team members **must** include the same members as an IEP team. The LEA ~~will~~ **must** ensure that a representative of the private school attends these meetings or participates by some other means.
- Parents **must be** ~~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 **must be** ~~are~~ informed that they may bring other persons knowledgeable about the student to the meeting. A copy of the ISP ~~will~~ **must** be given to the parents.
- The team developing the ISP ~~will~~ **must** consider the student’s strengths, educational needs/~~deficits~~, and results of the most recent evaluations. The private school general education teacher(s) 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~~ **must** 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 **eligible parentally-placed** 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. Parentally Placed Private School Students with an Individualized Education Program (IEP)**

Since the compulsory school age for school attendance in Oklahoma is 5-years old, the age a child is eligible to attend kindergarten, parentally-placed private school students are not placed on an ISP until they enter kindergarten. Eligible parentally-placed private school students with a disability ages 3, 4, and 5-year olds who are not yet in kindergarten must receive an offer of an Individualized Education Program (IEP). However, a parent may decline the offer of public school services through an IEP. When a student begins kindergarten, parentally-placed private school students are placed on an Individualized Services Plan (ISP) if the child meets the consultation designated services determination by the LEA.

### **~~B.~~ C. Location of Services**

Taking into consideration the information shared obtained in during 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, it is in the best 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 (See USDE (2022) Questions and Answers On Serving Children With Disabilities Placed By Their Parents In Private Schools).

### **~~C.~~ D. Transportation**

The LEA is not required to transport a parentally-placed private school student with a disability 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 equitable 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 considered to be a related service but a means of making the services offered accessible. Transportation costs may be included in the LEA's expenditure requirements for equitable services.

## **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 choose to withdraw their child with a disability from a public school and then enroll their child in a private school or obtain services from a private

provider at parent expense when the parents believe FAPE is at issue. Refer to the Procedural Safeguards in [20 U.S.C. § 1415\(d\)\(2\)\(H\)](#) relating to "requirements for unilateral placement by parents of children in private schools at public expense" as well as, 34 C.F.R. § 300.148. ~~quoted below:~~

~~"(a) **General.** This part does **not** require an LEA to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if that agency made FAPE available to the child and the parents elected to place the child in a private school or facility. However, the public agency must include that child in the population whose needs are addressed consistent with §§ 300.131 through 300.144.~~

~~(b) **Disagreements about FAPE.** Disagreements between the parents and a public agency regarding the availability of a program appropriate for the child, and the question of financial reimbursement, are subject to the due process procedures in §§ 300.504 through 300.520.~~

~~(c) **Reimbursement for private school placement.** If the parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private preschool, elementary school, or secondary school without the consent of or referral by the public agency, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made FAPE available to the child in a timely manner prior to that enrollment and that the private placement is appropriate. A parental placement may be found to be appropriate by a hearing officer or a court even if it does not meet the State standards that apply to education provided by the SEA and LEAs.~~

~~(d) **Limitation on reimbursement.** The cost of reimbursement described in paragraph (c) of this section may be reduced or denied—~~

~~(1) If—~~

~~(i) At the most recent IEP Team meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP Team that they were rejecting the placement proposed by the public agency to provide FAPE to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or~~

~~(ii) At least ten (10) business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parents did not give written notice to the public agency of the information described in paragraph (d)(1)(i) of this section;~~

~~(2) If, prior to the parents' removal of the child from the public school, the public agency informed the parents, through the notice requirements described in § 300.503(a)(1), of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for the evaluation; or~~

~~(3) Upon a judicial finding of unreasonableness with respect to actions taken by the parents.~~

~~(e) **Exception.** Notwithstanding the notice requirement in paragraph (d)(1) of this section, the cost of reimbursement—~~  
~~(1) Must not be reduced or denied for failure to provide the notice if—~~  
~~(i) The school prevented the parents from providing the notice;~~  
~~(ii) The parents had not received notice, pursuant to § 300.504, of the notice requirement in paragraph (d)(1) of this section; or~~  
~~(iii) Compliance with paragraph (d)(1) of this section would likely result in physical harm to the child; and~~  
~~(2) May, in the discretion of the court or a hearing officer, not be reduced or denied for failure to provide this notice if—~~  
~~(i) The parents are not literate or cannot write in English; or~~  
~~(ii) Compliance with paragraph (d)(1) of this section would likely result in serious emotional harm to the child.”~~

In Oklahoma, a student placed in daycare facilities or private preschool by their parents would not fall within the IEP definition of a private school placement. the age of compulsory school attendance is 5-years old. Therefore, a parentally placed private school student cannot be enrolled simultaneously in kindergarten at a public and private school. For example, a kindergarten student may not attend a private school kindergarten half-day and a public-school kindergarten half day when the LEA offers only a full-day kindergarten to all students with no half-day options. Nor may a kindergarten student attend a private school part of the week and the public school the remainder of the week. Compulsory public school attendance requires the child to attend the public school every day, thus prohibiting dual enrollment in a public and private school (70 O.S. 10-105 and OAC 210:15-11-2).

In Oklahoma, a Preschool students with a disability ages 3, 4, and 5-years old (not yet kindergarten age eligible on or before September 1st) enrolled in private daycare facilities or private preschools by their parents are would not considered to be parentally-place private school students. These students are served through an IEP by the LEA and thus may be enrolled in a public school for part of the day and a private day care or private preschool at the same time. fall within the IDEA definition of a private school placement.

The general rule to determine which whether an 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, except for children attending a private school receiving services on an ISP. “Parentally-placed private school children with disabilities may receive a different amount of services than children with disabilities in public schools (34 C.F.R. § 300.138(a)(2)).” See Section 5(A) of this chapter, [“Services with an Individualized Services Plan”](#) for more information.

### **A. Students Placed in Private Schools by the LEA**

Federal regulations The IDEA allows 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."~~ **When parents make an independent decision to place their child in a private school they, not the LEA, assume financial responsibility.** 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~~ **district where** 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 **the** parent's 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~~, **13**. "Dispute Resolution."

**The requirements for unilateral placement by parents of children in private schools at public expense are described in 34 C.F.R. § 300.148.**

**(a) General.** *This section of the law states that a public agency is not required to pay for the education of a child with disabilities at a private school or facility if the parents decide to do so after receiving FAPE from the public agency. However, the public agency must continue to address the needs of the child per 34 C.F.R. §§ 300.131 through 300.144.*

**(b) Disagreements about FAPE.** *If there are disagreements between the LEA and the parents regarding the provision of FAPE and financial reimbursement to the parent, due process procedures in 34 C.F.R. §§ 300.504 through 300.520 apply.*

**(c) Reimbursement for private school placement.** *If a child with a disability was previously receiving special education from a public agency, but the parents enrolled them in a private school without the agency's consent or referral, the agency may be required to pay for the private school if a court or hearing officer finds that the agency didn't provide the child with a FAPE in a timely manner prior to the private school enrollment. Even if the private school doesn't meet State standards, it may still be deemed appropriate by the court or hearing officer.*

**(d) Limitation on reimbursement.** *The cost of reimbursement may be reduced or denied.*

**(1) If -**

**(i)** *Before the child's removal from public school, the parents did not inform the IEP Team during the most recent meeting that they were rejecting the public agency's proposed placement to provide FAPE to their child. Nor did they state their concerns or intent to enroll their child in a private school at public expense; or*

**(ii)** *The parents failed to provide written notice to the public agency that they were rejecting the public agency's proposed placement to provide FAPE and their intent to enroll their child in a private school at public expense, at least ten (10) business days before removing the child from the public school.*

*(2) If, the agency notified parents through a Written Notice of intent to evaluate child before their removal from public school, but parents did not make the child available for evaluation; or*

*(3) When the court concludes that the actions taken by the parents were unreasonable.*

*(e) Exception. Exceptions to reimbursement costs apply under certain conditions.*

*(1) Regardless of the notice requirements in paragraph (d)(1) of this section, the cost of reimbursement must not be reduced or denied for failure to provide the notice if the school prevented the parents from giving notice, the parents were not notified of the notice requirement, or compliance with the notification requirement would likely result in physical harm to the child.*

*(2) At the discretion of the court or a hearing officer, the reimbursement may not be reduced or denied for failure to provide notice if the parents are illiterate or cannot write in English, or compliance with this requirement would likely result in serious emotional harm to the child (34 C.F.R. § 300.148(e)).”*

## **Section 3. 5 Private School Settings Not Subject to ~~Under Private School~~ IDEA Requirements**

### **A. Preschool Children (Ages 3-5)**

An LEA’s obligation to serve parentally-placed private school children aged three through five under the equitable services provisions depends on whether a child is enrolled in a private school or facility that meets the definition of “elementary school” in the IDEA (34 C.F.R. § 300.13) and Oklahoma State law (Refer to [Section 2. LEA Obligations, C .Equitable Services](#) in this chapter for more information). (~~See [Section 1](#) for the federal and state definition of elementary school in this chapter~~). In Oklahoma, the school code defines an elementary school district as one that offers grades K-8. Children who are age five (5) on or before September 1 are eligible for the public-school K kindergarten program, yet no child shall be required to attend any early childhood/preschool education program (70 O.S. § 1-114(A) and (B)). Therefore, a child 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~~ parentally placed private school K kindergarten student who is eligible ~~under IDEA~~ for special education and related services ~~would fall under the IDEA private school requirements; and therefore, would~~ **will** not receive an IEP unless the parent chooses to enroll their child in a public-school setting. ~~Instead, since this scenario falls under the IDEA private school requirements, the~~ A parentally placed private school student, if eligible, may possibly be provided services through an Individualized Services Plan (ISP), if the parent ~~chose~~ **chooses** 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 (34 C.F.R. § 300.13 and 34 C.F.R. § 300.36). The Child Find process includes students with disabilities attending for-profit schools located within the LEAs boundary.

### ~~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 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~~ calculate the proportionate share of both Section 611 federal grants (for students aged 3-21) and Section 619 federal grants (for children, ages 3-5) for all parentally-placed private school students with a disability attending private elementary schools or secondary schools located in the LEA. ~~# For the LEA to meet its responsibility for providing Equitable Services, these funds~~ 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.~~

### B. Proportionate Share Calculations

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. The LEA must spend the same proportionate amount of the LEA's total subgrant 611(f) and 619(g) funding for eligible parentally-placed private school students as is spent on eligible students attending the LEA (34 C.F.R. § 300.133). If a parent declines the offer of an IEP for special education and related

services, the LEA must still include this student in the annual count for calculating proportionate share.

34 C.F.R. § 300.133 Expenditures.

~~“(a) Formula.~~

~~To meet the requirement of §300.132(a), each LEA must spend the following on providing special education and related services (including direct services) to parentally placed private school children with disabilities~~

(1) The proportion of the subgrant 611(f) should be equal to the number of private school children with disabilities aged 3 through 21 who are enrolled in private, including religious, elementary schools and secondary schools situated in the school district served by the LEA, divided by the total number of children with disabilities, reported by the private schools in its jurisdiction, aged 3 through 21 (34 C.F.R. § 300.133 (a)(1)). *See the OSDE-SES IDEA Part B Funding Manual.* ~~For children aged 3 through 21, an amount that is the same proportion of the LEA’s total subgrant under section 611(f) of the Act as the number of private school children with disabilities aged 3 through 21 who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the LEA, is to the total number of children with disabilities in its jurisdiction aged 3 through 21.~~

(2) ~~(i)~~ LEAs must allocate funding for children aged 3-5 based on the number of children with a disability parentally-place in private schools within their jurisdiction. This allocation must be proportionate to the total subgrant received under section 619(g) of the Act (34 C.F.R. § 300.133 (a)(2)). ~~For children aged three through five, an amount that is the same proportion of the LEA’s total subgrant under section 619(g) of the Act as the number of parentally placed private school children with disabilities aged three through five who are enrolled by their parents in a private, including religious, elementary school located in the school district served by the LEA, is to the total number of children with disabilities in its jurisdiction aged three through five.~~

(3) ~~(ii)~~ Children aged 3 through 5 are considered to be parentally-placed private school children with disabilities enrolled by their parents in private, including religious, elementary schools, if they are enrolled in a private school that meets the definition of elementary school in § 300.13 (34 C.F.R. § 300.133 (2)(i)). ~~As described in paragraph (a)(2)(i) of this section, children aged three through five are considered to be parentally-placed private school children with disabilities enrolled by their parents in private, including religious, elementary schools, if they are enrolled in a private school that meets the definition of elementary school in § 300.13.”~~

The LEA **will must** 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 Grants Management System (GMS) and must be completed by the last Friday in September.

For additional information regarding special education funding see the “Oklahoma Special Education IDEA Part B Funding Manual” on the OSDE-SES website [Special Education Finance](#).

## Section 7. Lindsey Nicole Henry (LNH) Scholarship

The Lindsey Nicole Henry Scholarship for Students with Disabilities Program Act was established ~~authorized~~ by the Oklahoma legislature law in 2010. ~~The Lindsey Nicole Henry (LNH) Scholarship Act authorizes~~ to provide the parent or guardian of an eligible public school student, with a disability who is served under the IDEA, to exercise their parental option and request to have an the LNH Scholarship awarded for their child. ~~The LNH Scholarship provides funds for a qualified student with a disability~~ to enroll in and attend at a participating private school approved by the State Board of Education.

### **A. Eligibility for the LNH Scholarship**

~~To be eligible for the LNH Scholarship a student~~ the child must have been on an IEP prior to the application for scholarship 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 SoonerStart 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.

For more information about the LNH Scholarship calculation criteria see the “Oklahoma Special Education IDEA Part B Funding Manual” on the OSDE-SES website [Special Education Finance](#).

OSEP QA 22-01 states, “A State may not condition the receipt of a school choice voucher or scholarship on the parent’s revocation of consent to FAPE, including special education and related services. Parentally-placed private school children with disabilities are not entitled to FAPE in connection with their enrollment by their parents in a private school participating in a State-funded

voucher or scholarship program. See 34 C.F.R. §§ 300.148(a) and 300.137(a).” Therefore, the State may **not** require the parents to revoke consent prior to accepting the LNH Scholarship funds.

Also, for additional information regarding the application procedure for students and private schools for the [LNH Scholarship](#) see the OSDE website.

### **B. Students on a LHN Scholarship Returning to Public School**

A student returning to a public-school following enrollment in a private school with a LNH Scholarship must be considered an in-state transfer/move-in student with a potentially past-due or out-of-date IEP. Therefore, upon re-enrollment in a public school, the child will return as a child with a disability, as defined in 34 C.F.R. § 300.8. The LEA must convene an IEP meeting within 10 days to review and amend the previous existing IEP. For more information see [Chapter 14 “Transfers and Move-in Student.”](#)

The LEA must provide comparable services based on the previous IEP on the student's first day of attendance until the LEA can convene an IEP meeting. The IEP meeting must be held within 10 school days to review and amend the existing IEP or to develop a new subsequent IEP per [Oklahoma Policy](#). To facilitate the transition for a student, the receiving school district must make reasonable efforts to promptly obtain the student’s records, including the last IEP and supporting documents and any other records relating to the provision of special education services to the student, from a previous school district if applicable, to provide comparable services until the IEP team is able to develop, adopt and implement a new subsequent IEP.

## **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~~ for a parentally-placed private school student with disabilities receiving special education and related services on an ISP ~~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 is not applicable,

except for Child Find. The due process 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, 11. "Procedural Safeguards" and Chapter ~~11.~~ 13. "Dispute Resolution" for more information regarding due process and state complaints.

## **Section 9. Children with an Individualized Services Plan (ISP) Entering Public School**

### **A. Initial Evaluation and IEP**

Each LEA must locate, identify, and evaluate all children with disabilities who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the LEA. However, these children who are parentally placed 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 (34 C.F.R. § 300.137(a)), whether or not they receive an ISP based on services determined through the consultation process. If this same student returns to enroll in public school the LEA must conduct an initial evaluation **if this student has never received an ISP or the parent declined the LEA's offer of special education and related services. See Chapter 5. Evaluation and Eligibility for more information regarding procedures for an initial evaluation.**

### **B. Reevaluation and Subsequent IEP**

A child who was provided services on an IEP at a public school withdrew to attend a private school and was provided services with an ISP is considered a "move-in" student when they return to a public school. The IEP team must convene to develop a subsequent IEP, regardless of the time that has elapsed since the last IEP was developed in the public school.

If the child's eligibility has gone beyond the three year timeline for a reevaluation, the IEP team must obtain parent consent to conduct a reevaluation (34 C.F.R. § 300.303(a)). If the evaluation is current then a reevaluation is not necessary unless the team determines a need for a reevaluation. Though the child was enrolled in a private school, the child maintained eligibility under IDEA since the child was identified as an eligible child with a disability and served on an IEP before withdrawing from a public school to attend a private school.

## **PART 2. HOMESCHOOL**

### **Section 1. LEA Obligations**

While homeschooled children with disabilities have a right to both an evaluation and an IEP, these services are not mandatory, and parental consent is required. The IDEA expressly prohibits a district from using the consent override provision to evaluate children who are homeschooled or placed in a private school by their parents at their own expense (34 CFR § 300.300 (d)(4)).

The US Department of Education does not consider homeschooled children with disabilities to be parentally-placed private school children. The Department leaves the matter of whether homeschooled children with disabilities are considered parentally-placed private school children as a matter of State law. Oklahoma homeschooled children are not considered to be parentally-placed private school children. Therefore, LEAs are not obligated to offer equitable services through an ISP to homeschooled students. Equitable services are special education and related services provided by the LEA to eligible parentally-placed private school students with disabilities.

#### **A. Child Find**

LEAs are responsible for Child Find activities to ensure homeschooled students with disabilities are located, identified, and evaluated, and a FAPE is made available if their parents choose to enroll them in a public school. LEAs are neither required nor prohibited by federal or State law to treat homeschooled students as they would students enrolled in a private school.

##### ***i. Reevaluation***

When the parent of a homeschooled student requests a reevaluation, the district ~~should~~ **shall** promptly initiate the reevaluation process (34 C.F.R. § 300.303(a)) and schedule an IEP meeting to ensure compliance with the LEA's IDEA obligation ~~s~~ **to offer FAPE upon enrollment in public school if the student continues to be eligible.**

### **Section 2. Homeschool**

When a parent removes the student from public school to provide a homeschool program, the LEA should provide parents with a written notice indicating that enrollment in a homeschool terminates the LEA's obligation to provide a FAPE. The written notice should indicate that the child may be re-enrolled in the public school at any time, resulting in the provision of special education and related services provided by the public school. Parents do not revoke consent for special education and related services for their eligible student with a disability when removing the child from public school to homeschool.

If a district fails to provide a student with FAPE and the parent subsequently enrolls the student in a homeschool program, the district may be liable for the costs of the homeschool program.

However, if the program proposed by the district offers the student a FAPE and the parent chooses to homeschool the student, a hearing officer or court may deny the parent's request for relief under the IDEA.

#### **A. Homeschool Students Returning to Public School**

The LEA must consider a homeschooled student with disabilities who was previously on an IEP but is now re-enrolling in a public school as an in-state move-in student. Potentially, the student's IEP will be past-due and the reevaluation out-of-date. Regardless, the LEA must provide comparable services based on the previous IEP on the student's first day of attendance until the LEA can convene an IEP meeting. The IEP meeting must be held within 10 school days to review and amend the existing IEP or to develop a new subsequent IEP. If the reevaluation is out-of-date, the IEP team must complete a Review of Existing Data (RED) form and obtain parent consent for any additional evaluation components necessary to meet the requirements of a comprehensive evaluation aligned with the suspected category of disability or disabilities. Once the evaluation is completed the team must meet again to conduct a MEEGS determination for eligibility. For more information, see [Chapter 14 Transfers and Move-in Students](#), and Chapter 4 Evaluation and Eligibility.

[Oklahoma Policy](#) requires that an IEP for a move-in student be in place **within 10 school days** from the student's first day of attendance. To facilitate the student's transition the LEA must make reasonable efforts to promptly obtain the student's records, including the last IEP and supporting documents and any other records relating to the provision of special education services to the student, from a previous school district if applicable.

## Legal Citations

### **United States Code, Title 20: Education**

20 U.S.C. § 1415(d)(2)(H) Procedural Safeguards Notice – Unilateral Placement by Parents

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

**34 C.F.R. § 300.8** Child with a Disability

34 C.F.R. § 300.13 Elementary School.

34 C.F.R. § 300.36 Secondary School.

**34 C.F.R. § 300.111** Child Find.

34 C.F.R. § 300.130 Definition of Parentally-Placed Private School Children With Disabilities.

34 C.F.R. § 300.131 Child Find for Parentally-Placed Private School Children With Disabilities.

34 C.F.R. § 300.132 Provision Of Services For Parentally-Placed Private School Children With Disabilities — Basic Requirement.

**34 C.F.R. § 300.133** Expenditures.

34 C.F.R. § 300.134 Consultation.

34 C.F.R. § 300.135 Written Affirmation.

**34 C.F.R. § 300.136** Compliance.

34 C.F.R. § 300.137 Equitable Services Determined.

34 C.F.R. § 300.138 Equitable Services Provided.

**34 C.F.R. § 300.139** Location Of Services and Transportation.

**34 C.F.R. § 300.140** Due Process Complaints and State Complaints.

**34 C.F.R. § 300.141** Requirement that Funds Not Benefit a Private School.

**34 C.F.R. § 300.142** Use Of Personnel.

**34 C.F.R. § 300.143** Separate Classes Prohibited.

**34 C.F.R. § 300.144** Property, Equipment, And Supplies.

34 C.F.R. § 300.148 Placement Of Children By Parents When Fape Is At Issue.

34 C.F.R. § 300.300 Parental Consent.

**34 C.F.R. § 300.303(a)** Reevaluations.

**34 C.F.R. § 300.503** Prior Notice By The Public Agency; Content Of Notice.

**34 C.F.R. § 300.504** Procedural Safeguards Notice.

**34 C.F.R. § 300.505** Electronic Mail.

**34 C.F.R. § 300.506** Mediation.

**34 C.F.R. § 300.507** Filing a Due Process Complaint.

**34 C.F.R. § 300.508** Due Process Complaint.

**34 C.F.R. § 300.509** Model Forms.

**34 C.F.R. § 300.510** Resolution Process.

**34 C.F.R. § 300.511** Impartial Due Process Hearing.

**34 C.F.R. § 300.512** Hearing Rights.

**34 C.F.R. § 300.513** Hearing Decisions.

## **Legal Citations**

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

34 C.F.R. § 300.514	Finality of Decision; Appeal; Impartial Review.
34 C.F.R. § 300.515	Timelines and Convenience of Hearings and Reviews.
34 C.F.R. § 300.516	Civil Action.
34 C.F.R. § 300.517	Attorneys' Fees.
34 C.F.R. § 300.518	Child's Status During Proceedings.

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

34 C.F.R. § 300.519	Surrogate Parents.
34 C.F.R. § 300.520	Transfer of Parental Rights at Age of Majority.

### **Oklahoma Statutes, Title 70: Schools**

70 O.S. § 1-106	Public Schools – Definition – What is Included.
70 O.S. § 1-114	Free Attendance.
70 O.S. § 5-103	Elementary School Districts.
70 O.S. § 10-105	Neglect or Refusal to Compel Child to Attend School.

### **Oklahoma Administrative Code (OAC): State Department of Education**

OAC 210:15-11-2	Rules and Regulations for Early Childhood Education Programs.
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## CHAPTER 9. CHARTER SCHOOLS, OKLAHOMA SCHOOL FOR THE BLIND, OKLAHOMA SCHOOL FOR THE DEAF, AND HEAD START

### **PART 2. 1. Charter Schools**

#### **Section 1. Definition of Charter Schools including Virtual Charter Schools**

In Oklahoma, a charter school is a public school established by the statewide charter school board ~~or~~ contract with a board of education of a school district, ~~a technology center school district,~~ a higher education institution, ~~or~~ 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~~ the following ways:

1. ~~A school within an LEA, if authorized by a local school district;~~ A public school established by contract with a public school district board of education; or
2. A public school established by contract with a higher education institution, an institution of higher learning accredited pursuant to Section 4103 of Title 70 of the Oklahoma Statutes, ~~if sponsored by the board of education of a technology center school district, a higher education institution,~~ or a federally recognized Indian tribe, ~~or the Oklahoma State Board of Education (OSBE), or the Statewide Virtual Charter School Board (SVCSB).~~
3. As its own LEA, the Oklahoma Statewide Charter School Board (O.S. § 70-3-132.1).

## Section 3. **2.** Accreditation, Purposes, and Responsibilities of Charter Schools

Like any other **As with all Oklahoma** public schools, charter schools must go through an accreditation process through **be accredited by** 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 **is accountable to an** maintains its own **advisory or governance** board of governance. in addition to being **as well as the** **charter school's** 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 **The Board** 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;~~
- ~~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, the 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. A. Providing FAPE in for Virtual Charter and Charter Schools***

~~Responsibilities for~~ The provision of a FAPE for students with disabilities who attend public charter schools must be **provided** 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.

**A charter school established to serve secondary or high school students must serve students with disabilities until they earn a standard diploma or reach the maximum age of eligibility for services, whichever comes first. Based on Oklahoma Statute (70 O.S. § 5-132.1(B)), a student reaches maximum age when they are 22 or older on September 1 of a school year; and therefore, are no longer eligible for FAPE in Oklahoma. The LEA may deny admittance of persons over the age of 21 on or before September 1st.**

**A charter school established to serve elementary school students is obligated to serve eligible children with disabilities beginning at the age of 3.**

**Parents retain their parental rights under IDEA when their child** ~~For a student who attends a LEA, charter, or virtual charter public school, their parents retain all the rights given to them as in public schools under the IDEA. Charter schools and or virtual charter schools must make available a full continuum of services needed to provide a FAPE for students with IEPs. The Whether a charter that operates as its own LEA, the Oklahoma Statewide Charter School Board, whether or is sponsored by the board of education of a public school district, a technology center, a higher education institution, or a federally recognized Indian tribe, the OSBE or SVCSB, the charter school must offer the full continuum of services and supports at no cost to the parents. At the same time Likewise, the a charter that operates within an LEA or is authorized by a local school district and maintains its own resources, has the responsibility within itself to offer the full continuum of services and supports at no cost to the parents. 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 No public charter school that is part of the LEA may not, however, decline to serve students with IEPs.~~

## Section 4.3. 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 any other public school district.

## Section 5.4. Responsibilities and Provision of Services FAPE

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 any other 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. ~~A~~ 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 C.F.R. § 300.9 and 34 C.F.R. § 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 **including** and evaluations, **including** and 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 public 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~~ **Whether an evaluation is conducted by** the LEA where the charter school is located or the charter school themselves? ~~The answer depends on~~ **whether** if the charter school operates as part of an LEA, or ~~if they operate as their~~ **its** 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 **is** ~~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 **as an** LEA **is** ~~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 **(34 C.F.R. § 300.209(d)(2))**.

For additional guidance regarding the 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. FAPE Considerations for Virtual Charter Schools**

Special education and related services **s**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 the definition of the Individualized Education Program, each student's IEP should be specific to promote successful learning. For example, not all IEPs 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, for example, be provided:

1. In-person at home;
  - If the student ~~s~~ resides in close proximity to ~~speech therapists~~ a related service provider's professional office, and there is a mutual agreement between the parents and the related service provider are comfortable with the therapist providing the services being provided 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 a related service provider's professional office outside of their child's home to receive services. This arrangement may require ~~s~~ that the virtual school to secure provide appropriate transportation for the student (and in some cases reimburse the parent for transporting the child). Appropriateness depends on the unique circumstances of the student. For example, a student may need accessibility support, such as transporting a wheelchair, as part of the transportation. The school must also consider the length and duration of the transportation in to determining the appropriateness of the service provider. For example, transporting a student to services two hours away may be inappropriate (and as services should be provided closer to the student). Transportation arrangements services must be described on the IEP as a part of the related services provided by the LEA school.
3. Via synchronous (real-time) or asynchronous (not simultaneous) 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. FAPE 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 shall comply with all federal and state laws relating to the education of children with disabilities in the same manner as a public school district. 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(c)(1)(B)(IV) and § 1401(9)(A).
- The charter school will participate in all monitoring activities conducted by the OSDE.

## **C. FAPE 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~~ **The Oklahoma Statewide Charter School Board of Education or the board of education established by contract** ~~of a technology center school district, a higher education institution, or a federally recognized Indian tribe, the Oklahoma State Board of Education (OSBE), or the Statewide Virtual Charter School Board (SVCSB) have~~ **has** 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 **LEA or service provider** to provide special education and related services for its students.

## Section 2- **5. SoonerStart Transition to Charter Schools and Child Find**

Young children with developmental delays who receive services from SoonerStart Part C ~~will~~ transition to public school under IDEA Part B **beginning** with an initial evaluation prior to the child turning 3 years of age. Upon the child's third birthday, special education and related services ~~will be~~ **are** provided by the public school if the child is eligible for services under IDEA Part B.

**Any public charter school that** ~~If a public school, charter school or virtual charter school meets the definition of an elementary school which is "a nonprofit institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined under State law" (34 C.F.R. § 300.13), then that LEA, public charter, or virtual charter school has the responsibilities~~ **is responsible for the provision** of special education and related services and ~~is responsible for a FAPE~~ **for eligible students with a disability beginning at age 3 (34 C.F.R. § 300.13).**

If the charter school **is part of an LEA**, the LEA ~~would be~~ **is** responsible for **ensuring** the SoonerStart transition ~~to occur~~ **s** on or before the child's third birthday. If the charter school **operates as its own LEA**, then the public charter school or virtual charter school ~~would be~~ **is** responsible for the SoonerStart transition, initial evaluation, and if the child is eligible, the special education and related services.

If the public school, charter school or virtual charter school serves students in only a secondary school and meets the definition of a secondary school ~~which is "a nonprofit institutional day or residential school, including a public secondary charter school, that provides secondary education, as determined under State law, except that it does not include any education beyond grade 12" (in accordance with 34 C.F.R. § 300.36), then it is not applicable~~ **responsible** for ~~a young child to transition from SoonerStart to the secondary charter school.~~

- **For example, if a charter school enrolls only students in grades K-8, the charter school is responsible for Child Find obligations for students in those grades and children ages 3, 4, and 5 (if not age-eligible for kindergarten). If a child is determined to be eligible for special education and related services, the charter school must enroll the student and provide FAPE, including eligible children ages 3, 4, and 5 (not yet age-eligible for kindergarten).**
- **A charter school that enrolls only secondary students or is only a high school charter school, is responsible for Child Find obligations for secondary students. If a student is determined to**

be eligible for special education and related services, the charter school must provide FAPE to the student. This includes students ages 18 through the school year in which the student turns 22, when necessary, for when the student receives either a standard or alternate diploma, or reaches the maximum age for FAPE.

## **PART 2. Oklahoma School for the Blind and Oklahoma School for the Deaf**

The Oklahoma School for the Blind (OSB) and the Oklahoma School for the Deaf (OSD) are supported by the Oklahoma Department of Rehabilitative Services (DRS) (70 O.S. 1723). Each of these schools provide tuition free on-campus specialized education programs for day and residential students. Both OSB and OSD offer preschool programs and provide onsite consultation and resources for the benefit of students who are deaf, hard of hearing, blind, or visually impaired and attend a public schools in the State of Oklahoma (70 O.S. 1722 and 70 O.S. 1734) .

Even though OSB and OSD are not under the authority of the Oklahoma State Department of Education (OSDE), 34 C.F.R. § 300.2 states the provisions of IDEA apply to all subdivisions of the State who are involved in the education of children with disabilities (including State schools for children with deafness or children with blindness) regardless of whether that agency is receiving funds under Part B of the Act.

The An LEA will use the code enrollment code **RBD** for a student who is a resident of an LEA, but boards at the OSB or OSD during the week. This will allow the LEA to gain reimbursement for expenses such as weekly transportation for this child. The **RBD** code is only an admission code for the student's IEP to be generated and housed in the OSB or OSD special education software system. This student will **NOT** count on the special education child count for the LEA.

An LEA will use the **RBDTD** enrollment code to indicate that a student with a disability attends the OSB or OSD, but is transported daily to and from the OSB or OSD by the LEA. Only transportation and special education weights will be counted for this student. The IEP for the student will be housed in the district of resident-LEA's special education software system. The **RBDTD** enrollment code does allow the student to be counted on the special education child count for the LEA.

The parent or guardian of a student who is deaf, hard of hearing, blind, or visually impaired must be provided written information about the availability of programs offered by the OSB and the OSD at the student's IEP meeting. LEAs providing special education services to students who are deaf, hard of hearing, blind, or visually impaired must develop procedures to ensure that staff assigned to work with students have effective access to resources and information provided by the Oklahoma School for the Blind and the Oklahoma School for the Deaf (70 O.S. §13-112.1).

## **Section 1. Oklahoma School for the Blind**

Oklahoma School for the Blind (OSB) is a state-funded school through the Oklahoma Department of Rehabilitation Services for students who are blind or visually impaired. Located in Muskogee, OSB provides residential and day educational programs and outreach programs at no charge to Oklahoma children who are blind or visually impaired. Services are offered from infancy through high school graduation with a standard or alternate diploma (70 O.S. §1721).

The school serves as a resource center for students statewide with visual impairments who do not attend OSB. Outreach staff provide consultation, curriculum assistance, classroom modifications, and assistance with technical equipment. OSB offers free evaluations of academic achievement, orientation and mobility, low vision, psychological profiles, and living skills. Early intervention services are provided to young students to help them prepare for school. The Accessible Instructional Materials Center at the Oklahoma Library for the Blind provides textbooks and other instructional materials for students in pre-kindergarten through 12th grade in braille and large print formats (70 O.S. §1722).

OSB offers both a residential and day school education program. In addition to core academic subjects, the OSB offers students specialized instruction in orientation and mobility, Braille, independent living skills, and assistive technology.

### **A. Child Find**

OSB works collaboratively with LEAs throughout the eligibility process as a member of a student's eligibility team; or OSB may complete the eligibility process when appropriate. When a child is referred to OSB, an evaluation is conducted to determine eligibility for special education and related services under IDEA.

### **B. Referrals**

The OSB accepts referrals from LEAs, education cooperatives, and parents residing in the State of Oklahoma. Each LEA is notified of referrals to OSB for students who reside in their district.

### **C. Eligibility**

To be eligible for OSB services, a student must have a visual impairment. The impairment may be a corrected visual acuity of 20/70 or less or a visual field not greater than 20 degrees in the better eye. The students' visual impairment should be a major contributing factor to the student's inability to be successful in the classroom.

A student who does not meet the admissions criteria may be eligible to attend OSB if the visual impairment adversely affects the student's classroom performance, even with the best correction.

#### **D. Admission**

A parent or guardian must make application to the OSB for their child. Oklahoma State law requires that information regarding services available from OSB be provided at every IEP meeting for students with visual impairments to ensure that a student can receive a FAPE.

OSB begins collaboration with a student's LEA upon acceptance of the student. The LEA is responsible for ensuring a student receives FAPE. If a student's placement at OSB is not successful, the student will be referred back to the school district of the family's residence.

The criteria and procedures for the entitlement to free education and dormitory housing at the OSB is stipulated by 70 O.S. § 1724.

A. Residents of this state for whom blindness or visual impairment is the primary impediment to success in the common schools of the state, and who are of suitable age and physical and mental capacity, shall be entitled to admission to the Oklahoma School for the Blind and shall receive an education free of charge.

B. Students admitted to the school who are of suitable emotional capacity and who are not a threat to themselves or others shall be entitled to reside at the school free of charge to the extent that dormitory housing is available.

C. The Department of Rehabilitation Services shall establish the criteria and procedures for admission to the school.

#### **E. Transportation**

OSB provides transportation for residential students to and from regional locations throughout Oklahoma each weekend. The student's LEA of residence or parents are required to make arrangements to transport the child to the OSB pick-up/drop-off point.

Whether the parent placed the student at OSB or the student's LEA of residence requested the placement, OSB does not provide transportation for day students. The student's LEA of residence is responsible for transportation to and from school daily.

### **Section 2. Oklahoma School for the Deaf**

The Oklahoma School for the Deaf (OSD) in Sulphur provides residential, early intervention, and outreach education services at no charge to students who are Deaf and hard of hearing (70 O.S. § 1732). OSD also provides preschool programs for children who are Deaf at regional sites (70 O.S. § 1731).

The School for the Deaf serves as a resource center for Oklahoma students who are Deaf or hard of hearing but do not attend classes at OSD. Outreach staff administer speech and language, psycho-educational, and audiological assessments to children statewide. Families of preschool children who are Deaf or hard of hearing may receive early intervention services from the OSD.

OSD also provides onsite consultation to public school districts, professional development, and cultural, academic, and social programs for students (70 O.S. § 1734).

#### **A. Child Find**

OSD works collaboratively with LEAs throughout the eligibility process as a member of a student's eligibility team, or OSD may complete the process independently, as appropriate. When a child is referred to OSD, an evaluation is conducted to assist in determining eligibility for special education and related services under IDEA.

#### **B. Referrals**

The OSD accepts referrals from LEAs, education cooperatives, and parents residing in the State of Oklahoma. Each LEA is notified of referrals to OSD for students who reside in their district.

#### **C. Eligibility**

To be eligible to attend OSD, a student must be deaf or hard of hearing. The student's hearing disability must be the student's primary disability.

#### **D. Admission**

Admission to the school is accomplished through an application made by the parents or guardians. The OSD Admissions Committee reviews the application and all pertinent documentation and determines if OSD is an appropriate placement.

The criteria and procedures for the entitlement to free education and dormitory housing at the OSD is stipulated by 70 O.S. § 1733.

A. Residents of this state for whom deafness or hardness of hearing is the primary impediment to success in the common schools of the state, and who are of suitable age and physical and mental capacity, shall be entitled to an education in the Oklahoma School for the Deaf without charge.

B. Students admitted to the school who are of suitable emotional capacity and who are not a threat to themselves or others shall be entitled to reside at the school free of charge to the extent that dormitory housing is available.

C. The Department of Rehabilitation Services shall establish the criteria and procedures for admission to the school.

#### **E. Transportation**

OSD provides transportation to and from regional locations in Oklahoma for residential students each weekend. LEAs or parents are required to make arrangements to transport the child to the OSD pick-up/drop-off point.

Whether the parent placed the student at OSD or the student's LEA of residence requested the placement, OSD does not provide transportation for day students. The student's LEA of residence is responsible for transportation to and from school daily.

## Section 6. **PART 3. 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, but below 130% of the federal poverty line ("Near Low Income") if the program can ensure that certain the conditions described in 42 U.S.C. § 9840(a) Section 645 (a)(1)(B)(iii)(II) of the for Early Head Start participation Act have been met.

The table below is a summary of the differences and similarities between programs serving students with disabilities from Early Head Start to kindergarten.

	Early Head Start	Head Start Early Childhood (EC3)	Head Start Pre-K	Head Start K
<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. General Education Preschool Program***

Head Start is considered a general education preschool setting with typically developing peers. OSEP, in a [January 9, 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.”~~ **When determining the appropriate placement for a child with a disability enrolled in a regular public preschool program such as Head Start, the placement team must take into account whether the LEA, in collaboration with the preschool program, can ensure that the child will receive all the special education and related services, as well as supplementary aids and services specified in the child’s IEP.**

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 general 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 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 ([Letter to Brekken June 2, 2010](#)) has clarified that the category of specific learning disability (SLD) is generally not applicable to preschool age children.

Once ~~the~~ **a** child is determined to ~~have~~ **be an eligible child with** 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 General Education 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 primary or suspected 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.

### **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 Child Find, educational services, the provision of a Free Appropriate Public Education (FAPE), and educational services. ~~Child Find.~~ However, if the child is attending a Head Start program located outside of their district of residence, then the LEA where the Head Start program is located is **not** responsible for educational services, provisions of FAPE, and Child Find.

If a parent chooses to enroll their child with a disability in a Head Start program located outside of their district of residence, then the parent ~~would need to~~ **must** apply for a transfer to the LEA where the Head Start facility is located in order to receive the provision of a Free Appropriate Public Education (FAPE). The ~~new~~ receiving LEA shall establish availability of the appropriate program, staff, and services prior to approval of the transfer. The receiving LEA shall consult the resident school district and the parents of the child to determine how FAPE will be provided to the child. If the transfer is approved, services comparable to those described in the IEP shall be provided until the receiving LEA accepts the child's IEP from the resident district or develops and implements a new IEP that meets IDEA requirements. Upon approval of the transfer, the receiving LEA shall claim the child and shall assume all responsibility for the education of the child.

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 developing and implementing the provisions regarding the special education and related services written on the IEP or notifying the parent that the LEA does not have the availability of the appropriate program, staff, and services to meet the child's unique needs. Refer to Chapter ~~12.~~ 14. "Transfers and Move-In Students" for more information.

Rather than accept a transfer, the receiving LEA may offer to provide the resident district with a service agreement to provide FAPE to a non-resident student. ~~The other option is an IEP Service Agreement.~~ Under a service agreement, the resident district agrees that the receiving LEA **will** provide FAPE to a non-resident student on an IEP. In this case, the resident district claims the child

on their child count and agrees to pay tuition to the receiving LEA. ~~The decision of the LEA Service Agreement will be made between the sending and receiving districts. Refer to Chapter 12~~ 14. “Transfers and Move-In Students”, Section 1. “Transfers for Students with Disabilities”, C. “IEP Service Agreement” for more information.

#### **~~D.~~ IDEA Services**

Head Start programs must ensure the individual needs of children with disabilities are met ~~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 of Children Attending Head Start~~**

~~Under the federal regulations (45 C.F.R. § 1302.17) regarding suspension and expulsion of a child attending Head Start states,~~

##### **~~“(a) Limitations on suspension.~~**

~~(1) A program must prohibit or severely limit the use of suspension due to a child's behavior. Such suspensions may only be temporary in nature.~~

~~(2) 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.~~

~~(3) Before a program determines whether a temporary suspension is necessary, a program must engage with a mental health consultant, collaborate with the parents, and utilize appropriate community resources such as behavior coaches, psychologists, other appropriate specialists, or other resources as needed, to determine no other reasonable option is appropriate.~~

~~(4) If a temporary suspension is deemed necessary, a program must help the child return to full participation in all program activities as quickly as possible while ensuring child safety by:~~

~~(i) Continuing to engage with the parents and a mental health consultant, and continuing to utilize appropriate community resources;~~

~~(ii) Developing a written plan to document the action and supports needed;~~

~~(iii) Providing services that include home visits; and,~~

~~(iv) Determining whether a referral to a local agency responsible for implementing IDEA is appropriate.~~

~~**(b) Prohibition on expulsion.**~~

~~(1) A program cannot expel or unenroll a child from Head Start because of a child's behavior.~~

~~(2) When a child exhibits persistent and serious challenging behaviors, a program must explore all possible steps and document all steps taken to address such problems, and facilitate the child's safe participation in the program. Such steps must include, at a minimum, engaging a mental health consultant, considering the appropriateness of providing appropriate services and supports under section 504 of the Rehabilitation Act to ensure that the child who satisfies the definition of disability in 29 U.S.C. § 705(9)(b) of the Rehabilitation Act is not excluded from the program on the basis of disability, and consulting with the parents and the child's teacher, and:~~

~~(i) If the child has an individualized family service plan (IFSP) or individualized education program (IEP), the program must consult with the agency responsible for the IFSP or IEP to ensure the child receives the needed support services; or,~~

~~(ii) If the child does not have an IFSP or IEP, the program must collaborate, with parental consent, with the local agency responsible for implementing IDEA to determine the child's eligibility for services.~~

~~(3) If, after a program has explored all possible steps and documented all steps taken as described in [paragraph \(b\)\(2\)](#) of this section, a program, in consultation with the parents, the child's teacher, the agency responsible for implementing IDEA (if applicable), and the mental health consultant, determines that the child's continued enrollment presents a continued serious safety threat to the child or other enrolled children and determines the program is not the most appropriate placement for the child, the program must work with such entities to directly facilitate the transition of the child to a more appropriate placement."~~

~~A mental health consultant may include, but is not limited to, a certified school psychologist, a behavior interventionist, a school counselor, or other individuals trained in early childhood behavior interventions.~~

** **E. 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.

#### **F. 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 are 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~~ **13**, “Dispute Resolution” for more information).

## Legal Citations

### **United States Code, Title 20: Education**

**20 U.S.C. § 1401(9)(A)** Free Appropriate Public Education.

**20 U.S.C. § 1414(c)(1)(B)(IV)** Review of Existing Evaluation Data.

20 U.S.C. § 1419 Preschool Grants.

20 U.S.C. § 1431 et seq. Findings and Policy – Infants and Toddlers with Disabilities.

### **United States Code, Title 29: Labor**

29 U.S.C. § 794 Nondiscrimination Under Federal Grants and Programs.

### **United States Code, Title 42: The Public Health And Welfare**

42 U.S.C. § 12101 et seq. Findings and Purpose.

42 U.S.C. § 483.352 Definitions.

**42 U.S.C. § 9840a** Participation in Head Start programs

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

34 C.F.R. § 300.2 Applicability of this part to State and local agencies

34 C.F.R. § 300.9 Consent

34 C.F.R. § 300.13 Elementary School

34 C.F.R. § 300.36 Secondary School.

**34 C.F.R. § 300.111** Child Find.

34 C.F.R. § 300.201 Consistency with State Policies.

34 C.F.R. § 300.209 Treatment of Charter Schools and Their Students.

34 C.F.R. § 300.300 Parental Consent.

### **Oklahoma Statutes, Title 70: Schools**

**70 O.S. § 3-145.1** Statewide Virtual Charter School Board.

**70 O.S. § 3-145.3** Powers And Duties of Virtual Charter School.

**70 O.S. §13-112.1** Parental Notification of Programs for Students With An Auditory or Visual Impairment.

**70 O.S. § 1721** School For Blind Created.

**70 O.S. § 1722** Purposes of the School for the Blind.

**70 O.S. § 1723** Control of the School for the Blind.

**70 O.S. § 1724** School for the Blind - Entitlement to Free Education and Dormitory Housing

**70 O.S. § 1731** School for Deaf Created.

**70 O.S. § 1733** School for the Deaf- Entitlement to Free Education and Dormitory Housing

**70 O.S. § 1734** Purposes of the School for the Deaf.

## CHAPTER 10. RESIDENTIAL AND OTHER NON-TRADITIONAL PLACEMENTS

### RESIDENTIAL AND OTHER SETTINGS PROVISION OF EDUCATIONAL SERVICES

Residential Treatment Facility or Other Setting	Level of Care	Site for Provision of Educational Services
<del>Orphanages facility for children who have been abandoned by their parent and parents have failed to respond to notice; or an Eleemosynary (charitable) and Residential Child Care facility for children and youth placed by their parent or guardian.</del>	Full Time Residential	<p><u>These private facilities provide care for children who have been abandoned or placed in the facility by their parents or guardians.</u></p> <p>The LEA where the facility is located is responsible for providing education services for students living in <del>Orphanages</del> or eleemosynary Child Care facilities either at the facility or on the LEA's school campus (OAC § 210:10-1-13(c)(1), <u>70 O.S. §113(A)(3)</u>).</p>
<p>State Operated <u>and State Contracted</u> <del>Institutions (includes emergency shelters)</del></p> <p><u>Childrens' Shelters</u></p>	Full Time Residential	<p><u>These are non-secure public or private residential programs that provide temporary care and supervision for children.</u></p> <p>The LEA where the facility is located is responsible for providing education services for students living <u>with a shelter</u> <del>State Operated Institutions</del> at the facility or on the LEA's school campus (<u>10A O.S. § 1-9-111(E), 70 O.S. § 113(A)(8)</u>).</p>
*Foster Care	Full Time Residential	<p><u>Foster care provides temporary care and supportive services in a home environment for children in OKDHS or Tribal custody.</u> The LEA where the foster home is located is responsible for the</p>

Residential Treatment Facility or Other Setting	Level of Care	Site for Provision of Educational Services
		<p>education services on the LEA's school campus; or the LEA <del>in which</del> <u>where</u> the child resided prior to <u>the current placement</u> <del>being placed in Foster Care</del>, or the <u>LEA where</u> school district in which the child's previous foster family home is located, whichever is best for the student (<u>70 O.S. § 113(C)</u>).</p>
<p><u>**Community-Based Residential Services (Department of Human Service)</u></p>	<p><u>Full Time Residential</u></p>	<p><u>These placements are for children in DHS custody who have been determined to be deprived whose treatment needs can no longer be met in their own home, a relative's home or in traditional foster family care.</u></p> <p><u>The LEA where the facility is located is responsible for providing education services for students living in group homes, either at the facility or on the LEA's school campus (70 O.S. § 113(D)).</u></p>
<p><del>**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.</del></p>	<p><del>Full Time Residential</del></p>	<p><del>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</del></p>
<p>Inpatient Hospitalization</p>	<p>Full Time Residential</p>	<p>The LEA where the hospital facility is located is responsible for providing education services for students at the facility. <u>Educational services are provided at the hospital.</u> Students do</p>

Residential Treatment Facility or Other Setting	Level of Care	Site for Provision of Educational Services
		<b>not</b> attend an on-site (LEA) public school campus.
<u>Day Treatment or Partial Hospitalization</u>	<u>Day Treatment</u>	The LEA where the hospital or treatment facility is located is responsible for providing education services for students at the facility. Educational services are provided at the facility. Students do <b>not</b> attend an on-site (LEA) public school campus (70 O.S. § 3-104.7, 70 O.S. § 113(A)(6)).
Juvenile Detention Facility <u>Centers</u> <del>and</del>	<u>Full Time Residential</u>	<p>These centers serve as secure holding facilities for juveniles who have been arrested and are waiting to proceed through the court process or who have not yet been placed.</p> <p>The LEA where the facility is located is responsible for <u>usually providing</u> education services for students at the Juvenile Detention Center <del>or Secure Care Treatment facility.</del></p>
<u>***Office of Juvenile Affairs (OJA) Group Homes</u>	<u>Full Time Residential</u>	<p>These are highly structured environments for adjudicated delinquent youth in the custody of OJA.</p> <p>The LEA where the facility is located is responsible for providing education services for students at the group home. (OAC §210:10-1-13(c)(5), 70 O.S. § 113(D)(1)). Education services are provided at the group home</p>

Residential Treatment Facility or Other Setting	Level of Care	Site for Provision of Educational Services
***Secure Care Treatment Facility (Office of Juvenile Affairs) <del>and</del>	Full Time Residential	<p>This facility provides care and supervision of adjudicated delinquent youth in secured residence using locks and secure perimeter fencing.</p> <p>The Office of Juvenile Affairs Oklahoma Youth Academy Charter School (OYACS) is responsible for providing on-site education services for students at the Secure Care Treatment facility (OAC §210:10-1-13(c)(2) and 10A O.S. § 2-7-616).</p>
Municipal or County, or City Jail	Full Time Residential	<p>Eligible students confined to city or county jails are provided <del>do not attend</del> school on an on-site (LEA) on a public school campus. Educational services are provided to the student at the jail.</p> <p>Students are considered to be residents of the school district where the jail is located, therefore the LEA where the jail is located provides educational services "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>

\*For school purposes, if a foster parent may requests that the residence of a foster child's district of residence to be the school district in which the child resided in prior to being placed in foster care, or the school district where the child's previous foster family home is located, or a 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~~ within eleven (11) school days of admittance, the district in which the out-of-home placement or treatment is located must be notified of the child's admittance (70 O.S. § 1-113 (Amended 2023) and OAC 210:10-1-13(c)(5)).

\*\*\*Students residing in an Office of Juvenile Affairs (OJA) group home or secure care treatment facilities are not incarcerated but have been adjudicated delinquent and are in a secure placement for treatment. Some students residing in a secure treatment facility may have been convicted as an adult but have been sentenced under the Youthful Offender Act, thus placed in a juvenile facility.

## Section 3.1. IEP Team Decision for Residential Placement

LEAs must ensure each student with a disability receives a FAPE in the least restrictive environment (LRE). When the IEP team determines the various placement options attempted, including the most restrictive placement and maximum services provided by the LEA, have not proven to enable the student to make progress appropriate in light of the student's unique circumstances, then the IEP team may consider, ~~for the student to receive a FAPE,~~ a residential placement in order for the student to receive a FAPE. As part of the LRE continuum, a residential placement is considered one of the most restrictive environments.

When the LEA and parent agree to change the student's placement to a residential facility through the IEP team process, ~~then it will be~~ it must be at no cost to the parent. IDEA states (34 C.F.R. § 300.104), *"If placement in a public or private residential program is necessary to provide special education and related services to a child with a disability, the program, including non-medical care and room and board, must be at no cost to the parents of the child."* Whether the residential facility is located in-state or out-of-state, the LEA ~~will be~~ is obligated to pay for all special education and related services, including the expenses ~~surrounding the~~ incurred for residential services (non-medical care and room and board). IEP related services are not exhaustive (34 C.F.R. § 300.34) and are unique to the individual needs of the student, which ~~could also~~ may include parent counseling and training to assist the parents in understanding the special needs of their child. For more information regarding funding sources refer to [Chapter 1. Free Appropriate Public Education \(FAPE\), Section 2. "Potential Barriers to LEAs Provision of FAPE", A. "Funding Sources and Insurance."](#)

In selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of services the student needs (34 C.F.R. § 300.116(d)). Additionally, the child's placement must be determined at least annually; be based on the child's individualized education program (IEP); and be as close as possible to the child's home (34 C.F.R. § 300.116(b)). Therefore, the LEA and parents should review the student's progress ~~the student is making~~ periodically to ~~make a determination if the~~ it is an appropriate placement continues to be appropriate, including ~~determining~~ and when the student should be moved to a less restrictive environment ~~back within~~ in the LEA.

## Section 1.2. Education Services in Residential Treatment Programs Facilities

Each LEA with a residential facility or treatment program within the district's boundaries must ensure that all students who are determined to be eligible for services under the Individuals with

Disabilities Education Act (IDEA) receive a Free Appropriate Public Education (FAPE) (20 U.S.C. §§ 1400 et seq., or § 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, 70 O.S. § 1-113).

The LEA must ensure that the education program provides instruction for a standard diploma that is aligned with *Oklahoma Academic Standards (OAS)*, adopted by the State Board of Education pursuant to (70 OK Stat § 11-103.6). For those students assessed using the alternate assessment, the standards must be aligned to the Oklahoma alternate academic achievement standards.

A ~~Students may be placed in a public or private residential facility for full time care and treatment whether the facility is public or private. Students with disabilities are either by a parentally placed in a residential facility, placed through a the court system, placed by the Department of Human Services (DHS), or through the an IEP team determination. Students who may have been adjudicated delinquent and sentenced to treatment at placed in a group home or secure care treatment facility by the Office of Juvenile Affairs (OJA), are considered residents of the LEA where the facility is located (70 O.S. § 1-113).~~ 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 for Students in Residential Facility Types Treatment Programs**

When an eligible students are with a disability is placed in a residential treatment facility or treatment program, are still they continue to be entitled to a Free Appropriate Public Education (FAPE) and the special education and related services ~~that are specifically designed to meet the student's individual disability-related needs. In most~~ With the exception of students placed at the Central Oklahoma Juvenile Center (COJC) who are served by the Oklahoma Youth Academy Charter School, ~~at the circumstances,~~ the LEA where the facility is located is responsible for providing ~~these~~ educational services pursuant to a contractual agreement between the facility and the LEA.

~~Each individual or entity operating a residential facility or treatment program which requires provision of educational services from the school district, shall notify the local board of education of its anticipated educational needs, prior to locating facility or program in a school district. 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)). (Moved and amended)~~

~~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~~

## **B. Contractual Agreements**

Each individual or entity operating a residential facility or treatment program that requires provision of educational services is required to contract with the LEA to provide educational services. The residential facility must notify the LEA's board of education of the anticipated educational needs prior to locating a facility or treatment program within an LEA. An LEA is not 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 LEA was notified of the need for education services. However, the school district may agree to provide the educational services prior to the sixty (60) day notice (OAC § 210:10-1-13(d)(1)).

The LEA and residential facility or treatment program must enter a written contractual agreement annually. The contractual agreement ~~Under (OAC § 210:10-1-13(d), a contractual agreement for~~ must specify the conditions for the provision of educational services between the LEA and the facility ~~and~~ 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 services to students in such facilities or programs. ~~The LEA is not required to enter into a contract with a residential care, treatment, or emergency shelter unless it is state licensed or state operated (OAC § 210:10-1-13(d-e)).~~

~~The contractual agreement must~~ Provision in the contract shall be designed to ensure an appropriate education ~~for each~~ to which a student is entitled in the most ~~that is~~ cost-efficient manner ~~for the LEA to the responsible school district and shall allow~~s for local flexibility in funding and ~~the provision of~~ education ~~services~~ arrangements. The cost for related services, therapies, treatments, or support services for eligible students ~~shall be~~ is the responsibility of the facility unless otherwise agreed ~~upon~~ by the contractual parties or as ~~otherwise~~ specified in ~~the~~ a student's IEP. ~~Otherwise, For students who are eligible for payment of services from sources other than the school district, valid obligations to provide or pay for such services, such as Medicaid, the obligation to provide or pay for such services remains in effect (OAC § 210:10-1-13(d)). shall remain in effect for students who are eligible from sources other than the school district.~~

The contractual agreement between the LEA and the facility ~~This contract~~ should address ~~all~~ responsibilities related to staffing, technology, books/instructional materials, meals, classroom space, ~~classroom~~ cleaning, etc. ~~At a minimum, The~~ contractual agreement for educational services shall include the following ~~components as a minimum (OAC § 210:10-1-13(d)).~~

## **i.ii—Teacher Certification**

Teachers who teach in a residential facility or treatment program must be certified by the Oklahoma State Department of Education. However, when teaching in a residential facility a certified teacher may teach subjects for which the teacher does not hold certification. This provision applies only for on-site education services in a residential facility and must be approved by the OSDE (OAC § 210:10-1-13(d)(3)(A)). ~~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.”~~

## **ii.i Number of Hours Taught**

Many residential facilities provide for only 3 hours of instructional time daily due to requirements necessary for the mental health treatment needs of the students; and Therefore, the LEA is required to complete submit an application to the OSDE describing the reasons for the abbreviated school day. For example, one-half of the a student’s day is focused devoted on to group, individual, and family therapies, while the other half of the day is focused on dedicated to meeting the student’s educational needs. ~~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. The OSDE will authorize the abbreviated school day schedule upon receipt of an amended Application for Accreditation for this purpose (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.”~~

## **iii. Adequacy of Facilities**

In accordance with the contractual agreement, a residential facility or treatment program must provide an area appropriate for the LEA to provide the educational program. The facility is responsible for all services and costs not directly related to education and must ensure that related safety and health standards are followed. The facilities shall meet the State Board of Education accreditation standards and existing standards that apply to residential care facilities, treatment programs, and emergency shelters (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**

An educational plan must be developed for each student, with or without a disability, placed in a residential facility. Each student's plan must include a description of the curriculum to be used, the amount of instructional time the student will receive, and the setting in which the instruction will take place. The educational plan should be based on the student's individual educational needs and progress toward a full school day (OAC § 210:10-1-13(d)(3)(D)). Students must receive instruction in the core subjects, and if high school age, English, math, science, social studies, and art to allow for earning credits toward graduation (if high school age). For eligible students with disabilities who require Individualized Education Programs (IEPs) under the IDEA, the educational plan must be developed and implemented in accordance with procedural safeguards (OAC § 210:10-1-13(e)(8)).~~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 more specific information about the educational plans see [OAC § 210:10-1-13\(e\)\(1\) et seq.](#)

A student detained, held, or arrested for any offense under any provision of the Juvenile Code or Criminal Code of this state, must be identified for educational needs and afforded educational opportunities within seventy-two (72) hours of detention or arrest. This includes the detention or arrest of a student in city, county, and state jails, holding facilities, and juvenile or correctional institutions (10A O.S. § 2-5-301).

Education services must be provided to students no later than the tenth (10) school day following admittance to a facility. The exception to this may be made when a student's attending licensed psychologists, psychiatrists, or other physician on the student's treatment staff documents the recommendation that a delay is in the best interest of the student (OAC § 210:10-1-13(d)(3)(B)).

For students placed in residential facilities and treatment programs, OAC § 210:10-1-13(e) requires the following:

(1) Each student's educational needs must be reviewed within five (5) school days to determine the student's educational needs and to develop an educational plan. The plan must be consistent with state and federal laws and regulations and developed by a team of professionals. The education plan shall include strategies to assist in the integration of the student into the receiving school district (OAC § 210:10-1-13(E)(1)).

A student detained, held, or arrested for any offense pursuant to any provision of the Juvenile Code or Criminal Code of this state, must be identified for educational needs and afforded educational opportunities within seventy-two (72) hours of detention or arrest. This includes the detention or arrest of a student in city, county and state jails, holding facilities, and juvenile or correctional institutions (10A O.S. § 2-5-301).

(2) The professional team drafting the educational plan shall include a teacher or other qualified educator, under the direction of the school district. A process must exist to allow the education team members to regularly communicate recommendations and other relevant information to the facility staff (OAC § 210:10-1-13(E)(2)).

(3) The educational plan shall be periodically reviewed and amended to ensure that the student is consistently receiving appropriate educational opportunities (OAC § 210:10-1-13(E)(3)).

(4) The educational plan shall describe the curriculum, amount of instructional time, and setting where education services will be provided. The student must receive services in an educational setting based on the student's individual educational needs, and grade level and/or ability. The plan should include progress toward a full school day (six hours) program (OAC § 210:10-1-13(E)(4)).

(5) The educational plan shall be implemented within ten (10) days of enrollment in the LEA (OAC § 210:10-1-13(E)(5)).

(6) The educational plans and services shall be supervised by a school district administrator (OAC § 210:10-1-13(E)(6)).

(7) The school district is responsible for maintaining the educational plan and individual student education records. The district must have a procedure in place to ensure the expeditious exchange of education records to properly authorized persons. This procedure should comply with the Family Education Rights and Privacy Act (FERPA) and other relevant state and federal laws (OAC § 210:10-1-13(E)(7)).

(8) Implementation of the educational plan shall be consistent with procedural safeguards for students with disabilities who require an IEP under the IDEA. When the providing district determines that a student needs special education and related services, the student's school district of residence must be informed immediately. The LEA of residence should also be informed of the date, time, and location of meetings to plan the student's IEP and subsequent reviews. The residential facility or treatment programs should have a representative at the IEP meetings to offer concerns or information regarding the eligible student's educational needs and/or eligibility for related services. The facility and the providing district should collaborate with the eligible student's school district of residence as needed for IEP development (OAC § 210:10-1-13(E)(8)).

(9) Teachers shall be assigned to provide education services according to appropriate class sizes and ratios as determined by the State (OAC § 210:10-1-13(E)(8)).

(10) When a student demonstrates severe disruptive behavior while attending an education program, the residential facility must provide assistance and supervision for out-of-

classroom time, including suspension, time-out, and detention. Further, when requested, facility personnel will intervene in disciplinary matters unless otherwise agreed to in the contract (OAC § 210:10-1-13(E)(10)).

## **Section 3. Provision of FAPE in Residential Placements**

### **A. 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~~ **as long as two or more** years. Regardless of the length of the placement, the LEA where the facility is located is ~~ultimately~~ responsible for implementing Child Find and **providing** a FAPE for **eligible** students residing in ~~these~~ **a residential facility or treatment program**. Evaluations for students ~~living placed in a residential or treatment program facilities~~ must **comply with the requirements of IDEA and the Oklahoma State Department of Education. The evaluation must be completed and the MEEGS held in a timely manner, (within 45 school days from the date of parent consent, regardless of whether a student will be placed in the facility long enough to complete the evaluation. 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~~ **a** student transfers to another LEA ~~or~~ **including a** residential facility **or treatment program in another LEA**, and the evaluations ~~have~~ **has** begun but ~~they have~~ **has** not been completed, the responsibility for Child Find and a FAPE transfer with the student **to the receiving district**. ~~Both~~ **The two** districts should coordinate **and collaborate** to ensure completion in a timely manner.

### **B. 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."~~ The LEA should document the review of records on the "Record of Access" (OSDE Form 1) ~~W~~ **Within five days of the date the student was admitted to the residential facility the educational records of the student must be reviewed by a team of professionals to determine the education needs of the student.** The education services must be made available to a student no later than the 10th school day from the student's first day of attendance, including the provisions of the IEP ~~(either by writing a new S~~ **Subsequent IEP or accepting the IEP as written from the previous LEA) (OAC § 210:10-1-13(e)(1)).**

**The education plan for a student in a residential placement must follow procedural safeguards under IDEA for students with disabilities requiring IEPs. When planning a student's IEP and subsequent reviews, the LEA providing services to students in a residential placement must notify the school district of residence regarding the student's need for special education and related services. Coordination between the residential facility, the providing district, and a student's school district of residence may be necessary to develop the IEP. The facility may have a representative**

present at a student's IEP meeting to provide concerns or information about the student's special education and related service needs (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 **or treatment program** has specific adult to student ratio requirements determined by ~~other~~ state agencies **statutes** 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,~~ **15.** "Special Education Staffing."

#### ***i. Provision of a FAPE***

**When an eligible student with a disability is placed in a residential facility or treatment program the receiving LEA must provide the student with special education and related services comparable to those described in the student's IEP until the new LEA adopts the previous LEA's IEP or develops and implements a new IEP. All IEP components continue to be required including a statement of the student's present levels of academic achievement and functional performance, measurable annual academic and functional goals, and the special education and related services that will be provided to the student to enable them to achieve their IEP goals and make progress in the general education curriculum.**

#### ***ii. Least Restrictive Environment***

**The IDEA requirements related to the least restrictive environment (LRE) apply to the education of students with disabilities in residential facilities or treatment programs. IEP teams must make individualized placement decisions. The LEA must provide a continuum of services and alternative placements to ensure the needs of students with disabilities are met (34 CFR §300.115).**

### ***C. Enrollment/Child Count***

**Enrollment of a s**Students in **a** residential facility**ies or treatment program is conducted by the LEA in the same manner as enrollment for students residing within boundaries of the** ~~will be enrolled in the LEA in the same way as other resident students of the LEA. In a~~**Additionally,** students in

residential facilities or treatment programs ~~will be~~ are included in the Child Count ~~in the same way as other resident students of the LEA.~~

#### ***~~D.~~ D. Secondary Transition***

LEAs must comply with all IDEA secondary transition requirements to facilitate an eligible student's move from secondary education in the residential facility or treatment program to appropriate post-secondary education or employment. ~~Students placed in residential facilities are entitled to receive secondary transition services as required by applicable through IDEA. However, a~~ Students placed in an adult prisons or jail, and whose eligibility will end due to exceeding the ~~because of their age of eligibility for FAPE or before being released, from prison based on in consideration of their sentence, are~~ is not eligible for required by IDEA to receive secondary transition services through IDEA.

#### ***~~E.~~ E. Residential Facility or Treatment Program Shortened School Day***

The LEA and the IEP team should ~~be cautious if~~ use caution when shortening a student's school day beyond the residential facility or treatment program's abbreviated day ~~for all students within the Residential Treatment Facility.~~ Shortening the a student's day ~~will~~ may limit the student's ability to make adequate progress towards their IEP goals and may limit the student's access to the general education curriculum. If ~~the~~ a student's IEP team determines a the need to shorten the student's instructional day in a residential facility, then it the decision must be made in collaboration with the ~~licensed physician, psychiatrist, and/or licenced~~ providing psychologist providing treatmenting for the student's mental health needs, and other agency staff involved in the child's care.

Before making the determination to shorten a student's already abbreviated school day, the student's ~~The~~ IEP team should consider all other options and document the reasons why these options ~~were~~ are 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~~ A Functional Behavioral Assessment (FBA) must be conducted, and a Behavior Intervention Plan (BIP) developed prior to shortening a student's day due to behaviors. This ensures ~~to make certain appropriate means~~ measures have been developed and implemented ~~attempted to intervene and reduce the maladaptive behaviors.~~

The OSDE-SES requires a student's IEP team to document that an FBA has been conducted and a BIP is in place in order to finalize an IEP when shortening the student's day/week due to behavioral concerns. A reintegration plan must also be developed to address an increase to the student's instructional time consistent with the other students in ~~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 or treatment program. It is recommended to monitor and review that the reintegration plan~~ be monitored and reviewed frequently ~~in an~~ by the IEP team ~~meeting to determine whether a shortened~~ ed day continues to be necessary. See Chapter ~~10-12.~~

~~“Behavior”~~ **“Discipline Guidelines and Protections”**, 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.~~

## **F. F. Student Transfers**

**LEAs must have policies and procedures in place to ensure all pertinent records of students with disabilities who move to and from facilities or programs are transferred as quickly as possible. LEAs must take reasonable steps to expeditiously transmit the records to ensure that the student's transition to or from the residential facility is as smooth as possible.**

When a student transfers from one facility **or program** to another within the same state, the **receiving** new LEA is responsible to **for providing** the student with **a** FAPE and **related** services ~~that are as~~ described in the IEP from the previous LEA. The services must be comparable to the services described in the student's **current** IEP **and address** ~~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 **or programs** and/or districts are at greater risk ~~for~~ **of dropping out of school**. Similarly, ~~these same~~ students are at greater risk **of failing to not** earn credit, which ~~in turn may~~ delays graduation or further increase the risk of dropping out. **When a student transfers to another facility or program the sending district should include a copy of** ~~It is best practice to review the student's transcript and~~ **along with** withdrawal grades **upon transfer to the receiving school**. ~~For example, if enrolling mid semester, When possible, the receiving district should enroll the student in the same core courses~~ **the student was previously enrolled in to** ~~which will allow the student to complete the courses and earn credits toward graduation. Upon the student transferring to another LEA and/or facility, the resident sending district should include a copy of the transcript along with withdrawal grades in the forwarding paperwork to the new receiving district.~~

## **Section 4. Shelters, Group Homes, and Residential Child Care**

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 **a 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~~
- ~~● 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~~

## **A. Children's Shelter**

When a child is admitted to a shelter the child is provided with education services as soon as practicable, through enrollment in a public school or an alternative program consistent with the needs of the child. Pursuant to [10A O.S. § 1-9-111\(E\)](#), OKDHS may:

- (1) assist local school districts in providing an education to children in OKDHS operated facilities;
- (2) supplement the education; and
- (3) provide facilities for these purposes ([10A O.S. § 1-7-103](#))

## **B. 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 or individual. ~~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 is responsible for~~ Child Find and providing IDEA services to eligible students with disabilities who have not obtained a standard 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 delivery.

## **C. Community-Based Residential Services**

Community-based 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~~ Community-based residential services are provided to children and youth with the more severe behavioral issues that currently do not need hospitalization nor a psychiatric residential treatment center. These services are provided at differentiated levels, based on the needs of the child.
  - ~~Contracted Level~~ D+, E, and E+ group home placements are designed to serve the special needs of children and youth in DHS custody with ~~Conduct Disorder,~~

~~Oppositional Defiant Disorder, trauma, and~~ **emotional, behavioral and other disorders** 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 **fulfilling** ~~children who are admitted to Level E+ placements for~~ Child Find obligations and FAPE for children with disabilities **residing in a group home placement**. The LEA is responsible for contracting with the child-placing agency or the residential child care facility to provide on-site 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~~ **in Part 1 of this chapter** 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)-(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 on-site 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 group home** 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 **fulfilling** Child Find obligations and FAPE for children with disabilities **residing in a group home**. The LEA is responsible for contracting with the child-placing agency or the residential child care facility to provide on-site 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~~ **in Part 1 of this chapter** 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 fulfilling children who are in this residential program for Child Find obligations and FAPE obligations for children with disabilities residing in a group home. These students will attend school on campus. All requirements under this chapter for Section in Part 1 of this chapter 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 4. 5. Detention Centers and Residential Treatment Programs Facilities for Juvenile Offenders**

A student detained, held, or arrested for any offense under any provision of the Juvenile Code or Criminal Code of this state, must be identified for educational needs and afforded educational opportunities within seventy-two (72) hours of detention or arrest. This includes the detention or arrest of a student in city, county, and state jails, holding facilities, and juvenile or correctional institutions (10A O.S. § 2-5-301)

### ***i. Definition***

#### **A. Educational Program Requirements**

In Oklahoma, A correctional institution or correctional facilities that serve as placements for juvenile offenders are referred to as secure care facilities or treatment programs. This includes refers to juvenile justice treatment programs, detention facilities, and secure group homes. jails, and prisons are correctional facilities, however, a juvenile offender may be detained in a municipal or county jail for certain crimes or if a juvenile detention center placement is not available. where students with disabilities are, or may be, confined. Additionally, students with disabilities are defined in 34 C.F.R. § 300.8.

Under Oklahoma law, youth under the age of 18 who are determined to have committed certain crimes are not “convicted” of those crimes, but rather adjudicated delinquent by the juvenile court. However, some students residing in a secure treatment facility have been convicted as an adult and have been sentenced under the Youthful Offender Act.

### ***i. ~~ii.~~ Interagency Agreements***

When a student is placed in a detention center, secure care facility or a treatment program correctional facility, it often requires ongoing cooperative collaboration is required between the multiple agencies responsible for the care, welfare, and education of the students. The interagency agreements allow the sharing of information between programs and representatives of the juvenile courts systems, law enforcement, social services, probation, and prosecution. These agreements outlines each party's responsibilities for the safety, welfare and education of youth placed in a facility. The LEA should must 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, except when the LEA is presented with there is a judicial order for records. For information on who can serve as the parent see Chapter 9. 11. “Procedural Safeguards.”

### ***~~ii.~~ ~~iii.~~ Educational Services***

LEAs are responsible for providing special education and related services to eligible students with disabilities in detention centers, secure care facilities and treatment programs the correctional facilities located within the boundaries of their district, unless the program or facility is accredited as an LEA through with a school accredited by the Oklahoma State Department of Education. Students residing within the in a detention center, secure care facility or treatment program correctional facility will work towards meeting the graduation requirements for a high school diploma of the state. For more information about when a student is no longer entitled to special education services, see Chapter 7. “Non-Discriminatory Practices”, Section 1. “Discontinuation of Special Education Services.”

Each school district that includes with a jail, detention center, secure care facility or juvenile treatment program correctional facility within the district's boundaries shall designate an employee or employees of the school district who will to be responsible for overseeing the educational services to eligible juveniles or adult students identified by the facility. While residing in the facility or program incarcerated, the student shall be considered a resident of the school district where the correctional facility or program is located. The LEA and State of Oklahoma must ensure that FAPE is provided to all eligible students residing in a detention center, secure care facility, treatment program, or adult correctional facility, regardless of the type of facility or the nature of their offense.

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. § 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 (**10A O.S. § 2-5-301**). 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.~~

### **G. Adjudicated ~~iii.~~ Students Returning to their Home District ~~from a Detention Center, Treatment Program or Secure Placement~~**

A student on a current IEP who has been adjudicated for violent crime must **continue to** be provided FAPE **as when** they return to their home district. **However,** pursuant to 70 O.S. § 24-101.3(F) the IEP team may elect to ~~not~~ provide education services **in outside** the ~~general education~~ 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. **The student may be served through an alternative school setting, home-based instruction, or other appropriate setting.**

70 O.S. § 24-101.3(F) 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."*

## **B. Treatment Program Types**

### ***iii. i. Juvenile Detention Centers 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 detention facility ~~operated by the Office of Juvenile Affairs (OJA)~~ must receive ~~their~~ the special education and related services specified on the student's IEP. The LEA where the facility is located is ~~responsible for providing~~ esing FAPE to students with disabilities and fulfilling Child Find obligations.

### ***ii. Office of Juvenile Affairs Group Homes (Level E)***

Office of Juvenile Affairs (OJA) group homes are community-based rehabilitative treatment programs for youth who have been adjudicated as youthful offenders (YO's) or delinquents and placed into OJA custody. The group homes provide a highly structured environment where youth in the custody of OJA receive therapeutic treatment, education, medical care, recreation, independent living, and social skills. OJA works with contracted partners in these staff-secure residential facilities. The LEA where the facility is located is responsible for providing FAPE to students with disabilities and fulfilling Child Find obligations.

### ***~~iv.~~ iii. 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 a 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.~~ A secure care facility refers to a facility which is designed and operated to ensure that all entrances and exits from the facility are controlled by the staff of the facility, limiting the movement of the residents within the perimeter of the facility. These facilities rely on locked rooms, buildings, and fences to confine the residents.

Students eligible for special education services who have an IEP and who are in a secure 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. The Oklahoma Youth Academy (OYA) is the LEA that provides educational services to students residing at the Central Oklahoma Juvenile Center (COJC).

#### ~~v. Community~~ **iv. County/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 or prison 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.~~

Each LEA with a city, county or state jail within its boundaries is responsible for educational services to students in jail facilities located within the boundaries of a school district and for ensuring FAPE is made available to all eligible students with a disability. The provisions of 10 O.S. § 1-113(G) addresses the LEA's responsibility for educational services to students in jail.

An LEA with a jail within its boundaries must designate an employee to be responsible for ensuring that eligible students identified by the jail receive educational services. The LEA designated employee must provide the jail with information regarding the LEAs requirements for providing educational services to eligible students (OAC § 210:10-1-13(G)(2)).

The LEA is responsible for providing education services to a student in jail and must develop an education plan. The plan must include instruction in the core subjects and be designed for the possible reintegration of the student into their home school. These requirements should correspond with 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 student's plan must be provided to the jail and to the student. A copy must be kept on file by the school district. The educational plan shall also include the procedures the school district and the facility will utilize to provide educational services to the student and will address the acquisition of academic credit for completed coursework (OAC § 210:10-1-13(G)).

Every agency, at any level of government, involved in the provision of special education and related services to students with disabilities in correctional settings must ensure the provision of FAPE; including State and local adult correctional facilities (34 CFR §300.2(b)(1)(iv)). Interagency agreements or other methods will assure coordination between the LEA and the facility so that it is clear which agency or agencies are responsible for providing or paying for the services necessary to ensure FAPE for students with disabilities in correctional facilities (Dear Colleague Letter (December 5, 2014)).

~~vi.~~ **v. Adult Correctional Facilities**

With regard to IDEA, the term prisons refers to state facilities not Federal ~~under the~~ Bureau of Prisons facilities. IDEA is not applicable to federal prisons. In Oklahoma, the Department of Corrections (DOC) has its own LEA; thus, the LEA where a prison is located is not responsible for the education of students residing in DOC facilities. The DOC LEA is referred to as the Lakeside School District.

~~The LEA where the 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)).~~

**IMPORTANT NOTE:** This exception ~~does not~~ apply where:

- ~~• 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~~
- ~~• 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)(iii)).~~

~~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)), 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.~~

## Section 1. Orphanages

## Section 16. Foster Care, Hospitalization, and Partial Hospitalization/Day Treatment

### **A. Foster Care Programs**

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.

#### **i. Foster Parent ~~vs~~ and Biological Parents Participation**

~~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, **When a child is in foster care placement** the LEA must ~~reach out to~~ contact the biological or adopted parents to **invite them to** participate in the IEP meeting if **unless** the parents' rights have **not** been terminated, even ~~though~~ if the child is **only** temporarily in the State's custody **and** living in foster care **(Federal Register Vol. 71, No. 156, 46565, 34 C.F.R. §300.30.(b)(1))**. 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~~). **The** LEAs ~~will~~ **may** need to communicate directly with the DHS and document **any** attempts to contact the biological or adopted parents. **When a surrogate parent is necessary, a foster parent may act in place of the parent to represent the child's educational**

interests. DHS employees and other public agency employees may **not** act in place of a parent or sign an IEP. Volunteers, who serve as surrogate parents for children in placements other than foster care, are required to complete training through the Oklahoma State Department of Education” (OAC 340: 75-6-50(f)). 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.

#### ii. Tribal Foster Care

falls under the Oklahoma tribes’ are responsible for certifying tribal foster care homes for Native American children who have been removed from their own home. OKDHS follows all complies with the 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 members. If the a family member is not available, then tribal members from the child’s tribe would be are considered. Indian Tribes may also 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.

A Tribally Controlled School is a school that “*receives a grant under the Tribally Controlled Schools Act of 1988, as amended (25 U.S.C. § 2501 et seq.) or is determined by the Secretary to meet the eligibility criteria of section 5205 of the Tribally Controlled Schools Act of 1988, as amended (25 U.S.C. § 2504).*” A Tribally Controlled School may be operated by an Indian Tribe or a Tribal organization that enrolls students in PK-12 grades. A Tribally Controlled School is not a local education agency and is not directly administered by the Bureau of Indian Affairs and (BIE). Tribally Controlled Schools 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).

#### iii. Interstate Compact on Placement of Children (ICPC):

There are times An interstate compact may occur When a states cannot find an appropriate placement for a child/youth in their home state and However, there exists an appropriate out-of-state placement with a family member or other close relatives with whom 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” foster care or possible adoption. If the a~~ 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, ~~is~~ 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 are provided.

#### iv. Specialized and Therapeutic Foster Care

~~Other Foster Care:~~ There are ~~o~~Other types of foster care options are available when the traditional foster family care placement ~~is~~ does not meeting the child’s needs. These placements include such as:

- **Specialized Foster Care** is a residential placement that provides 24-hours a day ~~substitute~~ temporary care and supportive services in a home environment for children who have a primary diagnosis of Intellectual Disability and are three years and older.
- **Therapeutic Foster Care (TFC)** is a residential behavioral management service provided in a foster care 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.

#### v. Residential Exceptions for Students in Specialized or Therapeutic Foster Care

~~When an LEA is unable to provide the educational program for students with disabilities placed in therapeutic or specialized foster care facility located within the LEA of residence, the Oklahoma State law provides an exceptions:~~

- ~~70 O.S. § 1-113(C) states, “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.”*

To ensure a child placed in a therapeutic foster family home receives FAPE, a receiving LEA is not required to enroll the child if the enrollment of that child would cause the proportion of students in therapeutic foster family homes, compared to the average daily membership of the receiving LEA for the preceding school year, to exceed two percent (2%). However, an LEA may enroll a child placed in a therapeutic foster care home and exceed this limit if the LEA determines it can provide FAPE to the child (70 O.S. § 1-113(C)). It is recommended that LEA's serve all students with disabilities residing in the district even if it were to exceed the 2% cap as stated in the Oklahoma law, due to possible litigation of not complying with the federal IDEA. If the LEA is unable to serve the child with a disability who was placed in a therapeutic foster family home, then it is recommended to seek an IEP Service Agreement with another LEA who is able to serve the child with a disability.

~~Based on 70 O.S. § 13-103, When the an~~ 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 an LEA with a program~~ 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 (70 O.S. § 13-103). See Chapter ~~12-~~ 14. "Transfers and Move-In Students" for more information regarding IEP Service Agreements.

#### **vii. The Uninterrupted Scholars Act (USA)**

The Uninterrupted Scholars Act (USA) is a 2014 amendment to FERPA. This amendment creates an exception under FERPA that allows education programs, including LEAs, to release a child's educational records to child welfare agencies without the prior written consent of the parents. This amendment permits release of early intervention records to "an agency caseworker or other representative of a State or local child welfare agency, or tribal organization" who has the right to access a child's case plan, and when the agency or organization is "legally responsible" for the child's "care and protection." The USA eliminates the requirement that education agencies notify parents before education records are released pursuant to a court order to any individual, when the parent is a party to the case where that order was issued. See Chapter 11, Procedural Safeguards, Section 6. Confidentiality and Access to Records for more information.

## **B. Inpatient Hospitalization**

Students who are placed in inpatient hospitalization must continue to receive special education and related services while **hospitalized 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~~ **provides** 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. **LEA is required to apply to the OSDE for approval of an abbreviated school day in order for the students to meet the minimum 3 hours of treatment.**

**Though** ~~There~~ **is** a difference **between** ~~in~~ a psychiatric hospital and a psychiatric residential treatment facility. ~~Both~~ **both** placements are considered a residential facility, **and** ~~Both~~ **both** placements or facilities must adhere to FERPA and HIPPA guidelines **requirements**. 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~~ **illness**, 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 on-site educational services, Child Find obligations, and FAPE for students with disabilities when they are admitted for inpatient treatment.

Inpatient hospitalization and partial hospitalization have many commonalities and very few variations to distinguish the two. The chart explains their likenesses and differences.

Inpatient Hospitalization	Partial Hospitalization
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. Partial Hospitalization/Day Treatment

### C. Partial Hospitalization/Day Treatment Programs

A partial hospitalization day treatment programs, and day hospital programs are is an outpatient placement settings where children and youth ~~are stepping down from inpatient hospitalization or residential care yet need more~~ receive intensive treatment beyond the regular usual outpatient treatment ~~counseling sessions~~. These programs are defined as nonresidential settings/facilities in which school-age children are placed for psychiatric or psychological treatment which precludes their attendance at a regular public school. The children and youth ~~are able~~ 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 OAC 210:35-31-2. ~~As mentioned in the section above for inpatient hospitalization, Standards for on-site educational services in Oklahoma (70 O.S. § 3-104.7(B), (C)) state that a~~

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. ~~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 (70 O.S. § 3-104.7). These standards are established for students ages three (3) through twenty-one (21) years of age (70 O.S. § 3-104.7, OAC 210:35-31-1). Each LEA or state accredited private school 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 program facility (210:35-31-3(d)(2))(70 O.S. § 3-104.7).

~~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.~~

When a child is admitted to a partial hospitalization that is located outside the child's residency, the student is considered a resident of the LEA where the facility is located 70 O.S. § 1-113(6). Eligible students who are placed in a partial hospitalization program must also continue to receive special education and related services while in the 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 must provide 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 eligibility, reevaluations, and IEP timelines for students who are receiving special education and related services (210:35-31-3(d)(2)). The requirements for the provision of education services in these programs is delineated in OAC 210:35-31 and as provided herein.

## **1. Educational Services in Partial Hospitalization and Day Treatment Programs**

The LEA and the partial hospitalization or day treatment program must enter a written contractual agreement annually. The contractual agreement must specify the conditions for the provision of educational services between the LEA and the facility and 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 (OAC 210:35-31-3).

### **~~A. Instructional Day within a Partial Hospitalization~~**

#### **a. Local Plan**

- i. The LEA or state accredited private school providing onsite educational services in partial hospitalization programs and day treatment programs for children between the ages of three (3) and twenty-one (21) must develop a local plan for educational services in day treatment programs. The local plan shall address all required areas of educational services including teacher certification; the number of hours taught the adequacy of educational facilities; and educational plans, including plans for transition into the regular school setting (210:35-31-3 (A)).
- ii. The facility providing the treatment program must develop a local plan for onsite educational services. The plan shall provide that the educational services are provided directly by the school under the supervision of the LEA. Class size and student/teacher ratios specified in the plan shall comply with state accreditation standards and allow for conditions conducive to effective learning. The curriculum, program structure, student interaction, and reinforcement strategies

must comply with state accreditation standards and allow for individualization. The plan shall reflect collaborative efforts between school personnel, facility staff, other public agencies, and the parents/guardians. The plan must provide teaching staff with adequate time for instructional planning, preparation, and consultation with facility staff and parents/guardians (OAC 210:35-31-3 (B)).

iii. Contractual agreements must be jointly developed by the school and treatment program and signed by representatives with the authority to represent the governing boards. The services shall be provided pursuant to contract and in accordance with applicable standards and laws. The agreements shall address financial responsibilities and the services to be provided by each party. The contractual agreement for educational services shall include requirements for teacher certification, number of hours taught, adequacy of facilities, and educational plans, including plans for transition into regular school settings (OAC 210:35-31-3 (C)).

iv. Local plans and contractual agreements shall provide assurances that procedures for maintenance and disclosure of students' education records, including a procedure for expeditious exchange with properly authorized persons, shall be in accordance with the Family Education Rights and Privacy Act. The agreement will provide assurances that procedural safeguards shall be followed for eligible children with disabilities in accordance with the Individuals with Disabilities Education Act (IDEA), which includes the requirements for Individualized Education Programs (IEPs) and placement in the least restrictive environment (LRE), and with Section 504 of the Rehabilitation Act (OAC 210:35-31-3 (D)(1)).

Upon finding that the eligible student requires special education and related services the student's district of residence must be notified immediately. They must be notified as to the time, date and location of meetings for the purposes of planning the student's IEP and subsequent reviews. A facility representative present may attend the IEP meeting to advise the team of concerns or information the facility has regarding the student's educational needs and eligibility for related services. The facility and the providing district shall coordinate with the student's school district of residence for the development of the IEP. 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 children who are eligible from sources other than the school district (OAC 210:35-31-3 (D)(2)).

v. A student is considered a resident of the LEA where the facility is located (70 O.S. § 1-113). State aid for educational services by accredited schools shall be in accordance with the provisions of 70 O.S. § 18-110 (OAC 210:35-31-3 (E)).

- vi. Each individual or entity operating a partial hospitalization or day treatment programs is required to develop a local plan and contract with the LEA to provide educational services. The program must notify LEA board of education of LEA where the program is located of the anticipated educational needs prior to locating a facility or treatment program within the LEA boundaries. An LEA is not required to provide educational services to participants in the program until at least ninety (60) calendar days have elapsed from the time in which the LEA was notified of the need for education services. However, the school district may agree to provide the educational services prior to the sixty (60) day notice (OAC § 210:10-1-31-3(F)).

**b. Teacher Certification**

- i. Teachers must be certified by the Oklahoma State Department of Education. For certification purposes, a certified teacher qualified to teach in a school district's educational services in day treatment programs may teach subjects in which the teacher does not hold certification. The LEA's board of education must make an application to the State Department of Education for this exception. This exception is only for purposes of teaching in the on-site educational services in the day treatment program (210:10-1-31-4(1)). The district's Application for Accreditation serves as the application for this purpose. Original copies of the application and teacher certificates must be on file at the school district administration office and copies maintained at the building site level (210:10-1-31-4(2)).

**c. Number of Hours Taught**

- i. The day treatment partial hospitalization program must ensure that students receive a minimum of three (3) hours of instruction on regularly scheduled school days. This must be documented in the educational component of the treatment plan. Exceptions to the minimum hours of instruction may be made for verifiable reasons in the interest of the child. Such exceptions must be documented and supported by recommendations from the attending licensed psychologist, physician, and/or psychiatrist, as well as the treatment team with input from the educational staff of the school. It is the responsibility of the day treatment program to develop and implement an individualized treatment plan that meets the State standards and professional guidelines (210:10-1-31-5(1)).
- ii. *Instruction for students must be tailored to their individual needs and focus on reintegrating them into a six (6) hour school day. The educational program for qualified students with disabilities must comply with the IEP provisions as mandated by state and federal regulations (210:10-1-31-5(2)).*

- iii. Upon application of a school district, the State Department of Education will permit an abbreviated day schedule for students receiving education in a day treatment facility within the district. A student receiving services in a day treatment facility within the district who attends for a full abbreviated day shall be counted in attendance for purposes of computing average daily membership for the district. [70 O.S. § 1210.567] (210:10-1-31-5(3))
- iv. The district's Application for Accreditation serves as the application for this purpose. Original copies of the application and teacher certificates must be on file at the school district administration office and copies maintained at the building site level (210:10-1-31-5(4)).

**d. Adequacy of Facilities**

- i. The educational facilities and classrooms must comply with the accreditation standards set by the State Board of Education, along with the other existing standards that apply to partial hospitalization programs, day treatment programs, and day hospital programs for children. Relevant safety and health standards must be followed.(OAC 210:35-31-6).

**e. Educational Plans (OAC 210:35-31-7)**

- i. The day treatment program is responsible for creating an individualized treatment plan for each child, which is reviewed and updated regularly as needed. This plan should include specific service strategies to address the child's issues, detailed plans for integrating the child back into their home and community, and collaboration with the educational system to ensure a smooth transition back into school. These efforts should involve clear communication and coordination with various programs, agencies, parents/guardians, and school districts to ensure the best outcome for the child (OAC 210:35-31-7 (A)).
- ii. The educational plan shall be developed by the educational staff and the treatment team. A procedure must be established to provide teachers and other designated representatives of the school the opportunity to communicate recommendations and participate in the planning and decision-making process for coordination between the educational plan and the treatment plan. The school maintains the authority and responsibility for the educational plan (OAC 210:35-31-7 (B)).
- iii. The individual needs of the child shall determine the appropriate curriculum, instructional time, and educational setting in the educational plan (OAC 210:35-31-7 (C)).
- iv. The educational plan shall be in effect no later than ten (10) days from enrollment (OAC 210:35-31-7 (D)).

- v. The educational plan for eligible children with disabilities shall be in accordance with the IEP, as required by Federal regulations and State standards. (OAC 210:35-31-7 (E)).
- vi. Students enrolled in an LEA's on-site educational services must be afforded the same opportunities to receive schoolwide progress reports, grade cards, and transcripts as other enrolled students in the district. These students must have the same opportunities for admission, promotion, retention, graduation, proficiency-based promotion, and high school equivalency certificates as their peers (OAC 210:35-31-7 (F)).

~~The 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, Computer Education or World Language and Arts 70 O.S. § 11-103.6v2(D)) 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.~~

### **C. Residency and Transportation**

~~According to 70 O.S. § 1-113(6) by adding a provision to the residency statute "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. § 3-104.7(A) and (B)).~~

~~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.”~~

## **Section 7. Parental Rights and Participation for Foster Care and Residential Programs**

### **H. A. 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.

## ***Parent Participation***

### ***i. Parent Participation***

Under the IDEA, parents do not lose their rights when their child is placed in a residential facility or treatment program, even if the child has been convicted as an adult and incarcerated in an adult prison. Unless a parent's legal rights have been terminated by the courts, the LEA must fulfill their obligation to contact the parent and provide the parent the opportunity to participate 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 or treatment programs. LEAs should offer opportunity for participation via phone conference, or virtual/remote means, including various location options. 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. 11. "Procedural Safeguards" regarding parents' rights.

If neither both parents decline the invitation to will attend an IEP team meeting, the LEA must document the options provided to the parents for as alternative means of participation, including and the parent's response indicating that they decline to meet. If the LEA is unable to convince the parent to attend the IEP meeting, the LEA must maintain required documentation each time the an 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 the parents with a copy of the finalized documents in addition to the Parents' Rights and a Written Notice. Refer to Chapter 9. 11. "Procedural Safeguards" regarding parents' rights.

### ***ii. Parent Participation for Students in a Residential Foster Care***

The LEA must invite biological or adoptive parents to participate in IEP meetings if the parents' rights have not been terminated, even if the child is temporarily in the State's custody living in foster care or other residential placement. Oklahoma law limits 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).

For children in foster care, the LEAs must 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. When it is necessary, for the safety of the child, that the biological parent 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.

## **✚ B. Surrogate Parent**

If a parent cannot be located to participate in their child's IEP meetings, the LEA must provide a surrogate parent. Volunteers who serve as surrogate parents for children in placements other than foster care must complete training as specified by the Oklahoma State Department of Education (OAC 340: 75-6-50(f)). A "Surrogate Parent" means is an individual appointed by the LEA to make educational decisions regarding the Free Appropriate Public Education (FAPE) of a child with a disability. The surrogate parent may represent the student in all matters relating to the identification, evaluation, and educational placement of the student, and the provision of FAPE (34 C.F.R. § 300.519).

The LEA must make reasonable efforts to ensure the assignment of a qualified surrogate parent not more than 30 days after the LEA determines that the student needs a surrogate parent. 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 ensure 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 **must** 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 software system. If the assigned surrogate parent no longer wishes to serve as the child's representative, ~~then~~ this request is will be documented and the documentation placed in the student's file. ~~honored by the LEA.~~ A written statement by the resigning surrogate parent or a statement written on the OSDE Form 10 ~~could be made~~ may be used 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~~ must be signed and dated ~~with~~ by the new surrogate parent.

If ~~the~~ a child is in foster care or a residential child care facility maintained by the Oklahoma Department of Human Services (OKDHS) ~~where~~ and the parents' rights have been legally terminated, and the child is a ward of the state, or the parent(s) cannot be located, ~~then~~ the LEA ~~will need to~~ must assign a surrogate parent if one has not already been appointed by a judge. A "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.~~ Oklahoma law permits foster parents to act in place of the parent to represent a child's educational interests (OAC § 340:75-6-50). For a child residing in a specialized foster care program, agency staff acting as the "specialized foster care" can act as a surrogate parent (10A O.S. § 1-1-105(68) and OAC § 317:40-5-55(b)(2)). However, employees of DHS or other public agencies are not permitted to act as parents or sign an IEP.

## Legal Citations

### **United States Code, Title 20: Education**

20 U.S.C. § 1400 et seq                      Individuals with Disabilities Act

### **United States Code, Title 29: Labor**

29 U.S.C. § 794                      Nondiscrimination Under Federal Grants and Programs  
(Section 504 of the Rehabilitation Act of 1973)

### **United States Code, Title 42: The Public Health and Welfare**

42 U.S.C. § 483.352                      Definitions.

42 U.S.C. § 1395x(f)                      Definitions. Psychiatric Hospital.

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

34 C.F.R. § 300.30                      Parent.

34 C.F.R. § 300.30(b)(1)                      Legal Authority of Parent.

34 C.F.R. § 300.34                      Related Services.

34 C.F.R. § 300.104                      Residential Placement.

34 C.F.R. § 300.115                      Continuum of Alternative Placements.

34 C.F.R. § 300.116(b)                      Placement Decisions

34 C.F.R. § 300.116(d)                      Consideration of Least Restrictive Environment.

34 C.F.R. § 300.519                      Surrogate Parents.

### **Oklahoma Statutes, Title 70: Schools.**

70 O.S. § 1-113                      School District Residency.

70 O.S. § 1-113(A)(6-8)                      Residency for Children Placed in a Facility.

70 O.S. § 1-113(C)                      Therapeutic Foster Care Residency Exemption.

70 O.S. § 1-113(H)                      Students Requiring an IEP

70 O.S. § 3-104.7                      Day Treatment Programs – Standards for On-Site Educational Services.

70 O.S. § 13-103                      Authorized services and transfers for children with disabilities.

70 O.S. § 24-100.3                      School Safety.

70 O.S. § 24-101.3(D)                      School Suspension.

70 O.S. § 24-101.3(F)                      Student Adjudicated or Convicted of a Violent Crime.

### **Oklahoma Statutes, Title 10A: Children and Juvenile Code**

10A O.S. § 1-1-105(68)                      Definitions. Specialized Foster Care.

10A O.S. § 1-4-904                      Termination of Parental Rights in Certain Situations.

10A O.S. § 1-7-103                      Education of Children in Foster Care

10A O.S. § 1-9-111(E)                      Children's Shelters

10A O.S. § 2-5-301                      Educational Needs During Confinement or Incarceration.

10A O.S. § 2-7-616                      Board of Juvenile Affairs - Charter school

## Legal Citations

### **Oklahoma Statutes, Title 57: Prisons and Reformatories**

**57 O.S. § 571** Definitions

### **Oklahoma Administrative Code (OAC): State Department of Education**

OAC § 210:10-1-13 Educational Services for Children in Residential Care, Treatment, or Emergency Shelter Facilities.

**OAC § 210:10-1-31** Educational Services In Day Treatment Programs.

**OAC § 210:35-31-1** Standards for Educational Services in Day Treatment Programs-Purpose.

**OAC § 210:35-31-2** Standards for Educational Services in Day Treatment Programs-General Requirements for Day Treatment Facilities.

OAC § 210:35-31-5 Number of Hours Taught.

### **Oklahoma Administrative Code (OAC): Oklahoma Health Care Authority**

**OAC § 317:40-5-55** Specialized Foster Care Provider Responsibilities.

### **Oklahoma Administrative Code (OAC): Department of Human Services**

OAC § 340:2-3-2 Definitions.

**OAC § 340:75-6-50** Education. Foster or Surrogate Acting in Place of the Parents.

### **Oklahoma Administrative Code (OAC): Department of Mental Health and Substance Abuse Services**

OAC § 450:17-5-34 Day Treatment Services for Children and Adolescents.

Moved citations below to the appropriate chapters for 8, 9 and 10

### **United States Code, Title 20: Education**

~~20 U.S.C. § 1401(9).3 FAPE — Provided at Public Expense —~~

~~20 U.S.C. § 1414(d)(1) Individualized Education Programs — Definitions —~~

~~20 U.S.C. § 1415(d)(2)(H) Procedural Safeguards Notice — Unilateral Placement by Parents —~~

~~20 U.S.C. § 1419 Preschool Grants~~

~~20 U.S.C. § 1431 et seq. Findings and Policy — Infants and Toddlers with Disabilities —~~

### **United States Code, Title 25: Indians**

~~25 U.S.C. § 2501 et seq. Tribally Controlled School — Declaration of Policy~~

~~25 U.S.C. § 2504 Eligibility for Grants~~

### **United States Code, Title 29: Labor**

~~29 U.S.C. § 794 Nondiscrimination Under Federal Grants and Programs~~

~~29 U.S.C. § 705(9) Definitions — Disability~~

**United States Code, Title 42: The Public Health and Welfare**

~~42 U.S.C. § 12101 et seq. Findings and Purpose~~

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

~~34 C.F.R. § 300.2 Applicability of this Part to State and Local Agencies.~~  
~~34 C.F.R. § 300.9 Consent.~~  
~~34 C.F.R. § 300.13 Elementary School.~~  
~~34 C.F.R. § 300.30 Parent.~~  
~~34 C.F.R. § 300.36 Secondary School.~~  
~~34 C.F.R. § 300.102 Limitation — Exception to FAPE for Certain Ages.~~  
~~34 C.F.R. § 300.129 State Responsibility Regarding Children in Private Schools.~~  
~~34 C.F.R. § 300.130 Definition of Parentally Placed Private School Children with Disabilities.~~  
~~34 C.F.R. § 300.131 Child Find for Parentally Placed Private School Children with Disabilities.~~  
~~34 C.F.R. § 300.132 Provision of Services for Parentally Placed Private School Children with Disabilities — Basic Requirement.~~  
~~34 C.F.R. § 300.134 Consultation.~~  
~~34 C.F.R. § 300.135 Written Affirmation.~~  
~~34 C.F.R. § 300.137 Equitable Services Determined.~~  
~~34 C.F.R. § 300.138 Equitable Services Provided.~~  
~~34 C.F.R. § 300.145 Applicability of 300.146 through 300.147.~~  
~~34 C.F.R. § 300.147 Implementation by SEA.~~  
~~34 C.F.R. § 300.148 Placement of Children by Parents When FAPE is At Issue.~~  
~~34 C.F.R. § 300.201 Consistency with State Policies.~~  
~~34 C.F.R. § 300.209 Treatment of Charter Schools and Their Students.~~  
~~34 C.F.R. § 300.210 Purchase of Instructional Materials.~~  
~~34 C.F.R. § 300.300 Parental Consent.~~  
~~34 C.F.R. § 300.324 Development, Review, and Revision of IEP.~~  
~~34 C.F.R. § 300.519 Surrogate Parents.~~

**Code of Federal Regulations, Title 42: Public Health**

~~42 C.F.R. § 483.352 Definitions.~~

**Code of Federal Regulations, Title 45: Public Welfare**

~~45 C.F.R. § 1302.17 Suspension and Expulsion.~~

**Oklahoma Statutes, Title 70: Schools**

~~70 O.S. § 1-106 Public Schools — Definition — What Included.~~  
~~70 O.S. § 1-113v2 School District Residency.~~  
~~70 O.S. § 1-114 Free Attendance.~~  
~~70 O.S. § 3-104.7 Day Treatment Programs — Standards for On-Site Educational Services.~~  
~~70 O.S. § 3-145.3 Powers and Duties. (Virtual Charter School)~~  
~~70 O.S. § 3-145.1 Statewide Virtual Charter School Board.~~

~~70 O.S. § 5-103 Elementary School Districts.~~  
~~70 O.S. § 11-103.6v2 State Board of Education — Adoption of Subject Matter Standards —~~  
~~Option for High School Graduation — Adoption and Approval of~~  
~~Promotional System.~~  
~~70 O.S. § 13-103 Authorized Services and Transfers for Children with Disabilities.~~

**Oklahoma Statutes, Title 10A: Children and Juvenile Code**

~~10A O.S. § 1-1-105 Definitions.~~  
~~10A O.S. § 1-4-904 Termination of Parental Rights in Certain Situations.~~  
~~10A O.S. § 2-5-301 Educational Needs During Confinement or Incarceration.~~

**Oklahoma Administrative Code (OAC): State Department of Education —**

~~OAC § 210:10-1-13(d) Educational Services for Children in Residential Care, Treatment, or~~  
~~Emergency Shelter Facilities — Contractual Agreement for Educational~~  
~~Services.~~  
~~OAC § 210:35-31-5 Number of Hours Taught.~~

**Oklahoma Administrative Code (OAC): Department of Human Services —**

~~OAC § 340:2-3-2 Definitions.~~  
~~OAC § 340:75-6-4 Child Welfare Services — Permanency Planning — Definitions.~~  
~~OAC § 340:75-11-300 Child Welfare Services — Child Welfare Community-Based Residential~~  
~~Care — Family Style Living Program, Non-Funded and Funded,~~  
~~Contracted Level B Placements.~~  
~~OAC § 340:75-11-330 Child Welfare Services — Child Welfare Community-Based Residential~~  
~~Care — Non-Funded and Funded Level C Placements and~~  
~~Children Served.~~  
~~OAC § 340:75-11-350 Child Welfare Services — Child Welfare Community-Based Residential~~  
~~Care — Contracted Level D Placements and Children Served.~~  
~~OAC § 340:75-11-360 Child Welfare Services — Child Welfare Community-Based Residential~~  
~~Care — Contracted Level D Plus (+) and Level E Placements.~~

**Oklahoma Administrative Code (OAC): Department of Mental Health and Substance Abuse Services —**

~~OAC § 450:17-5-34 Standards and Criteria for Community Mental Health Centers — Optional~~  
~~Services — Day Treatment Services for Children and Adolescents.~~

## CHAPTER 9. 11. 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 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 agency, 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 under the paragraphs (a)(1) through (4) of this section 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’ 34 C.F.R. § 300.30(b)(2).”

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 have the legal authority to make educational decisions for the child (34 C.F.R. § 300.30(b)(1)). If the biological or adoptive parent does **not** have legal authority to make educational decisions for the child, then the LEA should obtain documentation of that determination and who has been given legal authority to make decisions on behalf of the child.

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 Letter to Cox August 21, 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. In some instances, the LEA or a judge must appoint an individual as a surrogate parent to make decisions regarding the FAPE of a student with a disability as required by the IDEA. 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 the OSDE-SES website.
- 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 is not required to invite other individuals to the student's IEP meetings. However, the surrogate parent may 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 another 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 C.F.R. § 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 documented ~~with~~ in 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. However, if it is determined the student is unable to carry out their IDEA rights, the parent/guardian may seek out other options to assist their student, including guardianship, power of attorney, supported decision making, appointment of a surrogate parent, or other similar options.

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 reached 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, September 4, 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 6. “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)).

- 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.
- 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)). The LEA must send the parent a Written Notice of the proposal to initiate a reevaluation prior to starting the evaluation process. Refer to Chapter 4- 5. “Evaluation and Eligibility”, Section 5. “Parent Consent” for more information.
- Administer an evaluation, assessment, or screener to all students in that grade level.
- 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 determines 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 for Meeting” form **to document steps of notifying the parent early enough to ensure they have an opportunity to attend and scheduling the meeting at a mutually agreed on time and place (34 C.F.R. § 300.322)**. 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 **or** the LEA is unable to persuade the parent to attend. 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 **or** the LEA was unable to persuade the parent to attend the meeting. 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 LEA was unable to persuade the parent to attend the meeting **or** the parent did not respond to their request to participate in the determination of the initial eligibility and for obtaining their input in the development of an IEP, as well as their written consent regarding 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 the LEA is unable to persuade the parent to attend **or** the parent fails to respond to reasonable measures taken by the LEA to convince the parent to participate in a meeting to obtain written parental consent to gather additional data for the reevaluation, then the LEA must send a Written Notice regarding the proposal for the reevaluation prior to gathering new information or administering the evaluations. The LEA must record its attempts to gain consent by documenting their parent contacts through means such as telephone calls made or attempted, email correspondence sent, or visits made to the home or place of employment, etc. and at least one of the two contacts must be the Invitation for Meeting form sent to the parent. These types of parent contacts are required to document the steps the LEA has taken to ensure that one or both parents of a child with a disability are present at each IEP meeting, including the meeting discussing the reevaluation process, by notifying the parents of the meeting early enough to have an opportunity to attend and scheduling the meeting at a mutually agreed on time and place, including detailed records of phone calls, emails, etc. attempted and the results of those attempts (34 C.F.R. § 300.322). If after several documented attempts to obtain the parental consent for the reevaluation with no response from the parent or the LEA is unable to convince the parent to participate in the meeting regarding consent for the reevaluation, the LEA may proceed with the reevaluation (34 C.F.R. § 300.300(c)(2) and § 300.322(d)).

NOTE: The LEA **is** unable to convince the parent to participate in a meeting to discuss the need for additional assessments for the reevaluation or the parent failing to respond is not the same as the parent declining to sign consent for the reevaluation.

### ***E. Revoking Consent***

A parent or adult student has the right to revoke consent for the continued provision of special education and related services at any time. The parent or adult student must submit in writing the request to revoke consent for special education and related services. Services cannot be revoked in part; therefore, the request for revocation would forfeit **ALL** special education services, related services and 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
- A parent request to convene an IEP team meeting.

### **Other Circumstances**

The LEA must provide Written Notice and enough information, so the parent is able to fully understand the LEA's proposed action or refused action for the decision if/when (not an exhaustive list):

- When the evaluation group determines that additional assessments are not required during 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 the LEA had not previously provided a 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. 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; parents may choose from the list or select their own qualified examiner to conduct the IEE based on the LEA's IEE criteria.

- 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 evaluation conducted by the LEA was appropriate, the parent and/or adult 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. [OSEP Letter to Parker \(February 20, 2004\)](#) stated, "It is not inconsistent with IDEA for a district to publish a list of the names and addresses of evaluators that meet agency criteria, including reasonable cost criteria. This can be an effective way for agencies to inform parents of how and where they may obtain an IEE. In order to ensure the parent's right to an independent evaluation, it is the parent, **not** the district, who has the right to choose which evaluator on the list will conduct the IEE. Therefore, when enforcing the IEE criteria, the district must allow parents the opportunity to select an evaluator who is not on the list but who meets the criteria set by the public agency. If a parent elects to obtain an IEE by an evaluator not on the public agency's list of evaluators, and the public agency believes the evaluator does not meet agency criteria or there is no justification for selecting an evaluator that does not meet agency criteria, the district may file for due process rather than pay for the IEE."

[OSEP letter to Carroll \(October 22, 2016\)](#) stated, "Furthermore, the public agency must ensure that in evaluating each child with a disability under 34 CFR §§300.304 through 300.311, the evaluation is sufficiently comprehensive to assess the child in all areas related to the suspected disability, and must identify all of the child's special needs, whether or not commonly linked to the disability category in which the child has been classified. 34 CFR §300.304(c)(4) and (6)."  
"However, the school conducted an evaluation pursuant to 34 CFR §300.502, but did not fully identify all areas needed to be evaluated. In that case, the parent has a right to ask for an IEE at public expense if the parent disagrees with the evaluation." Therefore, the parent may seek additional components through the IEE which were not addressed by the LEA's evaluation.

### ***i. Criteria for Reasonable Costs***

LEAs may establish a schedule of reasonable fees for IEEs, but at no cost to the parent. ~~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. The LEA will then consider whether to fund the entire cost of the IEE and respond without unreasonable delay. If unique circumstances do not exist, the LEA must file for hearing and demonstrate that the evaluation obtained by the parent did not meet the public agency's cost criteria for IEEs OR pay the entire cost of the IEE (OSEP Letter to Petska (September 10, 2001)).

~~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. Location***

The LEA may recommend the parent locate an evaluator within the LEA's county or neighboring counties. Evaluators outside of this area should be accepted only on an exceptional basis by the LEA if either party can demonstrate there is a unique need for a specialized evaluation and that there are no qualified evaluators within the specified area who can appropriately assess their child's educational needs. OSEP Letter to Petska (September 10, 2001) "If it is necessary for a child to be evaluated at a location out-of-district, the district may be required to pay for the expenses incurred by the parent for travel or other related costs. If the public agency believes that the requested expenses are unreasonable, it must request a due process hearing on this issue. 34 CFR §300.502(b)(2)."

## ***iii. 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.

## ***iv. 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 6. 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. The Federal Uninterrupted Scholars Act and the State of Oklahoma Quinten Douglas Wood Act (HB3469 November 1, 2014, O.S. §10A-1-6-103. Inspection of records without court order) provides additional exceptions to FERPA.

#### **The Family Educational Rights and Privacy Act (FERPA)**

The Family Educational Rights and Privacy Act (FERPA) is a federal law that protects the privacy of student education records. Any education agency, institution, or program that receives funds under a program from the U.S. Department of Education must abide by the provisions of this law. FERPA specifies that students and guardians have a right to know about the information kept as a part of their educational records.

Under FERPA, a “parent” means a parent of a child and includes a natural parent, a guardian, or an individual acting as a parent in the absence of a parent or guardian (34 CFR § 99.3). Additionally, in the case of the divorce or separation of a child’s parents, the LEA is required to give full rights under FERPA to each parent, unless the LEA has been provided with a court order, State statute, or legally binding document relating to such matters as divorce, separation, or custody that specifically revokes a parental rights (34 CFR § 99.4).

LEAs must adhere to the privacy privacy protections of the IDEA Part B regulations and the protections and exceptions under FERPA. Signed consent is needed for LEAs to share personal information with any individuals or entities that are not a part of the LEA.

FERPA allows schools to disclose those records, without consent, to the following parties or under the following conditions (34 CFR § 99.31):

- To teachers or other district officials who have a legitimate educational interest.
- To officials of another school system or school where the student seeks to enroll or has enrolled.
- To authorized representatives of the U.S. comptroller general, the federal education secretary, or state and local educational authorities.
- In connection with the application for or receipt of financial aid.
- To state and local juvenile justice systems or their officials.
- To organizations conducting educational studies.
- To accrediting organizations.
- To parents of an eligible student considered a dependent student under the Internal Revenue Code.
- In compliance with a judicial order or lawfully issued subpoena.
- In connection with a health or safety emergency.
- If designated as directory information.
- To the parent of a student who is not an eligible student or to the eligible student.
- To an agency caseworker or other representative of a state or local child welfare agency, or tribal organization, when the state or tribal organization is legally responsible for the care and protection of the student. [20 USC 1232 g\(b\)\(1\)\(L\)](#).

### **The Uninterrupted Scholars Act (USA)**

The Uninterrupted Scholars Act (USA) is a 2014 amendment to FERPA. This amendment creates an exception under FERPA that allows education programs, including LEAs, to release a child's educational records to child welfare agencies (CWA) without the prior written consent of the parents for two conditions: 1) emergency health/safety; and 2) CWA takes legal custody of the child. This amendment permits release of early intervention records to "an agency caseworker or other representative of a State or local child welfare agency, or tribal organization" who has the right to access a child's case plan, and when the agency or organization is "legally responsible" for the child's "care and protection." The USA eliminates the requirement that education agencies notify parents before education records are released pursuant to a court order to any individual, when the parent is a party to the case where that order was issued.

### **Quinten Douglas Wood Act**

Exceptions to FERPA permit disclosure of education records, including special education records, or personally identifiable, non-directory information without parent consent in connection with a health or safety emergency (34 CFR § 99.31(a)(10) and § 34 CFR 99.36).

Oklahoma House Bill 3469 expanded these exceptions with the creation of the Douglas Wood Act” 10A O.S. § 1-6-103. Inspection of records without court order.

Under this act, “The Department of Human Services or other public or private agency or individual having court-ordered custody or physical custody pursuant to Department placement of the child, or conducting a child abuse or neglect investigation of the child who is the subject of the record 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:

- a. psychological and medical records, and
- b. non-directory education records” (10A O.S. § 1-6-103(B)(3).

CWA personnel must provide the LEA with a signed “Request for Non-directory Educational Records” Form 04MP070E and must provide the LEA with a copy or a scanned/faxed image of the OKDHS current employee ID badge. Then upon receiving these two items, the LEA must release the personally identifiable information from the child’s educational record as requested by the CWA. The LEA should maintain in the student’s file the original signed “Request for Nondirectory Educational Records” form 04MP070E and the copy of the current OKDHS employment ID badge of the CWA personnel taking the record as documentation for the reason of releasing confidential information without parent consent.

## ***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 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 upon request:

- 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
- Provide a copy of the IEP at no cost to the parent (34 C.F.R. § 300.322(f)).

FERPA requires a parent be given access to the student's education record, which may include test protocols. FERPA does not require a parent be given 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.

- Upon request, the LEA discloses education records without consent to officials of another school or school district in which a student seeks or intends to enroll or is already enrolled (receiving district) if the disclosure is for purposes of the student's enrollment or transfer, if the school district responding to the records request states in its annual notification that it intends to forward records on request, or the parent or adult student initiates the disclosure.
- 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, as specified in state law.
- To comply with a judicial order or lawfully issued subpoena if the school district makes a reasonable effort to notify the parent or adult student of the order or subpoena in advance of compliance so the parent or adult student may seek protective action unless the court or agency issuing the order or subpoena prohibits its disclosure.
- 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 C.F.R. § 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 C.F.R. § 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 C.F.R. § 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 C.F.R. § 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 will be collected and maintained to document compliance.

Pursuant to 34 C.F.R. § 300.611(b), special education records are defined by the Family Educational Rights and Privacy Act (FERPA). Under FERPA, “education records” are defined at 34 C.F.R. § 99.3 as follows:

*“(a) The term means those records that are:*

*(1) Directly related to a student; and*

*(2) Maintained by an educational agency or institution or by a party acting for the agency or institution.*

*(b) The term does **not** include:*

*(1) Records that are kept in the sole possession of the maker, are used only as a personal memory aid, and are not accessible or revealed to any other person except a temporary substitute for the maker of the record.*

*(2) Records of the law enforcement unit of an educational agency or institution, subject to the provisions of [§ 99.8](#).*

*(3)*

*(i) Records relating to an individual who is employed by an educational agency or institution, that:*

*(A) Are made and maintained in the normal course of business;*

*(B) Relate exclusively to the individual in that individual's capacity as an employee; and*

*(C) Are not available for use for any other purpose.*

*(ii) Records relating to an individual in attendance at the agency or institution who is employed as a result of his or her status as a student are education records and not excepted under paragraph (b)(3)(i) of this definition.*

*(4) Records on a student who is 18 years of age or older, or is attending an institution of postsecondary education, that are:*

*(i) Made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his or her professional capacity or assisting in a paraprofessional capacity;*

*(ii) Made, maintained, or used only in connection with treatment of the student; and*

*(iii) Disclosed only to individuals providing the treatment. For the purpose of this definition, "treatment" does not include remedial educational activities or activities that are part of the program of instruction at the agency or institution; and*

*(5) Records created or received by an educational agency or institution after an individual is no longer a student in attendance and that are not directly related to the individual's attendance as a student.*

*(6) Grades on peer-graded papers before they are collected and recorded by a teacher."*

Documents such as test protocols that do **not** contain a student's personally identifiable information (e.g., protocols held separately from an answer sheet) are not considered to be education records. See [OSEP letter to Price, dated October 13, 2010](#).

Special education 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 adult 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. “[Adult] *students/parents shall be allowed at least thirty (30) days following notification to request the records before the records may be destroyed by the school district.*” (OAC § 210:35-3-47(10)).

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 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 hearing.

### ***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.

### ***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~~ **13**, "Dispute Resolution", Section 5. "Due Process Hearing Request" (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 in Special Education: Notice of Procedural Safeguards 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.

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.

Within 15 days of receiving notice of the parent's due process complaint, and prior to the initiation of a due process hearing, the LEA must convene a resolution session. The resolution session need not be held if the parent and LEA agree in writing to waive the session or agree to use the mediation process instead. The LEA should take steps to schedule a resolution session and/or seek mediation as soon as it receives the due process hearing request. 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. A 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~~-13. "Dispute Resolution."

## Legal Citations

### **United States Code, Title 20: Education**

20 U.S.C. § 1232g                      Family Education Rights and Privacy Act (FERPA)

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

34 C.F.R. § 99.3	What Definitions Apply to these Regulations?
34 C.F.R. § 99.4	What are the Rights of Parents?
34 C.F.R. § 99.5	What are the Rights of Students?
<b><u>34 C.F.R. § 99.8</u></b>	<b><u>What Provisions Apply to Records of a Law Enforcement Unit?</u></b>
<b><u>34 C.F.R. § 99.31</u></b>	<b><u>What Conditions is Prior Consent Not Required to Disclose Information?</u></b>
34 C.F.R. § 99.32	What Recordkeeping Requirements Exist Concerning Requests and Disclosures.
<b><u>34 C.F.R. § 99.36</u></b>	<b><u>What Conditions Apply to Disclosure of Information in Health and Safety Emergencies?</u></b>
34 C.F.R. § 300.30	Parent.
34 C.F.R. § 300.111	Child Find.
34 C.F.R. § 300.154	Methods of Ensuring Services.
34 C.F.R. § 300.300	Parental Consent.
34 C.F.R. § 300.301	Initial Evaluations.
34 C.F.R. § 300.302	Screening for Instructional Purposes is Not Evaluation.
34 C.F.R. § 300.303	Reevaluations.
34 C.F.R. § 300.304	Evaluation Procedures.
34 C.F.R. § 300.305	Additional Requirements for Evaluations and Reevaluations.
34 C.F.R. § 300.306	Determination of Eligibility.
34 C.F.R. § 300.307	Specific Learning Disabilities.
34 C.F.R. § 300.308	Additional Group Members.
34 C.F.R. § 300.309	Determining the Existence of a Specific Learning Disability.
34 C.F.R. § 300.310	Observation.
<b><u>34 C.F.R. § 300.311</u></b>	<b><u>Specific Documentation for the Eligibility Determination.</u></b>
<b><u>34 C.F.R. § 300.320</u></b>	<b><u>Definition of Individualized Education Program.</u></b>
34 C.F.R. § 300.321(b)	Transition Services Participants.
<b><u>34 C.F.R. § 300.322</u></b>	<b><u>Parent Participation.</u></b>
<b><u>34 C.F.R. § 300.324</u></b>	<b><u>Development, Review, and Revision of IEP.</u></b>
34 C.F.R. § 300.500	Responsibility of SEA and Other Public Agencies.
34 C.F.R. § 300.502	Independent Educational Evaluation.
34 C.F.R. § 300.503	Prior Notice by the Public Agency; Content of Notice.
34 C.F.R. § 300.504	Procedural Safeguards Notice.
34 C.F.R. § 300.512	Hearing Rights.
34 C.F.R. § 300.519	Surrogate Parents.
34 C.F.R. § 300.520	Transfer of Parental Rights at Age of Majority.
34 C.F.R. § 300.610	Confidentiality.

## ***Legal Citations***

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

- 34 C.F.R. § 300.611 Definitions.
- 34 C.F.R. § 300.613 Access Rights.
- 34 C.F.R. § 300.618 Amendment of Records at Parent's Request.
- 34 C.F.R. § 300.622 Consent.
- 34 C.F.R. § 300.624 Destruction of Information.

### **Code of Federal Regulations, Title 42: Public Health**

- 42 C.F.R. § 11434 Definitions – Homeless Children and Youths.

### **Oklahoma Statutes, Title 70: Schools**

- 70 O.S. § 24-114 Student Records and Transcripts – Storage and Disposal.

### **Oklahoma Statutes, Title 10A: Children and Juvenile Code**

- 10A O.S. § 1-6-103 Inspection of Records without Court Order.

### **Oklahoma Administrative Code (OAC): State Department of Education**

- OAC § 210:35-3-47 School Reports and Records.

## 12. Discipline Guidelines and Protections

### Section 1. Multi-Tiered System of Supports (MTSS) (MTSS Overview and MTSS Behavior moved to Chapter 3)

#### OVERVIEW

A Multi-Tiered System of Supports (MTSS) is a comprehensive continuum of evidence-based systemic practices to support a rapid response to students' needs in academic and social-emotional-behavioral (SEB) skills, with regular observation to facilitate data-based instructional decision making (20 U.S.C. § 7801(33)). 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.

Core components of OKMTSS, the Oklahoma framework, include Sustainable Teaming, Evidence-Based Practices, Data-Driven Decision Making, and Continuous Improvement Cycle. Within these components, there are essential activities that should be included in each LEA's MTSS program, including:

- Sustainable Teaming
  - Participation in professional development
  - Develop teaming structures to review data for developing intervention plans and instruction
- Evidence-Based Practices
  - Universal Screening of All Students (within specific grade levels), and
  - High-Quality Evidence-Based Instruction and Interventions
- Data-Driven Decision Making
  - Objective Decision Rules
  - Progress Monitoring
  - Regular Data Review
- Continuous Improvement Cycle
  - Evaluation of MTSS effectiveness
  - 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, using a general outcome measure, should provide staff with information on where a student is performing in relation to an expected benchmark. A general outcome measure allows LEAs to track a student's performance over time and not a onetime measurement of mastery regarding a specific skill. A general outcome measure is, for example, a curriculum-based measurement (CBM), or a common formative assessment (CFA). There are other validated instruments that are norm-referenced such as rating scales for measuring behavior (e.g., internal and external behaviors) that may also be used as a universal screening. Measures used should be predictive of future difficulties in a skill or 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 proficiency level for their grade, 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 general outcome measures as being "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 the universal supports within Tier 1 core instruction and class interventions. Tiers 2 and 3 interventions 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 as Tier 2 are considered **targeted supports** and 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, it is anticipated that approximately 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 social-emotional 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.~~

## **Section 5 [1](#). 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 law concerning out-of-school suspension (70 O.S. § 24-101.3), as well as Oklahoma’s School Bullying Prevention Act (70 O.S. §§ 24-100.2 through 24-100.5). 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, including students suspected of having 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.

LEAs are encouraged to address student misconduct through appropriate school-wide discipline policies, instructional service(s), and/or related services (see Chapter 3: Multi-Tiered System of Supports). If a student with a disability exhibits behaviors that interfere with their learning or the learning of others, an 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 as part of special factors **(34 C.F.R. § 300.324(a)(2))**. If the IEP team determines that such services are needed, they must be included in the IEP and be implemented as prescribed **(34 C.F.R. § 300.320(a))**.

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 (34 C.F.R. § 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 "Procedures for a Manifestation Determination" in Section 7-3 of this chapter.

### ***A. Informal Removals***

When students with disabilities are removed from school as a ~~results~~ **result** of behavior incident(s) without a formal suspension and without the rights extended to them under IDEA, an "informal removal" has occurred according to 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, an 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 five 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. Refer to Section ~~7~~ **3**, "Procedures for a Manifestation Determination" of this chapter for more information.

### ***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 C.F.R. §§ 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. "*

### **A+ C. 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.

An example of how the in-school suspension may count toward the 10 cumulative school day limit is as follows:

A student with an IEP has been suspended out of school this school year for a total of 6 days. The student had the following disciplinary incidents:

- The student's first suspension was in-school suspension (ISS) for **2 days**.
- The second suspension was again an in-school suspension (ISS) for **2 days**.
- The third suspension was an out-of-school-suspension (OSS) for **3 days**.
- The fourth suspension was not counted as a suspension, but the student was placed in the principal's office for the majority of the school day.
- The fifth suspension was out-of-school-suspension (OSS) for **3 days**.

If the student was placed in an in-school suspension (ISS) setting, then these days count toward the 10 cumulative days of suspension requiring a need for a manifestation determination, unless all three areas listed above were implemented to avoid counting the ISS days as days of removal. If all three areas are **not** implemented, then the ISS days count as a removal toward the 10 cumulative days. Also, whenever a student is removed from their IEP placement to remain in the principal's office for the instructional day, that action is also counted toward the 10 cumulative days (full-day, half-day, and even hourly). Therefore, in the example above the LEA may have initially thought the student was only under six days of disciplinary removal, when in fact, the student has actually been given 11 cumulative days of disciplinary removals.

### ***i. 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.

## ***G. D. 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 (34 C.F.R. § 300.530(g)). 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.

*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 pocket knife with a blade of less than 2½ inches in length.

The LEA may take disciplinary action for a student who brought a pocket knife 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.

*Serious Bodily Injury* [18 U.S.C. § 1365\(h\)\(3\):](#)

The term “serious bodily injury” means 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.

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~~ E. 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~~ F. 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 2. 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; and
- When there is a disciplinary change of placement.

### **A. FAPE Requirements in an Interim Alternative Educational Setting (IAES)**

If the student's placement will change to an Interim Alternative Educational Setting (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 3. 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 **1**, ~~(C)~~ **(D)** ~~"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 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 Use 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.

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 ~~4~~ **4**, ~~B~~ **E**. “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 reason/concern for the shortened school day/week;
- The total length of the student’s shortened instructional day/week;
- The type of services to be provided during the shortened instructional 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. If the parent refuses to sign consent for an FBA to be conducted, the IEP team may use existing information/data to complete the FBA; or if the parent does not respond or cannot be persuaded to attend a meeting to discuss the existing data refer to Chapter ~~4~~ **5**. “Evaluation and Eligibility”, Section 5. “Parent Consent”, B. “Failure to Respond or Provide Consent.”

## ***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 team must document the reason/concern for the shortened school day/week. 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 during the shortened school day/week. The IEP team would explain the total length of the shortened school day and identify specific parameters as to when the student would increase their day, including returning to a full school day schedule that is the same as their peers.

**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?**

3. 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 ~~41~~ **13**, “Dispute Resolution” for more information).

### **E. 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 (i.e., a desired behavior that meets the student’s need and produces the same outcome the student is currently gaining with the problem or inappropriate behavior). For example, if the function of the student’s behavior is escape, the student would be taught and reinforced how to request a break to learn how to appropriately escape a task demand, which will ultimately replace the problem behavior of eloping. 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. **Components of an FBA are as follows:**

- **Operational definition of behavior(s) targeted for reduction. Definition should provide examples of what the behavior might look like and non-examples of what the behavior does not look like (see below)**
- **Indirect assessment(s) – This includes parent/staff/student interview(s), rating scales, questionnaires. This should also include a review of all relevant assessment data and available **medical** information **such as medical and/or mental health.****
- **Direct assessment(s) – This includes any direct observation and data collection of behavior(s) targeted for reduction (e.g., ABC data, frequency, duration, latency, magnitude, etc.).**
- **Graph of data collected from direct assessment(s) – The graph should include line graphs with data points and include axes labels.**
- **Hypothesis statement that includes the antecedent, behavior(s) targeted for reduction, and hypothesized function.**
- **Consideration of medical concerns that may contribute to 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 (such as, escape, attention, etc.). 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 function of the targeted behavior is difficult to identify, or if the targeted behaviors are:

- severe or extreme,
- require greater individualization, or
- require a comprehensive plan of multiple targeted interventions.

Prior to conducting a Functional Behavioral Assessment (FBA), informed parental consent must be obtained (See Chapter 4. **5.** "Evaluation and Eligibility", Section 5. "Parent Consent", including (B) "Failure to Respond or Provide Consent"). 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., certified school psychologist, Board Certified Behavior Analyst-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 no longer needs 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 or more frequently as changes to the BIP are needed 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. If the behavior of a specific student does not improve through the LEA's targeted processes, the LEA is not absolved 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 obtain parent consent** 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 7.3. "Procedures for a Manifestation Determination"](#) within this chapter.

## **Section 2 [5](#). 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 does 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.).

70 O.S. § 24-100.3(4) as used in this section, "threatening behavior" means any pattern of behavior or isolated action, whether or not it is directed at another person, which indicates potential for future harm to students, school personnel or school property.

Also, 70 O.S. § 24-100.4(A) discusses the following:

- 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.
- 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.
- Nothing in this section shall be construed to impose a specific liability on any school district.

Refer to the [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. A crisis plan is an added component that will clearly outline steps that staff will take as an immediate response to student crisis behaviors that put the student or others at immediate risk of harm. The crisis plan should be developed by the IEP team,

including individuals knowledgeable about the child and at least one person who is trained in behavior crisis prevention and intervention. Crisis plans should be individualized and reviewed at least annually by the IEP team, and more often as needed. School personnel responses to student behaviors within the crisis cycle should be planned in advance, and consistently applied. The plan should include the following:

- An explicit definition of what the student's crises behavior(s) look like that are written in observable terms broken down to the point multiple people have the same understanding of each phase of the student's escalation cycle (e.g., What are the student's specific behaviors or warning behavior signs that usually precede a behavioral crisis? What specific pattern of behavior has been identified indicating the student needs an immediate intervention prior to the escalation?)
- Create a leveling of behavior interventions or actions within the escalation cycle (e.g., presenting choices, redirection, providing a break if staff have been trained on the use of the break procedure, using nonverbal cues, planned ignoring, etc.).
- Procedures regarding how school personnel will work with the student during the crisis (e.g., what to say to the student or more importantly what not to say to the student during the peak of the student's escalation?).
- Procedures to promote safety for the student in crisis, including other students and staff (e.g., clearing the room of other students, removing classroom objects that could become dangerous, etc.).
- Procedures should include who will be responsible for what action, including a back-up plan for when certain members of the school staff are not available or not in the building (e.g., Who will contact an administrator, or another identified staff member for assistance? Who will take the other children to supervise? Etc.).
- The crisis plan should include trained school employees 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.
- If the student ultimately, as a last resort, must be secluded or physically restrained due to an imminent danger of the student harming themselves or others, what procedures will occur to ensure the student's safety and the safety of the staff involved (e.g., What is operationally defined as "dangerous behavior" of the student or imminent harm in need of a seclusion or physical restraint? What are the criteria or release procedures? What specific behaviors would the student display to determine the student needed to be released? What specific data will the observer document regarding the crisis event

that will assist the team in reviewing to find patterns of behavior or to improve upon the results of the crisis plan? etc.).

- Procedures should also include specific student behavior to know how to identify that the crisis has ended and specific responses from staff members to reestablish a positive, supportive relationship with the student.
- Procedures must include information regarding notifying the parent that the crisis plan was activated, including if seclusion and/or physical restraint was used, and the results after the crisis had ended.

Note: If physical restraint is used in a crisis, the student does **not** need to be completely de-escalated for the team member(s) to release the student from a physical restraint hold and still ensure safety. It should also be noted that a crisis plan is more effective when developed using positive strategies throughout the escalation cycle and including after the incident.

All individuals working with the student must be trained on all aspects of the individualized crisis plan. Also, it is strongly recommended that all school personnel working with students prone to such severe escalations should be trained in prevention, crisis de-escalation techniques, and other alternatives to the use of physical restraint. Because some students escalate to the point of imminent danger to themselves or others, all school personnel working with students who have these types of severe behaviors should attend physical restraint training, which should be recurrent with periodic updates and result in some form of certification or credential (Refer to Section ~~3-~~ **6**, “Seclusion/Restraint, and Corporal Punishment” in this chapter for more information about seclusion and restraint training).

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.

Additionally, 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. Disciplinary actions do not need to be written within the crisis plan.

The development of a crisis plan may be an important addition for any student who experiences 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 Section ~~3~~ **6**, “Seclusion/Restraint, and Corporal Punishment”, A. “Minimizing the Use of Seclusion”, and [B. “Minimizing the Use of Physical Restraint”](#) below for more information.

## Section ~~3~~ **6**. 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., non-threatening 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)):

- A student’s actions pose an imminent danger of serious physical harm to the student or others; and not merely a threat to property;
- 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;
- 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
- 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
5. 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 Teacher of Record (TOR) of the IEP 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 or Basic Life Support (BLS) certification, 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;
- The room must be equipped with adequate 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)~~ **4(E) Functional Behavioral Assessment (FBA) and Behavior Intervention Plan (BIP)**, and Section ~~2~~ **5(B) Crisis Plans** within this chapter, plus:

- De-escalation techniques (e.g., non-threatening 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)):

- 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;
- Evidenced-based 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;
- 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 **or Basic Life Support (BLS)** (including certifications), possible effects of physical restraint, and monitoring the wellbeing of a student while being restrained; and
- 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)):

3. Under no circumstances may a student be restrained using a prone (facedown) restraint, or 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;
4. 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
5. 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 or Basic Life Support (BLS) certification, 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***

**“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 law.

The terms “**Imminent danger of serious physical harm**” and “**dangerous behavior**” refers to an impending threat of a person causing serious physical injury to self or others.

“**Mechanical restraint**” 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.

“**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)):

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](#).”

The [Civil Rights Data Collection \(CRDC\)](#) is a biennial (every other school year) survey of public schools required by the U.S. Department of Education, Office for Civil Rights (OCR), which includes data regarding the number of students with and without disabilities who were subjected to seclusion or restraint. LEAs need to maintain documentation of all seclusion and restraints to report to OCR.

### **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.”* Further, OSDE strongly encourages LEAs to prohibit any use of corporal punishment, including students with disabilities who have a 504 Accommodation Plan. Refer to [70 O.S. § 13-116](#) for additional information regarding corporal punishment. See [Chapter 3](#), Section 1. “Multi-Tiered System of Supports”, A. “MTSS Behavior” in this chapter for more information on effective evidence-based practices.

### **D. Reporting the Use of Seclusion, Restraint, and Corporal Punishment**

LEAs’ 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 (SES) 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 that OSDE-SES will make public 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).

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### **~~Section 4. Shortened Day~~**

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~~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.~~

## ***~~B. Appropriate Use 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:~~

- ~~4. An explanation of why the student's disability-related needs require a shortened day; and~~
- ~~5. 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.~~

## ***~~C. 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.~~

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### ***~~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.~~

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.

#### ***D. 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 reason/concern for the shortened school day/week;
- The total length of the student's shortened instructional day/week;
- The type of services to be provided during the shortened instructional 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. If the parent refuses to sign consent for an FBA to be conducted, the IEP team may use existing information/data to complete the FBA; or if the parent

~~does not respond or cannot be persuaded to attend a meeting to discuss the existing data refer to Chapter 4. "Evaluation and Eligibility", Section 5. "Parent Consent", B. "Failure to Respond or Provide Consent."~~

### ~~***E. 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 team must document the reason/concern for the shortened school day/week. 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 during the shortened school day/week. The IEP team would explain the total length of the shortened school day and identify specific parameters as to when the student would increase their day, including returning to a full school day schedule that is the same as their peers.~~

~~**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 law concerning out-of-school suspension (70 O.S. § 24-101.3), as well as Oklahoma's School Bullying Prevention Act (70 O.S. §§ 24-100.2 through 24-100.5). 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, including students suspected of having 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.

LEAs 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 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 (34 C.F.R. § 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 ["Procedures for a Manifestation Determination"](#) in Section 7 of this chapter.

### ***F. Informal Removals***

When students with disabilities are removed from school as a result of behavior incident(s) without a formal suspension and without the rights extended to them under IDEA, an "informal removal"

~~has occurred according to 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.~~

## ***G. Formal Removals***

### ***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, an 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 five consecutive school days requires the LEA to provide every student with an education plan designed for the eventual reintegration of the student into school.~~

### ***~~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. Refer to [Section 7. "Procedures for a Manifestation Determination"](#) of this chapter for more information.~~

### ***~~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.~~**

- ~~c. "For purposes of removals of a child with a disability from the child's current educational placement under 34 C.F.R. §§ 300.530 through 300.535, a change of placement occurs if--~~
- ~~3. The removal is for more than 10 consecutive school days; or~~
  - ~~4. The child has been subjected to a series of removals that constitute a pattern--~~
    - ~~(iv) Because the series of removals total more than 10 school days in a school year;--~~
    - ~~(v) Because the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and--~~
    - ~~(vi) 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.--~~
- ~~d.--~~
- ~~3. The public agency determines on a case-by-case basis whether a pattern of removals constitutes a change of placement.--~~
  - ~~4. This determination is subject to review through due process and judicial proceedings."~~

### ~~**LEA Actions When There is a Change of Placement**~~

~~Whenever disciplinary action results in a change in placement, the LEA must:--~~

- ~~3. 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--~~
- ~~4. Conduct a manifestation determination no later than 10 school days after the date on which the decision to take the disciplinary action is made.--~~

### ~~**H. 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 (34 C.F.R. § 300.530(g)). 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.—~~

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*~~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 2½ 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.~~

*~~Serious Bodily Injury~~ 18 U.S.C. § 1365(h)(3):*

~~The term "serious bodily injury" means 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.~~

~~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.

### **~~I. 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:

- ~~3. Demonstrate by substantial evidence that maintaining the current placement is substantially likely to result in injury to the student or others; and~~
- ~~4. 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.~~

### **~~J. 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; and~~
- ~~• When there is a disciplinary change of placement.~~

### **~~B. FAPE Requirements in an IAES~~**

If the student's placement will change to an IAES, the IEP team must select an IAES that enables the student to:

- ~~• 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 76. 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 **7.** Other Considerations

### ~~B.~~ **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 ~~11.~~ **13.** "Dispute Resolution", Section 5. "Due Process Hearing Request", and Section 6. "Expedited Due Process Hearing" 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.

## **~~D.~~ 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).

## **~~E. 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.~~

~~An example of how the in-school suspension may count toward the 10 cumulative school day limit is as follows:~~

~~A student with an IEP has been suspended out of school this school year for a total of 6 days. The student had the following disciplinary incidents:~~

- ~~● The student's first suspension was in-school suspension (ISS) for 2 days.~~
- ~~● The second suspension was again an in-school suspension (ISS) for 2 days.~~
- ~~● The third suspension was an out-of-school suspension (OSS) for 3 days.~~
- ~~● The fourth suspension was not counted as a suspension, but the student was placed in the principal's office for the majority of the school day.~~
- ~~● The fifth suspension was out-of-school suspension (OSS) for 3 days.~~

~~If the student was placed in an in-school suspension (ISS) setting, then these days count toward the 10 cumulative days of suspension requiring a need for a manifestation determination, unless all~~

~~three areas listed above were implemented to avoid counting the ISS days as days of removal. If all three areas are not implemented, then the ISS days count as a removal toward the 10 cumulative days. Also, whenever a student is removed from their IEP placement to remain in the principal's office for the instructional day, that action is also counted toward the 10 cumulative days (full day, half day, and even hourly). Therefore, in the example above the LEA may have initially thought the student was only under six days of disciplinary removal, when in fact, the student has actually been given 11 cumulative days of disciplinary removals.~~

#### ***~~F.~~ D. 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 8. 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 ([OSEP Letter to Nathan, January 29, 2019](#)).

### ***A. Parent Request for Evaluation of a Disciplined Student***

*"If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under this subsection, the evaluation shall be conducted in an expedited manner (20 U.S.C. § 1415(k)(5)(D))."* 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 (ii) "*No basis of knowledge*" 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:

- An evaluation was conducted and a determination was made that the student did not have a disability.
- The parent or adult student refused to give written consent for an evaluation.
- The parent or adult student refused/**revoked** special education services.
- If the LEA did not have a basis of knowledge that a student was a student with a disability prior to taking disciplinary measures, the student is subject to the same disciplinary measures applied to all other students who engage in comparable behaviors.

## ***B. Parents Revoking Consent***

If a parent chooses to revoke consent for special education and related services, the LEA should inform the parents in the written notice that the student will be treated as a nondisabled student for disciplinary purposes. Refer to Chapter 9- 11. “Procedural Safeguards”, Section 3. “Informed Consent”, E. “Revoking Consent” for more information.

### ***Legal Citations***

#### **United States Code, Title 18: Crimes and Criminal Procedure**

- |                  |   |
|------------------|---|
| 18 U.S.C. § 930  | Possession of Firearms and Dangerous Weapons in Federal Facilities. |
| 18 U.S.C. § 1365 | Tampering with Consumer Products. (Serious Bodily Injury)           |

#### **United States Code, Title 20: Education**

- |                           |   |
|---------------------------|---|
| 20 U.S.C. § 7801-8101(33) | <del>Strengthening and Improvement of Elementary and Secondary Schools</del> – Definitions - MTSS             |
| 20 U.S.C. § 1415(k)(5)    | Procedural Safeguards – Protections for Children Not Yet Eligible for Special Education and Related Services. |

#### **United States Code, Title 21: Food and Drugs**

- |                 |                                     |
|-----------------|-------------------------------------|
| 21 U.S.C. § 812 | Schedules of Controlled Substances. |
|-----------------|-------------------------------------|

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

- |                     |  |
|---------------------|--|
| 34 C.F.R. § 300.229 | Disciplinary Information.  |
| 34 C.F.R. § 300.530 | Authority of School Personnel.   |
| 34 C.F.R. § 300.531 | Determination of Setting.  |
| 34 C.F.R. § 300.532 | Appeal.  |
| 34 C.F.R. § 300.533 | Placement During Appeals.  |
| 34 C.F.R. § 300.534 | Protections for Children not Determined Eligible for Special Education and Related Services. |
| 34 C.F.R. § 300.535 | Referral to and Action by Law Enforcement and Judicial Authorities.                          |
| 34 C.F.R. § 300.536 | Change of Placement Because of Disciplinary Removals.  |

#### **Oklahoma Statutes, Title 70: Schools**

- |                    |   |
|--------------------|---|
| 70 O.S. § 13-116   | Corporal Punishment Prohibited on Certain Students.   |
| 70 O.S. § 24-100.3 | School Safety and Bullying Prevention Act – Definitions.  |
| 70 O.S. § 24-100.4 | School Safety and Bullying Prevention Act – Discipline of Child – Prohibition of Bullying at School and Online – Policy Requirements. |
| 70 O.S. § 24-101.3 | Out-of-School Suspensions.  |

#### **Oklahoma Administrative Code (OAC): State Department of Education**

- |                   |  |
|-------------------|--|
| OAC § 210:15-13-9 | Guidelines for Minimizing Seclusion and Restraint of Students. |
|-------------------|--|

## CHAPTER 11. 13. DISPUTE RESOLUTION

### Section 1. Dispute Resolution

On occasion, conflicts arise between Local Education Agencies (LEA) and parents and/or adult students. Several mechanisms are available through the Oklahoma State Department of Education (OSDE) to assist in resolving disputes. The processes are individualized education program (IEP) facilitation, mediation, formal state complaints, due process hearings, ~~facilitated resolution sessions, and expedited due process hearings,~~ and facilitated resolution session, as part of a due process request. 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.~~

IEP Facilitation, Mediation, State Complaint, and Due Process Hearing request forms are available on the websites for OSDE and Special Education Resolution Center (SERC) and may be submitted to either agency. ~~The OSDE accepts formal state complaints and requests for due process hearings~~ Forms may be submitted by mail, email, or hand delivery.

#### 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 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 for an IEP facilitation and/or a mediation to assist with disputes over special education issues that may develop at any time during the special education process. 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~~  
Program Manager, Regulatory Compliance  
2500 N. Lincoln Blvd.

Oklahoma City, OK 73105  
Local: 405-521-3351  
~~Facsimile: 405-522-~~  
~~2380~~ [sedisputeresolution@sde.ok.gov](mailto:sedisputeresolution@sde.ok.gov)  
[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~~  
[okserc@okstate.edu](mailto:okserc@okstate.edu)

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  
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~~ **Facilitation** is a voluntary process for which a **trained** facilitator is appointed to facilitate an IEP team meeting **at no cost to the parent, adult student, or LEA. To enter into an IEP facilitation, 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. 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.**

### 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:~~

- **IEP Facilitation request forms are available on the websites for OSDE-SES and SERC and may be submitted to either party by mail, email, or hand delivery.**

- 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.
- Requesting party completes a written request for IEP Facilitation and submits the request form to SERC or OSDE-SES.
- SERC contacts non-requesting party to determine participation in IEP Facilitation.
- SERC communicates with both parties to schedule IEP team meeting.
- ~~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

~~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. For the parties to enter into mediation, both parties must agree to the use of mediation.~~

Mediation is an agreement-reaching process in which a highly-trained, impartial mediator assists all consenting parties in resolving their dispute in a collaborative and informed manner and at no cost to either party. To enter into mediation, both parties must agree to the use of mediation. The mediator has no authority to decide the issue, and mediation is not a substitute for independent legal advice. Successful mediations result in a written agreement that is acceptable to both parties. These agreements are legally binding. 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.

~~The OSDE has developed a mediation system to help resolve disagreements between LEAs and parents and/or adult students regarding the identification, evaluation, educational placement, and the provision of a free appropriate public education (FAPE). A request for mediation may be made by the parent and/or adult student or the LEA at any point without the necessity of requesting a due process hearing. Requests may be made in writing or by phone to the SERC. The ultimate goal of mediation is to obtain a written agreement that is acceptable to both parties. Mediation agreements are legally binding. Even if a written agreement is not achieved, mediation may be helpful in clarifying issues.~~

## **A. Mediation Process**

- Mediation forms are available on the websites for OSDE-SES and SERC and may be submitted to either party by mail, email, or hand delivery.
- A request for Mediation may be made by the parent and/or adult student or by an LEA representative, such as the director of special education.
- Requesting party completes a written request for Mediation and submits the request form to SERC or OSDE-SES.
- SERC contacts non-requesting party to determine participation in Mediation
- SERC communicates with both parties to schedule a Mediation session
- Mediator guides the process with the intended outcome of a mediation agreement

~~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 state complaint is a formal process used to communicate that a public agency (such as a child's school) has not followed the requirements of the Individuals with Disabilities Education Act (IDEA), and to request an investigation of the dispute. Complaints may concern one child or student, or a group of students. Any individual or organization, including one from another state, may file a formal state complaint. The OSDE-SES will accept a complaint received by mail, email, or hand delivery.

~~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 the Individuals with~~

Disabilities Education Act (IDEA). The OSDE will accept a complaint received by email, mail, fax or hand delivery.

## ***A. ~~Filing State Complaints~~ Formal State Complaint Process***

### **1. Model State Complaint Request Form**

A sufficient complaint must be in writing and include the following information:

- Current date.
- Name, address, and telephone number of the person making the complaint (or available contact information).
- The signature of the person making the complaint.
- 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; and the name of the school that the student is attending).
- The school and local education agency (LEA) or other **state** education agency (**SEA**) that is the subject of the complaint.
- One or more statements (allegations) that the LEA or **SEA** has violated one or more requirements under the federal IDEA Part B within one year of the date OSDE-SES receives a completed state complaint.
- The facts and/or description of the events that support each allegation (e.g., documents such as the student's IEP, eligibility paperwork, email, or text message correspondences with the LEA, etc.) must be within one calendar year from the date of OSDE-SES receipt of a completed state complaint.
- Proposed solution to the allegations or the relief sought to the extent known and available to the party at the time.

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***

~~1.~~

### **2. State Department of Education Responsibility**

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

- Determine whether the State complaint contains all of the required components as listed above in section 4, "1. Model State Complaint Request Form"
- meets all of the required criteria.
  - The OSDE will notify the complainant if their submission is insufficient as listed above in section 4, "1. Model State Complaint Request Form"
  - For State Complaint requests that are determined insufficient, complainants and the LEA will be notified by OSDE-SES through formal correspondence stating reasons for insufficiency.
- Determine if the LEA has been informed of the State Complaint, and provide a copy to the LEA if the Complainant has not done so. Notify the LEA that a complaint has been received and the timeline to submit documentation.
- An investigator will be assigned the state complaint and will ensure all timelines are met.
- Through formal correspondence, give the complainant and the LEA the opportunity to provide additional information about the allegations, either orally or in writing. and the timelines for investigation.
- 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 report 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 Hearing Request

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.~~ The OSDE-SES will accept a due process complaint by mail, email, or hand delivery. When the request is filed, the requesting party must send copies to the Director of Regulatory Compliance ~~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 **only** concerning:
  - A manifestation determination or an interim education placement during ~~a long-term suspension.~~ a suspension exceeding 10 school days for the year. Only parents may request this expedited due process hearing.
  - 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. Only the Local Education Agency (LEA) may request this expedited due process hearing.

The expedited hearing will occur within 20 school days of the request, with a decision rendered within 10 school days of the hearing. **No extensions are permitted.**

A parent or a public agency may file a due process complaint on any of the matters described in 34 C.F.R. § 300.503(a)(1) and (2) (relating to the identification, evaluation, or educational placement of a child with a disability, or the provision of FAPE to the child) 34 C.F.R. § 300.507(a)(1).

#### ***A. Due Process Hearing Request by the 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 request 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 request can be initiated regarding issues pertaining to identification, evaluation, educational placement, or the provision of a FAPE if:
  - The LEA proposes to initiate or change any of these matters; or
  - The LEA refuses the parent's and/or adult student's request to initiate or change any of these matters.

#### ***B. Due Process Hearing Request by the LEA***

The LEA may initiate a due process hearing request within two (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 of a child enrolled in public school;
- 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).
- When an LEA believes that maintaining the child's placement is substantially likely to result in injury to the child or to others, may appeal the decision by requesting a hearing (34 C.F.R. § 300.532(a) and (b)).

~~**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 request, 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 Request**

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 local education agency (LEA) 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.

The use of the due process complaint form is optional; however, all Due Process Complaints must include the required elements listed above.

### **D. Actions for Due Process Hearing**

#### **1. A Due Process Request is Filed**

- A request may be filed by either party, and the SEA will confirm the other party was notified.
- The receiving 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 the hearing officer finds that the complaint is insufficient, then the party who filed the due process request may will be given time to amend prior to the hearing officer dismissing the complaint. If an amendment is filed, the timeline for resolution session timeline restarts.
- The LEA must inform a parent and/or adult student of any free or low-cost legal or other relevant services available to them 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 must be an attorney who is in good standing with the Oklahoma Bar Association (OBA) and receives annual training and professional development.
- 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 actual prehearing and hearing expenses incurred in conducting the hearing, including **but not limited to** 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. 3. 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. 4. Pre-hearing Resolution Session~~**

The purpose of the **resolution session 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.

- The IDEA requires the resolution session only if the **parent** has requested the due process hearing.
- A third-party neutral facilitator will be provided at the resolution session if both parties agree.

- 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 session, and begin the Due Process hearing timeline meeting;
  - Both parties agree to go to mediation
    - A trained mediator will be provided if the parties choose to waive the resolution session and participate in mediation rather than a resolution session.
  - The LEA initiates the hearing. The IDEA requires the resolution session only if the parent has requested the due process hearing.
- ~~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.~~
- The resolution session must include 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 document, 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 the 30 days resolution period, the Due Process hearing may occur. An extension of the resolution period may be granted under certain circumstances.

- 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 **resolution** 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~~ **Due Process Hearing 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~~ **resolution 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. **Due Process** Hearing Preparation

Upon the initial filing of a Due Process hearing request, LEAs and parents / adult students are encouraged to begin the preparation for the hearing:

- ~~After requesting a due process hearing,~~ A parent and/or adult student has the right to inspect and review reports, files, and records pertaining to the student.
  - The LEA should respond to the parent's and/or adult student's request as soon as possible, including providing copies of educational records.
  - An LEA may charge a fee for copies of records if the fee does not effectively ~~present~~ **prevent** 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:
  - Any evaluations Evaluations completed by that date;
  - Recommendations based on those evaluations intended to be used at the hearing; and
  - Copies of exhibits which will be introduced and a list of witnesses each party intends to call at the hearing.
- The subpoenas for witnesses (not current employees of the LEA) must be issued by the hearing officer as soon as possible, but no later than 10 days prior to 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, the hearing officer, SERC, and the OSDE. The hearing must be conducted at a time and place reasonably convenient to the parent and/or adult student.

## 8. The Due Process Hearing

A due process hearing is a court-like review governed by the Individuals with Disabilities Education Act (IDEA). Hearings may include opening statements, questioning and cross-examination of witnesses, examination of evidence, closing statements, etc.

- 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 to the IDEA requirements.
- The hearing officer's decisions have the effect of law and are binding upon the participating parties.
- 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. In Oklahoma, advocates may not act as legal representatives for ~~The Oklahoma Attorney General has opined that lay advocates cannot~~ parents and/or adult students at due process hearings.

- 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.
- 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 regarding reasonable accommodations for disabilities (i.e. interpreters, etc.) will be referred to the OSDE for resolution.
- A written verbatim transcript record of the hearing will be made, and it will be a written verbatim transcript. ~~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, SERC, 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

After the conclusion of the hearing, the hearing officer will render a decision based solely on evidence introduced at the due process hearing. The decision will include findings of fact and conclusion of law, including an order, if appropriate.

- ~~The decision will include findings of fact and conclusions of law, including 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.~~

- At the conclusion of the resolution period, the hearing officer's written decision must be available within 45 calendar days from the start of the due process hearing timeline. 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 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 must be sent to the parent and/or adult student at no cost. Copies will also be mailed electronically to the LEA, Superintendent, other representatives of the LEA, SERC, and the OSDE. [**Note:** Either party may request a printed copy] ~~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 Oklahoma IDEA-B Advisory Panel ~~State Advisory Council (IDEA-B Advisory Panel)~~ and to the public.
- A hearing officer's decision is final. However, if 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).
- ~~● 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).~~
- ~~● 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, including 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, 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 **complaint** 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~~ Once a due process hearing **request is filed**, 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.
- ~~During the pendency of 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:
  - If the parent provides written consent, the student must be placed in the LEA until the 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 Hearing

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 Request***

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 alternative 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 45 school days. This procedure may be repeated as necessary.

If the hearing officer finds for the parent and/or adult student, the change of disciplinary placement cannot occur, and the IEP team will need to determine the extent of services that are appropriate to meet the student’s individual needs and to address the student’s behavior. If the hearing officer finds for the LEA, the LEA may use the same disciplinary procedures, as it uses for any other student, except that a FAPE must be as described in the previous section regarding 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. A parent may seek compensatory damages for the denial of FAPE without exhausting administrative remedies (*Luna Perez v. Sturgis Public Schools*, 598 U.S. 142 (2023)).

## 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**

34 C.F.R. § 300.151	Adoption of State Complaint Procedures.
34 C.F.R. § 300.152	Minimum State Complaint Procedures.
34 C.F.R. § 300.153	Filing a Complaint.
34 C.F.R. § 300.506	Mediation.
34 C.F.R. § 300.507	Filing a Due Process Complaint.
34 C.F.R. § 300.508	Due Process Complaint.
34 C.F.R. § 300.510	Resolution Process.
34 C.F.R. § 300.515	Timelines and Convenience of Hearings and Reviews.
34 C.F.R. § 300.516	Civil Action.
34 C.F.R. § 300.517	Attorney's Fees.
34 C.F.R. § 300.530	Authority of School Personnel.
34 C.F.R. § 300.531	Determination of Setting.
34 C.F.R. § 300.532	Appeal.
34 C.F.R. § 300.533	Placement During Appeals.

## CHAPTER ~~12.~~ 14. TRANSFERS & MOVE-IN STUDENTS

### Section 1. Transfers for Students with Disabilities

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. §§ 8-114, 13-101, et seq. and 18-110 and OAC § 210:10-1-18). See within this chapter [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 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).

***i. Appeal Process Regarding the Denial of a Transfer***

If a request to transfer a student with a disability to an LEA other than the school district of residence of the student pursuant to the Education Open Transfer Act is denied, the following provisions shall apply (70 O.S. § 8-114, Section 2(C) - Amended § 13-103 in 2024 HB 3386):

1. The parent or legal guardian of a student with a disability or an adult student with a disability who is 18 or older but under the age of 22 may appeal the denial, within ten (10) calendar days of notification of the denial, to the receiving LEA board of education. The receiving LEA board of education shall consider the appeal at its next regularly scheduled board meeting; and
2. If the receiving LEA board of education denies the appeal, the parent or legal guardian of the student with a disability or an adult student with a disability who is 18 or older but under the age of 22 may appeal the denial within ten (10) calendar days of notification of the appeal denial to the State Board of Education.
  - The parent or legal guardian of the student with a disability or the adult student with a disability shall submit to the State Board of Education and the superintendent of the receiving LEA a notice of appeal on a form prescribed by the State Board of Education. The appeal shall be considered by the State Board of Education at its next regularly scheduled meeting, where the parent or legal guardian of the student with a disability or the adult student with a disability and a representative from the receiving LEA may address the State Board of Education.

***ii. Annual Submission: Transfers Approved and Denied***

Each LEA board of education shall annually submit to the State Board of Education the number of transfer requests for students with disabilities approved and denied and whether each denial was based on availability of programs, staff, or services. The State Department of Education shall publish the data on its website and make the data available to the Office of Education Quality and Accountability (70 O.S. § 8-114, Section 2(F) - Amended § 13-103 in 2024 HB 3386).

Each year, the Office of Educational Quality and Accountability shall randomly select ten percent (10%) of the LEAs in the state and conduct an audit of each LEA's transfer requests approved or denied regarding students with disabilities.

## ***B. Emergency Transfers***

SB 783 (2021) changed the transfer laws in Oklahoma, effectively eliminating Emergency Transfers.

## ***C. IEP Service Agreement***

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 the LEA reviews and accepts the previously held IEP as written or develops 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 from the student's first day of attendance.

If 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- [5](#). "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 meet sufficient key eligibility indicators determined by the Oklahoma State Department of Education (OSDE), Special Education Services (See Chapter 4- [5](#). "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](#). [6](#). "Individualized Education Program (IEP)" 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".

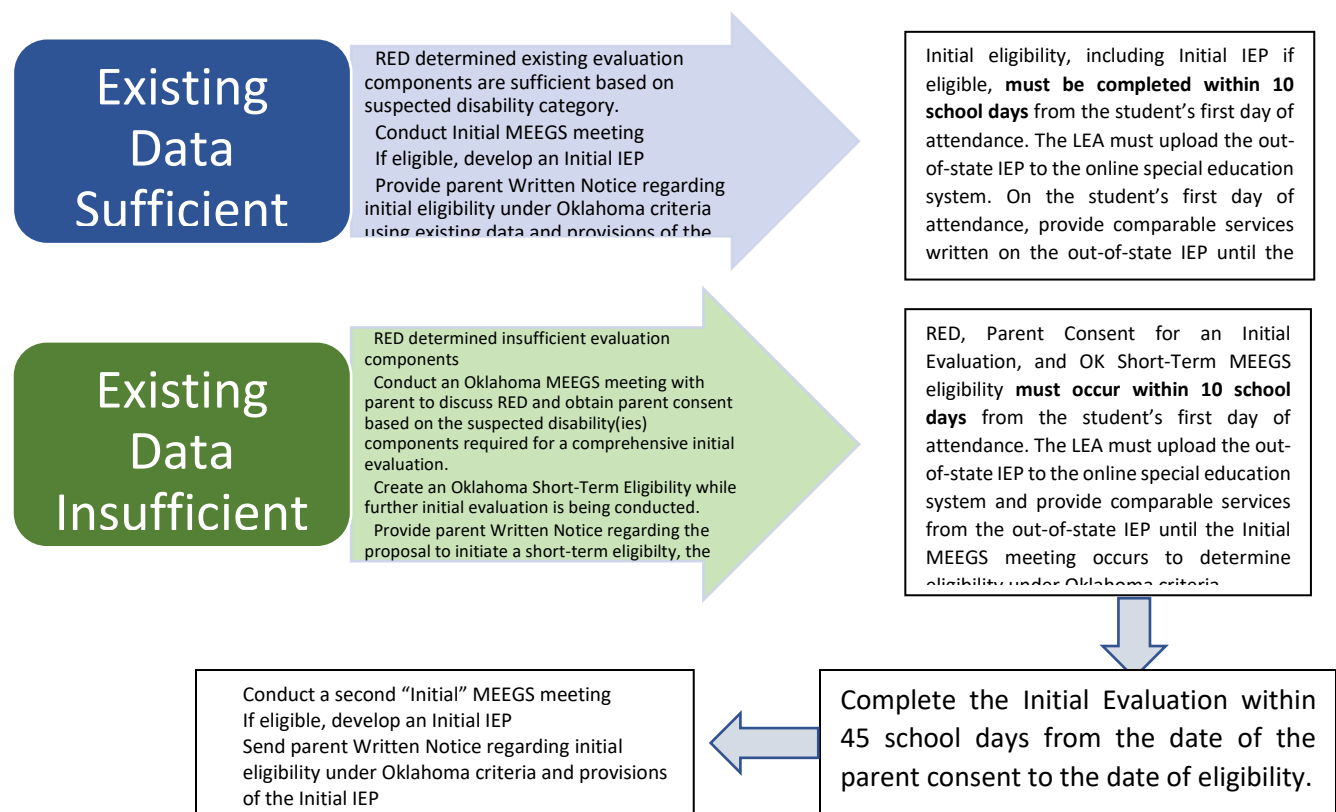
1. After documenting on the RED that "additional assessments are necessary for an Out-of-State Transfer", obtain the parent's written consent on the Special Education Parent Consent form for the additional components needed.

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, November 17, 2008](#)).
4. The group of qualified professionals must ensure all evaluation/assessment data be collected within 45 school days for the “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.

## Removing graphic due to accessibility

### ~~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 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, 10. "Private, Charter, Residential and Other Nontraditional Settings", Part 2, Section 2.1. "Group Homes/Foster Care/Residential Child Care Facilities" "Residential Child Care, Shelters, Group Homes and Foster Care" 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**

34 C.F.R. § 300.19	Homeless Children.
34 C.F.R. § 300.111	Child Find.
34 C.F.R. § 300.300	Parental Consent.
34 C.F.R. § 300.305	Additional Requirements for Evaluations and Reevaluations.
34 C.F.R. § 300.519	Surrogate Parents.

### **Oklahoma Statutes, Title 70: Schools**

70 O.S. § 13-101	Special Education and Related Services for Children with Disabilities – Cooperative Programs – Funding – Duty to Provide Special Services.
70 O.S. § 13-103	Authorized Services and Transfers for Children with Disabilities.
70 O.S. § 18-110	Adjustments and Limitations.
70 O.S. § 24-101.4	Disclosure of Disciplinary and Nondirectory Educational Records.

### **Oklahoma Administrative Code (OAC): State Department of Education**

OAC § 210:10-1-18	Transfers.
OAC § 210:10-1-19	Special Education and Gifted Education Transfers.

## CHAPTER ~~13~~. 15. 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, 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, or Deaf/Hard of Hearing. Speech-Language Pathologists, Speech Language Pathology Assistants, and Speech Language Therapists who hold a teacher certification may serve as the Teacher of Record (TOR) involving students whose primary disability is Speech Language Impairment (SLI), including students who are Developmentally Delayed who have a suspected disability of SLI. Without a specific teacher certification, individuals may not serve as Teacher of Record (TOR) for IEPs. 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)** or as an alternative, the Praxis Subject Assessment. 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 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 was replaced by the **Praxis Performance Assessment of Teachers (PPAT)**. The PPAT is not the same as the Praxis Subject Assessment. 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.

The Oklahoma General Education Test (OGET) was discontinued as of May 2022 (HB 3658 amending 70 O.S. §§ 6-122.3, 6-182, 6-187, and 6-189.2) removing the requirement to pass the general education portion of the competency examination.

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, 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</li> </ul> </li> </ul> <p>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.</p> <p>Once passing scores for the PPAT 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</li> </ul> <p>NEW as of 2022 and covers both Mild/Moderate AND Severe/Profound. It does NOT cover Blind/ Visual Impairment or Deaf/Hard of Hearing.</p>	<p><b>TOR for Instruction and Assigning Grades</b></p> <p>Pass the OSAT in a general education subject area.</p> <p><b>Teaching Alternate Standards</b>  <del>Teaching students with cognitive delays with alternate standards or concepts</del> <b>requires:</b>  Elementary Education <b>or Early Childhood</b>, which either one covers grades <del>1st</del> <b>Pre-K</b> - 12<sup>th</sup>  <b>OR</b>  <del>Early Childhood Grades Pre-K to 3rd</del></p> <p><b>Teaching Regular Oklahoma Academic Standards:</b>  <del>Teaching students with mild disabilities or basics</del> 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 General 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> </ul> <p>Pass the PPAT</p> <p>Pass the OSAT in subject area</p> <p>Once passing scores for the PPAT and OSAT are received, then submit to OSDE the <b><i>“Application for Oklahoma School Certificate”</i></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>Teacher Certificate for OSAT area passed</p> <p><b>NOTE:</b> Once a general 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</li> </ul> <p>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>Once a passing score has been received, then submit to OSDE the <b><i>“Application for Adding Areas to Existing Certificate”</i></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> <li>● Special Education Comprehensive Assessment</li> </ul> <p>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>NOTE: SLP and SLPAs may take and pass the PPAT national certification test for their SLP and SLPA Teacher Certificate.</p> <p>However, to obtain a special education teacher certification the SLP or SLPA must complete the following:</p> <p><b>Take and pass:</b></p> <ul style="list-style-type: none"> <li>● <b>PPAT</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 a passing score for the OSAT is received, then submit to OSDE the <b><i>“Application for Oklahoma School Certificate”</i></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>A provisional will be issued for a specified time period determined by the Office of Teacher Certification until the PPAT is passed, <del>whichever comes first.</del></p>	<p><b>TOR for Instruction and Assigning Grades</b></p> <p>Pass the OSAT in a general education subject area to be TOR for placing grades on a report card.</p> <p><b>Teaching Alternate Standards</b>  <del>Teaching students with cognitive delays with alternate standards or concepts</del> <b>requires:</b>  Elementary Education <b>or Early Childhood</b>, which either one covers grades <del>1st</del> <b>Pre-K</b> - 12<sup>th</sup>  <b>OR</b>  Early Childhood Grades <del>Pre-K to 3rd</del></p> <p><b>Teaching Oklahoma Academic Standards:</b>  <del>Teaching students with mild disabilities or basics</del> is dependent on the grade level and/or subject area assigned.  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><i>“Application for Adding Areas to Existing Certificate”</i></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><b>Alternative Standard Teacher Certificate</b></p> <p>Bachelor's degree from an accredited college or university with a GPA of 2.5 or higher <b>OR</b></p> <p>Bachelor's degree from an institution accredited by the Oklahoma Regents of Higher Education (OSRHE) plus 2 years of qualified work experience in a field corresponding to subject area or certification <b>OR</b></p> <p>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. 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 OSAT in subject area. Once the OSAT passing score is received, then submit to OSDE the "<b>Initial Alternative Certification Application</b>" and payment for the application fee.</p>	<p><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: <ul style="list-style-type: none"> <li>Complete 6 to 18 college/university credit hours of teacher education coursework. <b>OR</b></li> <li>90-270 clock hours of professional development approved by an Oklahoma school district.</li> </ul> </li> </ul> <p>NOTE: All participants will be required to complete a college credit course addressing classroom management and 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 (70 O. S. § 6-122.3).</p> <p>Once coursework is completed</p> <ul style="list-style-type: none"> <li>Pass the PPAT</li> </ul> <p>Once a passing score for the PPAT has been received, then submit to OSDE the "Application for Oklahoma School Certificate" with official</p>	<p><b>TOR for IEPs</b></p> <p>Must have a standard teacher certificate in a <b>core</b> 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</li> </ul> </li> </ul> <p>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.</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 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</li> </ul> <p>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.</p> <p>Renew every 5 years.</p>

	transcript(s)/documentation of PD and payment of any fees.		
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Pathway	Initial Certification	Post-Certification Requirements	Final Certificate Type
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<b>Paraprofessional to Special Education Teacher Program</b>	<b>Initial</b>	<b>TOR for IEPs</b>	<b>Standard</b>
<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 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</li> </ul> </li> </ul> <p>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.</p> <p>Once the OSAT passing score is received, then submit to OSDE the <b><i>"Application for Oklahoma Paraprofessional to Apply for Teaching Certificate"</i></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>Valid for up to 3 Years 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><i>"Application for Adding Areas to Existing Certificate"</i></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>Within three (3) years, complete twelve (12) semester hours of 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 nine (9) hours in special education content</b>; AND</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.</li> <li>● Recommendation letter comes from either the school principal or superintendent, and college recommendation/credit verification; AND</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><i>"Application for Oklahoma School Certificate"</i></b> along with an official transcript(s), recommendation letters, and payment for the application fee.</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</li> </ul> <p>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.</p> <p>Must also be certified in a Core Subject Area to teach in a content area and place grades on a report card – See <a href="#">Section 2</a> below for more information.</p> <p>Renew every 5 years.</p>

Pathway	Initial Certification	Post-Certification Requirements	Final Certificate Type
<p><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><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><b>Upon completion of the Boot Camp candidates may serve as the TOR for the IEP after receiving a provisional certification.</b></p>	<p><b>TOR for IEPs</b></p> <p>Within three years, pass the</p> <ul style="list-style-type: none"> <li>PPAT,</li> <li>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</li> </ul> </li> </ul> <p>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.</p> <ul style="list-style-type: none"> <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 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><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</li> </ul> <p>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.</p> <p>Must also be certified in a Core Subject Area to teach in a content area and place grades on a report card – See <a href="#">Section 2</a> below for more information.</p> <p>Renew every 5 years.</p>

Pathway	Initial Certification	Post-Certification Requirements	Final Certificate Type
<p><b>Earn a master's degree in Special Education</b></p> <p>Take and pass:</p> <ul style="list-style-type: none"> <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</li> </ul> </li> </ul> <p>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.</p> <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><b>Initial</b></p> <p>A provisional will be issued for a specified time period determined by the Office of Teacher Certification until the PPAT is passed, whichever comes first.</p>	<p><b>TOR for Grades</b></p> <p>Pass the OSAT in a general education subject area to be TOR for placing grades on a report card.</p> <p><b>Teaching Alternate Standards</b>  <del>Teaching students with cognitive delays with alternate standards or concepts</del> <b>requires:</b> Elementary Education <b>or Early Childhood</b>, which either one covers grades <del>1st</del> <b>Pre-K</b> - 12<sup>th</sup>  <b>OR</b>  Early Childhood Grades <b>Pre-K to 3rd</b></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><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-PPAT Praxis Performance Assessment for Teachers](#) website “Test Takers”. Deadlines for task submissions can also be found at the same website under [“Dates and Deadlines for the PPAT Assessments.”](#)

In some cases, the corresponding Praxis Subject Assessment, such as the school psychologist, special education, and speech-language pathologist, may be substituted for the Oklahoma Subject Area Test. Check with the OSDE, Office of Teacher Certification for specific guidance.

### **Adjunct Special Education Teacher Not Allowed**

The OSDE, Office of Teacher Certification, **disallows** adjunct teachers for special education (70 O.S. § 6-122.3, amended by SB 1119, effective July 1, 2022).

**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/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.

**NOTE:** The HOUSSE is **not** a pathway to any type of certification, including special education certification. The HOUSSE may be used for a certified special education teacher's qualification to serve as TOR for grading purposes in a special education classroom when they do not hold the appropriate subject area certification. The HOUSSE can only be used by certified special education teachers, and it can be used in **any subject area** (early childhood, elementary education, math,

science, English/language arts, etc.). Since it is not a certification pathway, it will never appear on their teaching certificate. A copy of the approved HOUSSE form and all supporting documentation should be kept by the school district for review by the Regional Accreditation Officer (RAO) or USDE, and the teacher (in case the teacher changes LEAs). An example of using the HOUSSE with a certified special education teacher who is assigned to teach a special education class of 3<sup>rd</sup> and 4<sup>th</sup> grade students on IEPs, but does not hold an Elementary Education certification, may use the HOUSSE to document the qualifications in Elementary Education to provide grades on a report card.

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. 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 (an amendment to 70 O.S. § 6-187(C)(2)), allows any special education certified teacher 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 **with the most significant cognitive disabilities, who are taught to alternate standards and assessed by participate in the OAAP aligned with alternate academic achievement standards**, 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 Programs***

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 is ONLY for “General Education” Content Areas:***

In order to be certified in a general education 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 State 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-substitutes-special-education>.~~

If the candidate does not hold a degree, the total number of days for employment is 135. If the candidate does have a bachelor's degree or lapsed certificate, the total number of days for employment will be 145 days.

There is no limit for a candidate with a valid Oklahoma teaching certificate. Districts may request a waiver in such cases.

#### **70 O.S. § 6-105 (OSCN 2024)**

**"B. No substitute teacher shall be employed for a total period of time in excess of one hundred thirty-five (135) school days during a school year; or one hundred forty-five (145) school days during the school year if the substitute teacher holds a lapsed or expired certificate or has a bachelor's level college degree; or no limit of school days during the school year if the substitute teacher holds a valid certificate.** Each school district shall adopt a policy which sets forth the maximum number of days a substitute teacher may be employed for the same assignment if the substitute teacher does not hold a valid certificate. C. Substitute teachers who do not hold a valid certificate and who are employed to teach special education for students with physical disabilities or students with intellectual disabilities shall **not** be subject to the restrictions on total time a substitute teacher may be employed if no certified teachers are available to teach such students and the students would be denied instruction in special education if the substitute teacher were not employed. Beginning with the 2007-08 school year, any substitute teacher employed to teach special education for the same assignment for more than fifteen (15) consecutive or thirty (30) total school days during a school year who does not hold a valid certificate to teach special education shall be required to complete in-service training as prescribed by the State Board of Education. The training shall be provided at no cost to the substitute teacher. Availability of certified teachers shall be determined after the school has consulted the State Board of Education and any other resources for filling the vacant position with a certified teacher."

## **Section 4. Paraprofessional and Personal Care Assistant**

### **A. ~~A How to Become a~~ A. Special Education Paraprofessional**

#### **i. Tier 1 and Tier 2 Special Education Certification**

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 +), **or the [ParaPro Assessment](#) (455 +).**

#### ***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)/**and** First Aid **[or Basic Life Support \(BLS\) certification](#)**, 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 expire and** do **not** require renewal. It does, however, require ongoing annual professional development of six (6) hours.

## **ii. Restricted Activities and Duties of Paraprofessionals**

The additional limitations, as described in 20 U.S.C. § 6319(g)(3), state paraprofessionals “may **not** provide any instructional service to a student unless the paraprofessional is working under the direct supervision of a teacher.”

Paraprofessionals must **not** be utilized to:

- Reduce the caseload of certified teachers.
- Provide the initial instruction to students.
- Provide the special education direct instruction without the supervision of a special education teacher.
- Replace a certified special education teacher as the co-teacher in a general education classroom.

## **iii. Allowable Duties of Paraprofessionals**

Special Education Paraprofessionals are paraprofessionals who provide instructional support for students with disabilities under the direct supervision of a fully certified teacher.

The list below are examples of allowable duties of Paraprofessionals; and therefore, may be assigned to:

- Provide support in an educational/classroom environment.
- Support students with disabilities individually or in small groups.
- Reteach skills or reinforce concepts.
- Assist with classroom management.
- Organize instructional materials.
- Provide assistance in a computer laboratory.
- Provide support in a library or media center.
- Implement Behavior Intervention Plans.
- Assist with transition community based instruction.

## **B. Personal Care Assistant Requirements**

Personal Care Assistants (PCA) are under the directions of a certified special education teacher and/or related services staff.

### **i. Requirements**

Personal Care Assistants (PCA) require at least a high school diploma. Annually the PCA must receive 6 hours of professional development, along with maintaining their CPR/First Aid or Basic Life Support (BLS) certification.

### **ii. Restricted Duties of Personal Care Assistants**

Personal Care Assistants may not be utilized to:

- Reteach academic skills or reinforce academic concepts.
- Small tutorial groups or provide one-on-one tutoring.

### **iii. Allowable Duties of Personal Care Assistants**

The list below are examples of allowable duties of Personal Care Assistants; and therefore, may assist with:

- Daily living (toileting, dressing, feeding, etc.).
- Students who have physical disabilities,
- Health-related functions,
- Transition community based coordinated activities.
- Redirect behavior/implement Behavior Intervention Plans, and
- Non-academic tasks as identified in an Individualized Education Program (IEP).

## Section 5. Related Services and/or Other Personnel Qualifications

Profession/ Discipline	Services Provided	State Licensure or Credential	Requirements for Professional Licensure or Credential	Oklahoma Teaching Certification	Requirements for OSDE Certification
Advanced Registered Nurse Practitioner *333	Medical and Other Health Services	Yes	Must hold a Master's degree in nursing, and state licensure as an ARNP		
Audiologist *309	Audiology Services	Yes	OBESPA 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.		
<u>Board Certified Behavior Analyst (BCBA)</u>	<u>Behavior Therapy Services</u>	<u>Yes</u>	<u>Master's Degree in Applied Behavior Analysis and an Oklahoma State Board of Behavioral Health licensure in ABA Therapy</u>		
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 Paraprofessional *418	1:1 student support to access instruction, social, environmental information.			No, but paraprofessional certification is required.	Paraprofessional , plus specialized training in deaf- blindness and the process of intervention

	Supervision by special ed teacher				
Licensed Professional Counselor (LPC)	Counseling services	Yes	Master's degree; state licensure as LPC, LMFT, or LBP		

<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>
Licensed Practical Nurse *507	Medical and Other Health services	Yes	Approved LPN program, state licensure		
Occupational Therapist *334	Occupational therapy services	Yes	Bachelor's degree; or Master's degree; state licensure		
Occupational Therapy Assistant *416	Occupational therapy services under the general direction and supervision of a licensed Occupational Therapist	Yes	Associate's degree; state licensure		
Orientation and Mobility Specialist	Orientation and Mobility	Yes, O&M Credential	Bachelor's or Master's degree; ACVREP Certification or NOMC Certification		
Physical Therapist *338	Physical therapy related services	Yes	Doctoral degree; or Master's degree; state licensure		
Physical Therapy Assistant *417	Physical Therapy related services under the general direction of a licensed Physical Therapist	Yes	Associate's degree; state licensure		
Physician	Medical Services	Yes	MD or DO; state licensure		
Psychological Clinician	Psychological and counseling services while		Master's degree; OPM requirements		

	working in state agencies				
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		
<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>
Rehabilitation Counselor	Rehabilitation Counseling services		Master's degree; OPM requirements		
<u>Registered Behavior Technician (RBT)</u>	<u>Behavior Therapy Services</u> <u>Must be under the general supervision/ direction of a licensed BCBA</u>	<u>Yes</u>	<u>Minimum of Associates degree in behavior analysis</u>		
School Counselor *203	Counseling services			Yes	Master's degree, Oklahoma 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 a bachelor's within 10 years; or Bachelor's degree; state licensure as RN
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; or doctoral degree and state licensure	Yes	Master's degree/ Ed.S.; special course of study; Oklahoma State Certification test; or Praxis NCSP certification <u>PPAT not required</u>
Certified School Psychometrist *510	Psycho-educational assessments		Master's degree	Yes	Master's degree; Oklahoma State certification test

					<b>PPAT not required</b>
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 SLPA) recommended ASHA certification	Yes, required to carry a caseload and develop IEPs; Optional to provide therapy;  May add additional areas to teaching certificate	Master's degree in SLP or Communication Sciences and Disorders;

Profession/ Discipline	Services Provided	State Licensure or Credential	Requirements for Professional Licensure or Credential	Oklahoma Teaching Certification	Requirements for OSDE Certification
Speech- Language Pathology Assistant *216	Speech and Language Therapy Services under the general direction of a licensed Speech- Language Pathologist	Yes	Minimum of Associate's degree in SLPA; or 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 of SLP; Optional to provide therapy under supervision. See <a href="#">Section 6</a> . Certification Requirements below.	Bachelor's degree
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
Social Worker *352	School social work services	Yes	Master's degree; state licensure; OPM requirements		

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 paraprofessional 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 and First Aid <b>or Basic Life Support</b> Certification OSDE Para Modules

\*See the [Financial Accounting OSDE](#) website for 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. **Teaching certification for direct instruction in a special education classroom may have any special education certification (such as Severe/Profound, Mild/Moderate, Special Education Comprehensive, or any area of special education involving categorical and registry certifications), except Speech-Language Pathology may provide direct**

instruction for only speech therapy (asterisk denotes older certifications that are acceptable but no longer being issued for new applications for certification).

The following are examples:

Primary Category of Disability	Placement Example	Levels of Performance Examples	State Assessment OSTP or OAAP	Teaching Certification Requirement TOR for IEP TOR for IEP	General Education Certification TOR for Transcript/Guide Grade
Autism	Special Education Class 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	Special Education Comprehensive  <b>Or</b> <b>Older Certifications such as:</b>  *Severe/Profound (2558) <b>Or</b> *Mild/Moderate (2556) <b>Or</b> *Any area of Special Education (categorical certification, except Speech-Language Pathology) <b>And</b> *Multiple Disabilities Registry Training (9803) <b>including</b> *Autism Registry Training (9801)	Core Content Area  Early Childhood (1003)  <b>Or</b>  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 12 <sup>th</sup>

Primary Category of Disability	Placement Example	Levels of Performance Examples	State Assessment OSTP or OAAP	Teaching Certification Requirement TOR for IEP	General Education Certification TOR for Transcript/Guide Grade
Autism	General Education 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 general education classroom and/or a special education classroom	OSTP	Special Education Comprehensive <b>Or</b> Speech- Language Pathology  <b>Or</b> Older Certifications such as:  *Mild/Moderate (2556) <b>Or</b> *Any area of Special Education (categorical certification) <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
Deaf-Blindness	General Education 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 general education classroom and/or a special education classroom	OSTP	Blind/Visual Impairment (2550)  <b>And</b>  Deaf/Hard-of-Hearing (2552)  <b>Note:</b> Student with a category of Deaf-Blindness <b>cannot</b> have a TOR solely with *Mild/Moderate or *Severe/Profound certification <b>Or</b> Special Ed Comprehensive	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 OSTP or OAAP	Teaching Certification Requirement TOR for IEP	General Education Certification TOR for Transcript/Guide Grade
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) <b>Note:</b> Student with a category of Deaf-Blindness <b>cannot</b> have a TOR solely with Mild/Moderate; Severe/Profound <b>or Special Education Comprehensive certification</b>	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 Delays (DD) (Ages 3-9)  NOTE: Children with sensory impairments (e.g., Blind/Visual Impairment or	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	OAAP	Special Education Comprehensive <b>Or</b> <b>Older Certifications such as:</b>  *Severe/Profound (2558) <b>Or</b>	Core Content Area  Early Childhood (1003)  <b>Or</b>  Elementary Education (1501 or 1600)

Hearing Impairment) cannot be categorized as DD		through intensive/extensive direct instruction including skill areas such as daily living, functional academics, communication, etc.		*Any area of Special Education (categorical certification), <b>And</b> *Multiple Disabilities Registry Training (9803)	
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Primary Category of Disability	Placement Example	Levels of Performance Examples	State Assessment OSTP or OAAP	Teaching Certification Requirement TOR for IEP	General Education Certification TOR for Transcript/Guide <b>Grade</b>
Developmental Delays (DD)	General Education 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 general education classroom.	OSTP	Certificate based on the Suspected Disability: For example: If Speech Language Impairment, then a SLP or SLPA or SLT	Core Content Area Early Childhood (1003) <b>Or</b> Elementary Education (1501 or 1600) If the suspected disability is Speech Language Impairment, then the SLP, SLPA or the SLT does not need the general education certification
Emotional Disturbance	General Education 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 general education classroom and/or a special education classroom	OSTP	Special Education Comprehensive <b>Or</b> <b>Older</b> <b>Certifications such as:</b> *Mild/Moderate (2556) <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	General Education	Requires instruction under	OSTP	Deaf/ Hard-of-Hearing	Core Content Area Early Childhood

(Including Deafness)	Class Full-Time Or Special Education Class Part Time	the Oklahoma Academic Standards (OAS) for <b>ALL</b> content areas either in a general education classroom and/or a special education classroom		(2552) <b>Or</b> *Hearing Impaired (2503) <b>NOTE:</b> Student with Hearing Impairment <b>Cannot</b> have a TOR solely with Mild/Moderate; Severe/Profound; <b>Special Education Comprehensive certification</b>	(1003) <b>Or</b> Elementary Ed (1501 or 1600)  <b>Or</b> Secondary Subject Area Taught Example: English; or Middle Level/Intermediate Mathematics
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Primary Category of Disability	Placement Example	Levels of Performance Examples	State Assessment OSTP or OAAP	Teaching Certification Requirement TOR for IEP	General Education Certification TOR for Transcript/Guide <b>e Grade</b>
Intellectual Disability	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	Special Education Comprehensive  <b>Or</b> <b>Older Certifications such as:</b> *Severe/Profound (2558) <b>Or</b> *Mild/Moderate (2556) <b>Or</b> *Any area of Special Education (categorical certification, except Speech-Language Pathology) <b>And</b> *Multiple Disabilities Registry Training (9803) <b>Or</b> *Mentally Handicapped (2507)	Core Content Area  Early Childhood (1003) <b>Or</b> 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 Disability	General Education 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 general education classroom and/or a special education classroom	OSTP	Special Education Comprehensive  <b>Or</b> <b>Older Certifications such as:</b>  *Mild/Moderate (2556)  <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
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Primary Category of Disability	Placement Example	Levels of Performance Examples	State Assessment OSTP or OAAP	Teaching Certification Requirement TOR for IEP	General Education Certification TOR for Transcript/Guide Grade
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	OAAP	Special Education Comprehensive  <b>Or</b> <b>Older Certifications such as:</b>  *Severe/ Profound (2558)  <b>Or</b>  *Any area of Special Education (categorical certification, except Speech-	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

		academics, communication, etc.		Language Pathology) <b>And</b> *Multiple Disabilities Registry Training (9803	required Pre-K through 12 <sup>th</sup>
Orthopedic Impairment	General Education 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 general education classroom and/or a special education classroom	OSTP	Special Education Comprehensive  <b>Or</b> <b>Older</b> <b>Certifications</b> <b>such as:</b>  <b>*Mild/</b> Moderate (2556)  <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

Primary Category of Disability	Placemen t Example	Levels of Performance Examples	State Assessment OSTP or OAAP	Teaching Certification Requirement TOR for IEP	General Education Certification TOR for Transcript/ <b>Guide</b> <b>e Grade</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	OAAP	Special Education Comprehensive  <b>Or</b> <b>Older Certifications</b> <b>such as:</b> <b>*Severe/</b> Profound (2558) <b>Or</b> *Any area of Special Education	Core Content Area  Early Childhood (1003)  <b>Or</b>  Elementary Education (1501 or 1600) NOTE: When students require alternate achievement

		in <b>ALL</b> content areas through intensive/extensive direct instruction including skill areas such as daily living, functional academics, communication, etc.		(categorical certification, except Speech- Language Pathology) <b>And</b> *Multiple Disabilities Registry Training (9803) <b>And</b> *Other Health Impairment Registry Training (9804)	standards and are assessed under the OAAP Early Childhood or Elementary Education is required Pre-K through 12 <sup>th</sup>
Other Health Impairment	General Education 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 general education classroom and/or a special education classroom	OSTP	Special Education Comprehensive  <b>Or</b> <b>Older Certifications</b> such as:  *Mild/ Moderate (2556) <b>Or</b> *Any area of Special Education (categorical certification except Speech- Language Pathology) And *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

Primary Category of Disability	Placement Example	Levels of Performance Examples	State Assessment OSTP or OAAP	Teaching Certification Requirement TOR for IEP	General Education Certification TOR for Transcript/Guide Grade
Specific Learning Disabilities	General Education 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 general education classroom and/or a special education classroom	OSTP	Special Education Comprehensive  <b>Or</b> <b>Older Certifications such as:</b>  *Mild/Moderate (2556)  <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	General Education Classroom Full-Time	Requires instruction under the Oklahoma Academic Standards (OAS) for <b>ALL</b> content areas either in a general education classroom and/or a special education	OSTP	Speech-Language Pathologist (SLP) (0521)  <b>Or</b>  Speech-Language Therapist (SLT)  <b>Or</b>  Speech-Language Pathology Assistant (SLPA) **See below	None required

Primary Category of Disability	Placement Example	Levels of Performance Examples	State Assessment OSTP or OAAP	Teaching Certification Requirement TOR for IEP	General Education Certification TOR for Transcript/Guide Grade
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	Special Education Comprehensive  <b>Or</b> <b>Older Certifications such as:</b>  *Severe/ Profound (2558) <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	General Education 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 general education classroom and/or a special education classroom	OSTP	Special Education Comprehensive  <b>Or</b> <b>Older Certifications such as:</b>  *Mild/ Moderate (2556)  <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)	General Education 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 general education classroom and/or a special education classroom	OSTP	Blind/Visual Impairment (2550)  <b>Or</b> <b>Older Certifications such as:</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; Severe/Profound; <b>or</b> <b>Special Education Comprehensive certification</b>	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
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\*Allowable due to old certification; however, no longer being issued as a new certificate.

**Special Education Comprehensive certification will cover all categories of disabilities with the exception of the sensory disability categories (i.e., Deaf-Blindness, Visual Impairment including Blindness, and Hearing Impairment including Deafness) to be the Teacher of Record (TOR) to write the IEPs and carry a caseload.**

#### **\*\*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 as the Teacher of Record (TOR) under the supervision of the SLP for students who have a primary disability of DD/SLI or SLI categories, or a secondary category of SLI. The certified SLPA's caseload may also be made up of students who receive speech services as a related service. Under the supervision of the SLP, the SLPA may ~~draft~~ **write** the Subsequent IEP, facilitate the Subsequent IEP meetings, and sign IEPs as the ~~special education~~ teacher **of record** for students whose primary disability is DD/SLI or SLI, as well as sign as a service provider for students receiving speech services as a related service. **Only those SLPAs with teacher certification as an SLPA may be designated as the Teacher of Record (TOR). The SLPA without a standard teaching certificate may attend, participate in the meeting, sign the IEP as a team member but will not be the teacher of record.**

SLPAs who do **not** hold a current Oklahoma SLPA Teacher Certificate (including those with an Associate's Degree in SLPA) should be on a support staff contract and may **not** serve as the TOR for students. While an SLPA without a teacher certificate may not serve as TOR, they may carry a roster (as opposed to a caseload, which is reserved for the TOR) by serving as an IEP team member.

Students on the SLPA's roster must also have a TOR, (e.g., SLP, SLT, SLPA, or a special education teacher who holds the corresponding primary disability certification). Under the supervision of the SLP, the SLPA without a teacher certificate may provide speech services for students served under the primary disability category of DD/SLI or SLI, students whose secondary disability is SLI, or students who receive speech language therapy as a related service. Under the supervision of the SLP, the SLPA without teacher certification may also develop speech goals and draft the sections of the Subsequent IEP related to speech therapy services or progress monitoring, participate in the Subsequent IEP meetings, and sign the IEP as a team member (but not as the special education teacher).

### **Supervision** [OAC § 690:10-7-3](#)

The responsibility of the SLPA is to implement the treatment plan created by the supervising SLP. The SLPA can only perform tasks prescribed by the SLP. However, SLPAs **cannot** conduct evaluations or sign the eligibility determination as the qualified professional or as the special education teacher for students eligible to receive speech therapy under the category of DD/SLI or SLI. 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 and the Oklahoma Board of Examiners for Speech-Language Pathology and Audiology (OBESPA).

### **OAC 690-10-7-10 Roles and responsibilities of Speech-Language Pathology Assistants and Audiology Assistants.**

#### **(a) Allowed activities as delegated by the supervising speech-language pathologist:**

- (1) Assist the speech-language pathologist with speech-language and hearing screenings.
- (2) Assist with informal documentation as directed by the speech-language pathologist.
- (3) Follow documented treatment plans or protocols developed by the supervising speech-language pathologist.
- (4) Document patient/client performance.
- (5) Assist the speech-language pathologist with assessment of patient/clients.
- (6) Assist with clerical duties.
- (7) Perform checks and maintenance of equipment.
- (8) Support the speech-language pathologist in research projects, in service training, and public relations programs.
- (9) Collect data for monitoring quality improvement.
- (10) Comply with regulations, reimbursement requirements and speech language pathology assistant's job responsibilities.

#### **(b) Non-allowed activities of the - speech-language pathology assistant**

- (1) May not perform diagnostic tests, formal or informal evaluations or interpret test results.
- (2) May not evaluate or diagnose patients/clients for feeding/swallowing disorders.
- (3) May not participate in parent conferences, case conferences, or any interdisciplinary team without the presence or prior approval of the supervising Speech-Language Pathologist.
- (4) May not write, develop, or modify a patient's/client's individualized treatment plan in any way without the prior approval of the licensed speech-language pathologist.

(5) May not assist with patients/clients without following the individualized treatment plan approved by the speech-language pathologist or without access to supervision.

(6) May not sign any formal documents not drafted and/or approved by the speech-language pathologist prior to dissemination of the document.

For more information on roles and responsibilities of the SLPA, [OAC § 690:10-7-10 Board of Examiners of Speech Language Pathology and Audiology](#).

## Section 7. Caseload and Class Size Requirement

### A. Class Size Requirements

<b>Full Day Self-contained</b>	Maximum of ten (10) students per classroom Pre-K - 12th	These classrooms are designed predominantly for the support of students with significant, moderate, or multiple <b>severe</b> 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>	<b>Grades Pre-K-4:</b> Maximum of ten (10) students per classroom  <b>Grades 5-12:</b> Maximum of fifteen (15) students per classroom	These classrooms are designed to provide a higher level of support than what is provided in the general education classroom. Students receive direct support services for specific subjects. They are also available for students seeking extra help to complement general education classroom instruction.

### B. Caseload or Workload

The OSDE-SES has made available two options for districts to select when determining special education staffing limitations: 1) Caseload Calculation or 2) Workload Calculation. ~~Each district will select either the caseload model or the workload model for the school year.~~ **The LEA must choose either the caseload or workload calculation for determining the special education teacher of record maximum limit. The LEA will document their choice within the annual LEA Assurance; however, may not utilize both.**

Note: The caseload or workload calculation is only for the Teacher of Record who manages the student file, and is not intended for related service personnel who provide IEP services (i.e., Physical Therapists, Occupational Therapists, Licensed Professional Counselors, School Counselors, Nurses, etc.). However, the LEA may utilize these calculation tools to assist in making the determination for these other related service personnel who are not carrying at least one student as the Teacher of Record for the student file.

### ***Caseload Calculation Requirements***

The following chart details the maximum full-time equivalent (FTE) caseload based on each student's placement. **If a teacher is part-time special education then the caseload FTE would be .50.**

Placement	Caseload	
	Percentage (FTE)	Total
<b>General Education Class Full-time</b> (inside the general education class more than 80% of the day) - Consultation and Monitoring Only	.025	40
<b>General Education Class Full-time</b> (inside the general education class <del>more than</del> 80% <b>or more</b> of the day) Collaboration, Co-teaching, or Direct Instruction	.04	25
<b>Special Education Class Part-time</b> (inside the general education class 40% to <del>80</del> 79% of the day)	.05	20
<b>Special Education Class Full-time</b> (inside the general education class less than 40% of the day)	.067	15
<b>Special Education Class Full-time</b> (inside the general education 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 half day)
<b>Full-day preschool continuum</b>	<b>.1</b>	
<b>Speech/Language</b> 60 minutes or less per week	.02	50
More than 60 minutes per week	.025	40
<b>Total (1.0 or less)</b>		

### ***i. Description of Calculation for TOR Caseload***

**Special Education Teacher of Record (TOR):** This calculation includes only students assigned to the special education teacher as TOR for developing the IEPs and managing the special education paperwork. Do **not** count students the teacher serves directly but does not develop the IEP nor manage the special education paperwork.

**Speech-language Pathologist (SLP), Speech-Language Therapist (SLT) and Speech-Language Pathologist Assistant (SLPA) with a standard Oklahoma Teacher Certificate as a SLPA:** This calculation includes all students assigned to the SLP, including students for whom the SLP is serving as TOR and students for whom the SLP is providing related services as documented on the IEP.

### ***Workload Calculation Requirements***

The following chart details maximum full-time equivalent (FTE) based on a range of services.

Job Function	Specifics	Weight of Item	Tally /# of Students	Total
<b>Section A</b>				
Provides services but is <b>NOT</b> the IEP TOR		0.25		
Teacher of Record (TOR) Only		0.50		
TOR & provides for one or more IEP services		0.75		
<b>Section B</b>				
Initial Evaluation – current school year		1.0		
Three-Year Reevaluation – current school year		0.25		
In-State move in – current school year		0.25		

Out-of-State move in – current school year		0.50		
<b>Section C</b>				
Number of school sites served – Select <b>only one</b> option and enter the number one in the box. Leave the other two options blank.	One site	0.25		
	Two - three Sites	0.75		
	Four or more sites	1.0		
<b>Section D</b>				
Grade level of students served - Count all students per grade level range the TOR provides services to regardless of being the IEP Teacher of Record (TOR).	EC through 3 <sup>rd</sup>	1.0		
	4 <sup>th</sup> – 6 <sup>th</sup>	0.50		
	7 <sup>th</sup> – 12 <sup>th</sup>	0.75		
	Extended Transition Program	0.25		
<b>Section E</b>				
Service Delivery Type – count all students the TOR provides services to regardless of being the IEP Teacher of Record (TOR). Count each student based upon the type of service.  NOTE: Students can be counted more than once depending on the number of IEP services the TOR provides.	Consultation	0.25		
	Monitoring	0.35		
	Collaboration	0.50		
	Co-Teaching	0.75		
	Direct Instruction	1.0		

Section F				
Service Minutes – Frequency of service for all students the TOR provides services regardless of being the IEP Teacher of Record (TOR).	Up to 3 hours/week	0.25		
	3:01 hours to 10 hours/week	0.50		
	10:01 hours to 20 hours/week	0.75		
	20:01 hours +/week (more than 20 hours a week)	1.0		
Section G				
Total Workload (Average Caseload – Points Range from 75 to 125)				

***i. Instructions for Workload Calculation***

**Section A** – Provide the number of students the Teacher of Record (TOR) serves in the appropriate category. Each student will be counted once.

- Provides services but is not the teacher of record (TOR) – Count all the students the TOR provides instruction to but the confidential file is the responsibility of another certified special education teacher of record.
- Teacher of Record (TOR) only – Count all the students the TOR is only responsible for the confidential file. The TOR in this section does **not** provide any services on the IEP, and only writes the IEP paperwork.
- Teacher of Record (TOR) and provide services – Count all the students the TOR is responsible for the confidential file and provides at least one IEP service to each student such as consultation, monitoring, co-teaching, collaboration, and direct instruction.

**Section B** – Provide the number of student records/evaluations the TOR will or have completed during the current school year. Section B is in regards the TOR who is involved with completing

the evaluation paperwork and may also conduct additional assessments for the MEEGS eligibility determination.

- Initial evaluations the TOR will initiate and/or completed to date within the school year.
- Reevaluations the TOR will initiate and/or completed to date due this current school year.
- New move-in students (in-state transfer or out-of-state transfer) will be a count of the records the TOR has completed to date for the current school year.

**NOTE:** If the TOR is **not** involved in the **initial** and/or **reevaluation** testing or paperwork, then these two areas would be blank.

**Section C** – Provide the number of school sites the TOR travels to within the same school district to provide IEP services to students. The TOR will select only one of the three options and place a number 1 in the selected option box. Be sure to leave the other two options blank.

**Section D** – Provide the number of all students the TOR provides services to for each grade level option. Make certain to include the number of students the TOR provides instruction to but is not the Teacher of Record (TOR). Each student should only be counted once.

**Section E** – Provide the total number of students per type of service listed on the IEP the TOR is directly serving each student. Include the students the special education staff is providing services to but is not responsible for the confidential paperwork (i.e., is **not** the TOR). Also, one student may have multiple types of service depending on the needs. Therefore, if the special education staff provides multiple services to a student, then count the student for each service type provided. For example, Sally's IEP services lists Reading one hour per day for five days a week for direct instruction, and Math one hour per week for collaboration. Therefore, this student will be counted twice (once for collaboration and once direct instruction) to document both services.

**Section F** – Provide the amount/frequency of services the TOR provides to each student each week. Include the students the TOR is providing instruction to but is **not** responsible for the confidential paperwork (meaning is not the TOR for the special education paperwork).

**Section G** – Total Workload Calculation: (Average **Points** Range - 75 to 125). When a TOR goes over the 125 total then an exception to workload will need to be requested. The form is available on the OSDE-SES webpage.

### ***C. Exceptions to Caseload/Workload/Class Size***

If the total Caseload is over 1.0 or the Workload is over 125 points, the LEA must apply for an exception to caseload or workload depending on which calculation the district is utilizing for their staff. For permission to adjust caseload/workload/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/workload/class size that 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 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/Workload/Class Size Request for Exception form. This exception will expire at the end of the school year. If the LEA continues to have staffing needs above the caseload or workload maximum number, then the LEA must apply annually for an exception for each school year the LEA exceeds the caseload/workload.

#### ***Legal Citations***

##### **Oklahoma Statutes, Title 70: Schools**

70 O.S. § 6-122.3	Alternative Placement Teaching Certificate – Alternative Placement Programs – Adjunct Teachers.
70 O.S. § 6-122.8	Issuance of Certificates to Teach in the Area of Mild-Moderate or Severe-Profound Disabilities or Comprehensive Special Education.
70 O.S. § 6-182	Definitions – As Used in the Oklahoma Teacher Preparation Act.
70 O.S. § 6-187	Competency Examinations.
70 O.S. § 6-189.2	Licensing or Certification of School Psychologist or Psychometrist.

##### **Oklahoma Administrative Code (OAC): State Department of Education**

OAC § 210:35-29-6	Alternative Education Academies, Programs, and Schools: Personnel:
	Certification; Criminal Record Searches.
OAC § 210:10-1-13	Educational Services for Children in Residential Care, Treatment, or Emergency Shelter Facilities.

##### **Oklahoma Administrative Code (OAC): Board of Examiners for Speech-Language Pathology and Audiology**

OAC § 690:10-7-3	Supervision Required.
OAC § 690:10-7-10	Roles and Responsibilities of Speech-Language Pathology Assistants
	and Audiology Assistants

## 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>● <i>RED</i> 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>● <i>RED</i> 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><b>If Additional Assessments are Necessary</b></p> <ul style="list-style-type: none"> <li>• <i>Special Education Parent Consent</i>, signature is required (electronic signatures are allowed).</li> <li>➤ 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> <p><b>OR</b></p> <ul style="list-style-type: none"> <li>➤ If the parent fails to respond or the LEA cannot persuade the parent to attend a meeting regarding the LEA's request for consent of an initial evaluation, document attempts to contact parent and results of the contact. It is recommended to send a Written Notice to Parents with the LEA's rationale regarding the proposal to conduct an initial evaluation. LEA must <b>not</b> evaluate without the parent's signature for consent to conduct an initial evaluation.</li> </ul> <p><b>OR</b></p> <ul style="list-style-type: none"> <li>➤ If parent declines to sign consent, the LEA must <b>not</b> evaluate without parent's signature for consent.</li> </ul> <p><b>NOTE:</b> Parent failing to respond is <b>not</b> the same as the parent declining to sign consent for the initial evaluation.</p> <p>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><b>If Additional Assessments are Necessary</b></p> <ul style="list-style-type: none"> <li>• <i>Special Education Parent Consent</i>, signature is required (electronic signatures are allowed).</li> <li>➤ 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> <p><b>OR</b></p> <ul style="list-style-type: none"> <li>➤ If the LEA is unable to persuade the parent to attend a meeting to discuss the option of additional assessments for a reevaluation made reasonable efforts to obtain such consent, or the parent fails to respond to LEA's request for consent for reevaluation, then the 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 based upon the date the proposal will go into effect as determined to be considered a reasonable amount of time for the parent to respond. *</li> </ul> <p><b>OR</b></p> <ul style="list-style-type: none"> <li>➤ If parent declines to sign consent, then the LEA must <b>not</b> reevaluate without parent's signature for consent.</li> </ul> <p><b>NOTE:</b> The LEA is unable to convince the parent to participate to discuss a need for additional assessments for the reevaluation or the parent fails to respond is <b>not</b> the same as the parent declining to sign consent for the reevaluation. 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><i>Written Notice to Parents</i> required</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</i> must be provided to the parent along with the Written Notice.</p>	<p><i>Written Notice to Parents</i> required</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</i> must be provided to the parent along with the Written Notice.</p>
Initial	Reevaluation
<p><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><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>● <i>Multidisciplinary Evaluation and Eligibility Group Summary</i> (MEEGS) 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 for Meeting form (34 C.F.R. § 300.322):</li> </ul> </li> </ul>	<p style="text-align: center;"><b>Eligibility Determination</b></p> <ul style="list-style-type: none"> <li>● <i>Multidisciplinary Evaluation and Eligibility Group Summary</i> (MEEGS) 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 for Meeting form:</li> </ul> </li> </ul>

1. Detailed records of email, phone calls made, virtual meeting, home visits, etc., offering multiple options for date/time of meeting.	1. Detailed records of email, phone calls made, virtual meeting, home visits, etc., offering multiple options for date/time of meeting.
<b>Initial</b>	<b>Reevaluation</b>
<p><b>AND</b></p> <p>2. Sent the parent an <i>“Invitation for Meeting”</i> form.</p> <p>NOTE: The LEA must complete the initial evaluation within 45 school days from date of parent consent.</p> <p>NOTE: Parent failing to respond is not the same as the parent disagreeing with eligibility.</p> <p>NOTE: LEA has 30 calendar days for parent(s) to participate in an Initial IEP meeting after eligibility determination. During the 30 days the child will <b>not</b> be placed in a special education setting. Only if the parent signs and agrees to the initial IEP may a child be placed into a special education setting.</p>	<p><b>AND</b></p> <p>2. Sent the parent an <i>“Invitation for 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>
<b>Initial</b>	<b>Reevaluation</b>
<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 Written Notice.</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 Written Notice.</p>

\* 34 C.F.R. § 300.300(c)(2): Parental Consent.

(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
<b>Parents or Adult Student (if Rights Have Transferred).</b> A “parent” includes: <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>	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
<ul style="list-style-type: none"> <li>Foster parent only when natural parent's authority to make educational decisions for their child has been suspended/terminated by law) who has no interest (i.e., financial) that would conflict with the interests of the student.</li> <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 9 <a href="#">11</a>, Section 2, for definition of a parent and Chapter 8 <a href="#">10</a>, Part 3 <a href="#">2</a>, Section <a href="#">2-1</a> for more information about foster parent).</li> </ul>			
<b>Student</b> <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</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>must take steps to ensure that the student's preferences and interests are considered.</p> <ul style="list-style-type: none"> <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>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>General 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 general education teacher. The IEP</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
team is not required to include more than one general education teacher of the student.			
<b>Special Education Teacher</b> <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
<b>Related Service Provider</b> <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>	As Needed	As Needed	As Needed
<b>Speech-Language Pathologist, and Speech-Language Therapist, <u>Speech-Language Pathology Assistant (SLPA) with a standard Oklahoma Teacher Certification</u></b> <ul style="list-style-type: none"> <li>• If the Primary Disability is Speech Language Impairment, then the speech-language pathologist (SLP), a speech-language therapist (SLT) or a speech-language pathology assistant (SLPA) who also holds a teacher certificate may be the special education teacher of record.</li> <li>• Leads the team in the development and writing of the IEP for a student receiving speech services in the category of DD/SLI or SLI.</li> <li>• Has knowledge and expertise about communication/ language delays to assist in the development of the IEP.</li> <li>• Responsible for overseeing the implementation of the IEP with the supervision of the SLP.</li> </ul>	SLP Required Review and Signature	SLP Required Attendance and Signature	SLP, SLT, or SLPA Required Attendance and Signature

Team Members Needed to Participate in Special Education Decision-Making			
TEAM MEMBER QUALIFICATIONS	RED *	MEEGS	IEP
Speech-Language Pathology Assistant cannot sign MEEGS as a qualified professional for interpreting test results, but may attend the meeting and sign as a team member (not TOR). Refer to <a href="#">Section 6</a> for more information regarding SLPAs.			
<b>Qualified Professional (as appropriate)</b> <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 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>	Required Review and Signature	Required Attendance and Signature  **May be optional for reevaluation	As Needed
<b>Representative of Transition Agency(s)</b> <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>	As Needed	As Needed	As Needed

Team Members Needed to Participate in Special Education Decision-Making			
TEAM MEMBER QUALIFICATIONS	RED *	MEEGS	IEP
<b>Part C Coordinator (SoonerStart Representative)</b> <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>	As Needed	As Needed	As Needed
<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 be provided 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- 5. "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. See "Determination of Eligibility" at [34 C.F.R. § 300.306\(a\)\(1\)](#), and "IEP Team Attendance" at [34 C.F.R. § 300.321\(e\)](#).

## 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), Office of Special Education Services 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 C.F.R. § 300.101 and 34 C.F.R. §§ 300.320 through 300.324)
2. Parent Participation and the IEP Team (34 C.F.R. §§ 300.321 through 300.322)
3. Extended School Year Services (34 C.F.R. § 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 maximum age school year in which they turn of 22 or older on or before September 1 of a school year or until they graduate with a regular standard diploma ~~reach maximum age~~. 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 amendment 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.

## APPENDIX D. GLOSSARY

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

**Accessible educational materials (AEM).** Are materials in an accessible format to all students with disabilities to meet their unique disability related needs. AEM are print-based and technology-based educational materials, including printed and electronic textbooks, and related core materials that are designed or enhanced in a way that makes them usable across the widest range of learner variability, regardless of format (e.g., print, digital, graphic, audio, video). Accessible formats provide the same information in another form to address the barriers text-based materials can present for some learners. Refer to IDEA 34 C.F.R. § 300.172 and Chapter 1. Free Appropriate Public Education for more information.

**Accommodation.** Allow for the student with a disability to access the curriculum, instruction, or testing format or procedures that enables them to participate in the general education curriculum. Accommodations should be considered to include supports such as assistive technology as well as changes in presentation, response, timing, scheduling, and settings that do not fundamentally alter the requirements or the standards.

**Adaptation.** The broader application of altering curriculum to meet the needs of learners, either by providing accommodations or modifications to what is being taught. Changes to curriculum, instruction, or assessments that fundamentally alters the requirements, but that enable a student with an impairment an opportunity to participate in general education. Adaptations, like modifications include strategies that change the level of learning expectation. Refer to Chapter 6. Individualized Education Program (IEP) for more information on modifications.

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

**Adequate Progress.** Based on an individual student's trajectory toward their individualized annual goals, perform within a reasonable time period consistent with national or local growth rate comparisons.

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

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

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

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

**Aggregated Data.** Information that is from multiple separate sources but is gathered and analyzed as a whole.

**Alternate Assessment.** The Oklahoma Alternate Assessment Program (OAAP) aligned with alternate academic standards is designed for students with significant cognitive and adaptive delays who are unable to participate in the state-established Oklahoma State Testing Program (OSTP) aligned with the Oklahoma Academic Standards as determined by the IEP team. Alternate assessments may also be developed for when there are district-wide assessments and a student with significant cognitive and adaptive delays are not able to participate in the district-wide assessments created for all students.

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

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

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

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

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

**Autism.** An IDEA disability category which is described as a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three (3), 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. Autism does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance. A child who manifests the characteristics of autism after age three could be identified as having autism if the criteria within the definition and the key eligibility indicators meet the Oklahoma eligibility standards. Refer to IDEA 34 C.F.R. § 300.8(c)(1) and Chapter 5. Evaluation and Eligibility for more information.

**Behavioral Intervention Plan (BIP).** A BIP is an individualized behavior plan which defines the problem behavior, the reasons the behavior occurs and positive intervention strategies that will address the problem behavior prior to and after the identified behavior occurs. These strategies address preventative techniques, teaching replacement behaviors, how to respond or resolve behaviors, and crisis management, if necessary.

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

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

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

**Change of Placement.** Removal of a child with a disability from the child's current educational placement. When the removal is for disciplinary purposes, regulations apply, 34 C.F.R. § 300.536.

**Change of Placement for Disciplinary Reasons.** A removal from the current educational placement for more than 10 consecutive school days or a series of removals that constitute a pattern when they total more than 10 school days in a school year. Factors such as the length of the removal, the proximity of the removals to one another, and the total amount of time the student is removed are indicators of a pattern. Refer to IDEA 34 C.F.R. § 300.530 and Chapter 12. Discipline Guidelines and Protections for more information.

**Charter School.** A publicly funded, nonprofit, nonsectarian public school that operates under the state-wide charter school board or a school within an LEA if authorized by the LEA's board. It is governed by the conditions of its approved charter and federal and state laws.

**Child.** An individual who has not reached age 18.

**Child Find.** A process to locate, identify, and evaluate students who reside in the district and may be in need of special education. Mandated through IDEA, Child Find requires all school districts to identify, locate and evaluate all children with disabilities, regardless of the severity of their disabilities. This obligation to identify all children who may need special education services exists even if the school is not providing special education services to the child. Refer to IDEA 34 C.F.R. § 300.111 and Chapter 2. Child Find for more information.

**Compensatory Education.** When through a due process hearing the Independent Hearing Office (IHO) or through a State complaint investigation the student is awarded compensatory educational services because the school district failed to provide the student a Free Appropriate Public Education (FAPE). These compensatory educational services are above and beyond those normally due a student under their IEP and general education instructional day.

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

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

**Consensus.** Has two common meanings.

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

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

**Consent.** Voluntary, written approval of a proposed activity, as indicated by a parent/adult student signature. The parent/adult student must be fully informed in their native language or other mode of communication. The parent/adult student understands and agrees in writing to the carrying out of the activity 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. Even though the parent provided consent, they may revoke their consent at any time. However, revocation of consent 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). Refer to IDEA 34 C.F.R. § 300.9 for more information.

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

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

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

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

**Curriculum Based Measurements (CBM).** Is a type of general outcome measure that is used to determine how students are progressing in basic academic skills such as phonemic awareness, oral reading fluency, math fluency or math concepts and applications, and spelling.

**Dangerous Weapon.** A weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of causing death or serious bodily injury, except that such term does not include a pocket-knife with a blade of less than 2 ½ inches in length. Refer to Chapter 12. Discipline Guidelines and Protections for more information.

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

**Deaf-Blindness.** An IDEA disability category in which a student demonstrates concomitant hearing and visual impairments, and where the combination of these two disabilities causes such severe communication and other developmental and educational needs that the student cannot be accommodated with special education services designed solely for students with deafness or blindness. Refer to IDEA 34 C.F.R. § 300.8(c)(2) and Chapter 5. Evaluation and Eligibility for more information.

**Deafness.** An IDEA disability category in which a hearing impairment is so severe that the student, with or without amplification, is limited in processing linguistic information through hearing, which adversely affects educational performance. Refer to IDEA 34 C.F.R. § 300.8(c)(3) and Chapter 5. Evaluation and Eligibility for more information.

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

**Developmental Delay (DD).** An IDEA disability category used only for students ages 3 through 9 for whom a significant delay exists in one or more of the following skill areas:

receptive/expressive language; cognitive abilities; gross/fine motor functioning; social/emotional development; or self-help/adaptive functioning. The use of this category is optional for districts. Refer to Chapter 5. Evaluation and Eligibility for more information.

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

**Discipline.** A set of rules or techniques designed by a district when a student violates a code of conduct. Districts utilize discipline to minimizing disruption of learning of the student and the learning of others.

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

**Discrepancy Formula.** A method of determining the difference between a student's expected level of academic achievement and intellectual ability used to establish eligibility for special education under the category of specific learning disability. Refer to Chapter 5. Evaluation and Eligibility for more information.

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

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

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

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

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

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

**Elementary School.** The term ‘elementary school’ means a nonprofit institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined under State law, 34 C.F.R. § 300.13.

**Emotional Disturbance.** An IDEA disability category in which a student has a condition exhibiting one or more of five behavioral or emotional characteristics over a long period of time, and to a marked degree, that adversely affects educational performance. The term does **not** include students who are socially maladjusted unless it is determined they have an emotional disturbance. The term emotional disturbance does include students who are diagnosed with schizophrenia. Refer to IDEA 34 C.F.R. § 300.8(c)(4) and Chapter 5. Evaluation and Eligibility for more information.

**Essential Components of Reading Instruction.** The term means explicit and systematic instruction in (a) phonemic awareness, (b) phonics, (c) vocabulary development, (d) reading fluency, including oral reading skills, and (e) reading comprehension strategies.

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

**Evaluation Group.** A group of qualified professionals, including the parent/adult student, charged with the responsibility to make decisions regarding evaluation, assessments, and eligibility. The group of qualified professionals will depend on the suspected category of disability which drives the evaluation components required to make eligibility determinations. For reevaluations different qualified professionals may be included when the IEP team has questions regarding the need for additional services/related services or modifications to the special education and related services are needed.

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

**Extended School Year (ESY).** A program to provide special education and related services to a student with a disability beyond the normal school year of the LEA (e.g., instructional days or minutes in a school year) in accordance with the child’s IEP and at no cost to the parents. The IEP team determines the need for ESY services based on the child’s unique circumstances to provide a Free Appropriate Public Education. Refer to Chapter 6. Individualized Education Program (IEP) for more information.

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

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

**Free Appropriate Public Education (FAPE).** A basic IDEA requirement which states that special education and related services are provided at public expense (free); in conformity with an appropriately developed IEP (appropriate); under public supervision and direction (public); and include preschool beginning at age 3, elementary, and secondary education that meets the education standards, regulations, and administrative policies and procedures issued by the State

Department of Education (education). Refer to Chapter 1. Free Appropriate Public Education for more information.

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

**Functional Behavioral Assessment (FBA).** A systematic process for defining problem behavior to hypothesize about the function of student behavior. FBA data provides a baseline with regards to the frequency (how often the behaviors occur), duration (how long does the identified behavior occur), latency (how long it takes for a behavior to begin after a specific verbal demand or task demand or an event has occurred), including information about antecedent behaviors, consequences of responses to the student's behaviors, etc.

**General Education Curriculum.** The curriculum that is designed for all students, usually consisting of a common core of subjects and curriculum areas adopted by a district that are aligned to the Oklahoma Academic Standards.

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

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

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

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

**Hearing Impairment (HI).** An IDEA disability category in which a student has a permanent or fluctuating hearing loss that adversely affects the student's educational performance but is not included under the category of deafness. Refer to IDEA 34 C.F.R. § 300.8(c)(5) and Chapter 5. Evaluation and Eligibility for more information.

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

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

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

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

a licensed health care professional. Refer to Chapter 12. Discipline Guidelines and Protections for more information.

**Independent Educational Evaluation (IEE).** A parent has a right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency. An IEE means an evaluation conducted by a qualified examiner(s) who is not employed by the public agency responsible for the education of the student in question. Public expense means that the public agency either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent (34 C.F.R. § 300.502(a) and (b)).

**Individualized Education Program (IEP).** A written document (developed collaboratively by parents and school personnel) which outlines the special education program for a student with a disability. This document is developed, reviewed, and revised at an IEP meeting at least annually. Refer to IDEA 34 C.F.R. § 300.320 and Chapter 6. Individualized Education Program (IEP) for more information.

**Individualized Education Program (IEP) Team.** Established by the IDEA, an IEP team is responsible for determining a student's placement, developing the student's IEP, and reviewing/revising the student's IEP and placement at least annually. An IEP team is comprised of required members: The parents of the child; not less than one general education teacher of the child (if the child is, or may be, participating in the general education environment); not less than one special education teacher of the child, or where appropriate, not less than one special education provider of the child; a representative of the public agency who is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities; is knowledgeable about the general education curriculum; and is knowledgeable about the availability of resources of the public agency; the IEP team may include other stakeholders as appropriate, including the student with a disability when appropriate. Refer to IDEA 34 C.F.R. § 300.321 and Chapter 6. Individualized Education Program (IEP) for more information.

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

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

**Individualized Services Plan (ISP).** A written document that describes the special education and related services the LEA will provide to a parentally-placed child with a disability enrolled in a private school who has been designated to receive services based on consultation regarding proportionate share funds for students with disabilities attending private school, consistent with 34 C.F.R. § 300.137 through 34 C.F.R. § 300.139, and 34 C.F.R. § 300.132 through 300.136.

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

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

**In-school Suspension.** A disciplinary technique, considered a less restrictive alternative to out-of-school suspension, sending a student home, that involves a change in placement and removing the child from their peers and assigning him or her to a temporary location. Refer to Chapter 12. Discipline Guidelines and Protections for more information.

**Intellectual Disabilities (ID).** An IDEA disability category in which subaverage intellectual functioning exists concurrently with deficits in adaptive behavior. These deficits are manifested during the student's developmental period and adversely affect the student's educational performance. Refer to IDEA 34 C.F.R. § 300.8(c)(6) and Chapter 5. Evaluation and Eligibility for more information.

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

**Interim Alternative Educational Setting (IAES).** Under special circumstances as outlined in IDEA, the educational setting in which a district may place a student with a disability, for not more than 45 school days, if the student while at school, on school premises or at a school function carries a weapon or possesses a weapon; possesses, uses, sells or solicits the sale of drugs or controlled substances; or has inflicted serious bodily injury upon another person. An IAES may also be ordered by a due process hearing officer based upon evidence that maintaining the current placement is substantially likely to result in injury to the student or others. School personnel may also remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate IAES, another setting, or suspension, for not more than 10 consecutive days (to the extent those alternatives are applied to children without disabilities), and for additional removals of not more than 10 consecutive days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement). Refer to IDEA 34 C.F.R. § 300.530 and Chapter 12. Discipline Guidelines and Protections for more information.

**Interim IEP.** A short-term IEP (30 days or less) for students already identified as a child with a disability under IDEA (**not** for initial placements nor for out-of-state transfers who are in need of an initial evaluation under Oklahoma eligibility standards) with all the components of a required IEP developed by the IEP team. It may be used for students transferring from other districts in-state pending the development of the subsequent IEP while the district conducts assessments to determine the student's current academic, behavior or functional performance to help develop the subsequent IEP.

**Interpreting Services.** When used with respect to children who are deaf or hard of hearing: Oral transliteration services, cued language transliteration services, sign language transliteration and interpreting services, and transcription services, such as communication access real-time translation (CART), C-Print, and TypeWell; and special interpreting services for children who are deaf-blind (34 CFR § 300.34(c)(4)).

**Intervention.** Is an evidence-based standard protocol designed to target a specific skill deficit used by educators to help students who are struggling with a skill or lesson succeed in the classroom. If the data reveals the student is not responding to the intervention, then there are a variety of ways to intensify the intervention instruction (e.g., decrease the size of the group, increase the amount of time the student is exposed to the intervention, possibly focus on a precursor skill or a different academic skill, etc.).

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

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

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

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

**Least Restrictive Environment (LRE).** The IDEA 2004 requirement that students with disabilities, including those in public or private institutions or other care facilities, be educated with students who are nondisabled to the maximum extent appropriate and special classes, separate schooling, or other removal of children with disabilities from the general education environment occurs only if the nature or severity of the disability is such that education in the general education classes with the use of supplementary aids and services cannot be achieved satisfactorily (34 C.F.R. § 300.114).

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

**Local Education Agency (LEA).** A public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or for a combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary schools or secondary schools (34 C.F.R. § 300.23(a)).

**Manifestation Determination.** Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the LEA, the parent and relevant members of the child's IEP team (as determined by the parent and the LEA) must review all relevant information in the student's file, including the child's IEP, and teacher observations, and any relevant information provided by the parents to determine: 1) If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or 2) If the conduct in question was the direct result of the LEA's failure to implement the IEP (34 C.F.R. § 300.530(e)(1)).

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

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

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

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

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

**Monitoring for Compliance.** An activity conducted by the Oklahoma State Department of Education to review a school district's compliance with federal laws, regulations, and state rules and special education policies/procedures.

**Multiple Disabilities (MD).** An IDEA disability category in which two or more impairments co-exist (does not include deaf-blindness), whose combination causes such severe educational problems that the student cannot be accommodated in special education services designed solely for one of the impairments. Multiple disabilities are generally lifelong, significantly interfere with independent functioning, and may necessitate environmental accommodations and adaptations to enable the student to participate in school and society. Multiple Disabilities are concomitant impairments such as intellectual disability and blindness, or intellectual disability and orthopedic impairment. Refer to IDEA 34 C.F.R. § 300.8(c)(7) and Chapter 5. Evaluation and Eligibility for more information.

**Native Language.** The language or mode of communication normally used by an individual or, in the case of a student, the language normally used by the student's parents. In direct contact with a student, the native language would be the language or mode of communication normally used by the student and not the parents, if there is a difference between the two.

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

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

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

**Nursing Services.** See “School health services” and Chapter 6. Individualized Education Program (IEP) under related services for more information.

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

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

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

**Other Health Impairment.** An IDEA disability category in which a student exhibits limited strength, vitality or alertness, including heightened alertness to environmental stimuli that is due to chronic or acute health problems (such as asthma, ADD or ADHD, cancer, diabetes, epilepsy, Fetal Alcohol Syndrome, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, Tourette syndrome and stroke) to such a degree that it adversely affects the student’s educational performance. Refer to IDEA 34 C.F.R. § 300.8(c)(9) and Chapter 5. Evaluation and Eligibility for more information.

**Orthopedic Impairment.** An IDEA disability category that includes a severe physical impairment that adversely affects a student’s educational performance and are caused by congenital anomaly (e.g., clubfoot, absence of an appendage, etc.); disease (e.g., poliomyelitis, bone tuberculosis, etc.); or from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contracture). Refer to IDEA 34 C.F.R. § 300.8(c)(8) and Chapter 5. Evaluation and Eligibility for more information.

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

1. Parent and/or Adult student;
2. A biological or adoptive parent of a child;
3. A foster parent;
4. A guardian generally authorized to act as the child’s parent, or authorized to make educational decisions for the child (but not the State if the child is a ward of the State);
5. An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child’s welfare; or
6. A surrogate parent who has been appointed by the school district. If the child is a ward of the state, the judge overseeing the child’s case may appoint the surrogate. The surrogate may not be an employee of the state or local education agency or any other

agency that is involved in the education or care of the child, has no personal or professional interest which conflicts with the interest of the child, has knowledge and skills that ensure adequate representation of the child.

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

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

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

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

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

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

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

**Positive Behavioral Supports (PBS).** Is an evidence-based framework developed to be proactive to support all students' social behavior, academic behavior, emotional behavior, and mental health utilizing data decisions to determine if in addition to core behavioral supports a need for targeted evidence-based interventions and behavior strategies to improve the outcomes of student behaviors.

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

**Present Levels of Performance.** A statement of the student's current level of academic achievement or development or behavior or functional performance in an area of need and how the student's disability affects their involvement and progress in the general education curriculum. Present levels of academic achievement and functional performance (PLAAFP) typically shortened to 'present levels'-is a central component of the IEP and is intended to comprehensively describe a child's abilities, performance, strengths, and needs. It is based on current data collected and information known about the child, including any new data collected, if appropriate and necessary, from the individual evaluation of the child that must be conducted in accordance with IDEA's evaluation/eligibility provisions, to meet the child's unique educational needs.

**Private School.** A school that 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, including religious, schools, or facilities that meet the definition of elementary school in IDEA 34 C.F.R. § 300.13 or secondary school in § 300.36, other than children with disabilities covered under §§ 300.145 through 300.147.

**Procedural Safeguards.** The formal requirements of Part B of the IDEA 2004 that are designed to allow a parent/adult student to participate meaningfully in decisions concerning an appropriate educational program for a student with a disability and, if necessary, dispute such decisions. Also referred to as special education rights. Refer to IDEA 34 C.F.R. § 300.504 and Chapter 11. Procedural Safeguards for more information.

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

**Professional Development.** High-quality comprehensive programs that are essential to ensure that persons responsible for the education or transition of students with disabilities possess the skills necessary to address the educational and related needs of these students. These should be scientifically-based and reflect successful practices including strategies for recruiting, hiring, preparing and retaining personnel.

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

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

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

**Reevaluation.** The LEA must ensure that a reevaluation of a child with a disability be conducted at least once every 3 years, unless the parent and the LEA agree that a reevaluation is unnecessary. A reevaluation may occur not more than once a year, unless the parent and the LEA agree otherwise (34 C.F.R. § 300.303).

**Related Services.** Refers to transportation and such developmental, corrective, and other supportive services required to assist a student with a disability to benefit from special education and includes the following, but not limited to: speech therapy, language therapy, audiology services, psychological services, physical therapy, occupational therapy, recreation, therapeutic recreation, early identification and assessment of disabilities in children, counseling services, rehabilitation counseling, orientation and mobility services, interpreting services, medical services for diagnostic or evaluation purposes, school health/nursing services (excluding surgically implanted medical devices), social work services in schools, and parent counseling and training (34 C.F.R. § 300.34(a)).

**Response to Intervention (RtI).** A formal process for evaluating student response to scientifically research-based interventions, consisting of the core components of: (1) problem identification, (2) problem analysis, (3) applying evidence-based interventions targeted to specific skill deficits, (4) progress monitoring, (5) utilizing data-decisions rules to determine if the intervention is working or not, including intensifying/adapting the intervention if not working.

**Resolution Session.** Within 15 days of receiving notice of the parent's due process complaint, and prior to the initiation of a due process hearing, the LEA must convene a meeting with the parent and the relevant member or members of the IEP team who have specific knowledge of the facts identified in the due process complaint that includes a representative of the LEA who has decision-making authority on behalf of that agency; and may not include an attorney of the LEA unless the parent is accompanied by an attorney. The purpose of the meeting is for the parent of the child to discuss the due process complaint, and the facts that form the basis of the due process complaint, so that the LEA has the opportunity to resolve the dispute that is the basis for the due process complaint. The meeting need not be held if the parent and the LEA agree in writing to waive the meeting; or the parent and the LEA agree to use the mediation process (34 C.F.R. § 300.510(a)).

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

**School Day.** Any day, including a partial day that students are in attendance at school for instructional purposes. School day has the same meaning for all children in school, including children with and without disabilities (34 C.F.R. § 300.11(c)).

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

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

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

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

has been accepted by a peer-reviewed journal or approved by a panel of independent experts through a comparably rigorous, objective, and scientific review.

**Screening.** An informal, although organized process, of identifying students who are not meeting or who may not be meeting Oklahoma Academic Content Standards. 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). Parental consent is not required before administering a test, screener, or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of parent of all children (34 C.F.R. § 300.300(d)(1)(ii)).

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

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

**Setting.** The location where special education services are received.

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

**Special Education.** Specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and instruction in physical education. Special education includes each of the following, if the services otherwise meet the requirements, such as speech-language pathology services, or any other related service, if the service is considered special education rather than a related service under State Standards; travel training; vocational education (34 C.F.R. § 300.39(a)).

**Special Education Paraprofessional.** A credentialed individual who is employed by a district and who is appropriately trained and supervised in accordance with State standards to assist in the provision of special education and related services under the general direction and supervision of a certified or licensed professional staff. Refer to Chapter 15. Special Education Staffing for more information.

**Special Education Placement.** In determining the educational placement of a child with a disability, including a preschool child with a disability starting at the age of 3 years old, each public agency must ensure that the placement decision is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and is made in conformity with the Least Restrictive Environment (LRE) provisions. The child’s placement is determined at least annually; is based on the child’s IEP; and is as close as possible to the child’s home; unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that they would attend if nondisabled. In selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of services that the child needs. A child with a disability is not

removed from education in age-appropriate general education classrooms **solely** because of needed modifications in the general education curriculum (34 C.F.R. § 300.116).

**Specially Designed Instruction.** Adapting, as appropriate to the needs of an eligible child under IDEA, 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 education curriculum so that the student can meet the educational standards within the jurisdiction of the school district that apply to all students (34 C.F.R. § 300.39(b)(3)).

**Specific Learning Disability (SLD).** An IDEA disability category in which a specific disorder of one or more of the basic psychological processes involved in understanding or in using spoken or written language may manifest itself in an imperfect ability to listen, think, speak, read, write, spell or do mathematical calculations, adversely affecting the student's educational performance. The term includes such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia and developmental aphasia. The term does not include a student who has needs that are primarily the result of visual, hearing, or motor disabilities; cognitive impairment; emotional disturbance; or environmental, cultural, or economic disadvantage (34 C.F.R. § 300.8(c)(10)). Refer to Chapter 5. Evaluation and Eligibility for more information.

**Speech or Language Impairment (SLI).** An IDEA disability category that includes a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a child's educational performance (34 C.F.R. § 300.8(c)(11)). Refer to Chapter 5. Evaluation and Eligibility for more information.

**Speech-Language Pathologist Assistant (SLPA).** A professional supervised under a Speech-Language Pathologist. Examples of work performed may be found in Chapter 15. Special Education Staffing.

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

**Student (School Age).** For resident children with disabilities who qualify for special education and related services under the federal individuals with disabilities education act (IDEA) and subsequent amendments thereto, and applicable State and federal regulations, 'school age' begins at the attainment of age 3 and continues through the age of 21 years, including through the entire school year in which the student turns 22 years old or when the student earns a standard diploma, whichever comes first.

**Stay Put.** A requirement that a district or agency maintain a student with a disability in their present educational placement while a due process hearing or subsequent judicial proceeding is pending, unless the parties agree otherwise (34 C.F.R. § 300.518). "Stay-put" only applies during the pendency of any administrative or judicial proceeding regarding a due process complaint notice requesting a due process hearing. However, stay-put does not apply to a State Complaint, nor mediation, or any other removal such as suspension by the school district.

**Summary of Performance (SOP).** A school district is required to provide a "Summary of Performance (SOP) document to secondary students with a disability when a student exits special education as a result of earning a standard diploma or aging out. This SOP document is a written summary of the student's academic achievement and functional performance, which shall include recommendations on how to assist the student in meeting postsecondary goals (34 C.F.R. § 300.305(e)).

**Supplementary Aids and Services.** Aids, services and other supports that are provided in the general education classrooms, other education-related settings, and in extracurricular and nonacademic settings, to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate, including supports to the general education teacher (34 C.F.R. § 300.42).

**Surrogate Parent.** An individual assigned and trained by a district or an agency to assume the rights and responsibilities of a parent under the IDEA 2004 when no parent can be identified or located for a particular student or when the child is a ward of the state. The surrogate cannot be an employee of the State Education Agency (SEA-aka Oklahoma State Department of Education), the Local Education Agency (LEA-aka local school district), or any other agency that is involved in the education or care of the child; has no personal or professional interest that conflicts with the interest of the child the surrogate parent represents; and has knowledge and skills that ensure adequate representation of the child (34 C.F.R. § 300.519(d)).

**Suspension.** A temporary removal of a student with a disability who violates a code of student conduct from their current educational placement.

**Teacher of Record (TOR).** A special education teacher or speech-language pathologist assigned to manage the student with a disability special educational records, and oversee the implementation of the Individualized Education Program (IEP) with regard to their area of certification.

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

**Travel Training.** Providing instruction, as appropriate, to children with significant cognitive disabilities, and any other children with disabilities who require this instruction, to enable them to develop an awareness of the environment in which they live; and learn the skills necessary to move effectively and safely from place to place within that environment (e.g., in school, in the home, at work, and in the community). Refer to IDEA 34 C.F.R. § 300.39(b)(4).

**Traumatic Brain Injury (TBI).** An IDEA disability category that refers to an injury to the brain caused by an external physical force and resulting in a total or partial functional disability or psychosocial impairment, or both, that adversely affects educational performance. The term applies to open or closed head injuries resulting in impairments in one or more areas such as cognition, language, memory, attention, reasoning, abstract thinking, judgment, problem solving, sensory perception and motor abilities, psychosocial behavior, physical functions, information processing, and speech. The term does not apply to congenital or degenerative brain injuries or to brain injuries induced by birth trauma (34 C.F.R. § 300.8(c)(12)). Refer to Chapter 5. Evaluation and Eligibility for more information.

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