

Section 4. - ARD/IEP SECTION
Table of Contents

INDIVIDUAL EDUCATION PROGRAM

I.	Required ARD/IEP	402
II.	Timeline	403
III.	Written ARD/IEP Report	403
IV.	Definitions	403
V.	Content of the IEP	405
VI.	Parent Rights / Participation	407
	A. Participation.....	407
	B. Age of Majority / Parental Rights Regarding Adult Students.....	408
VII.	Membership (including excusal)	410
VIII.	ARD / IEP Meetings:	411
	A. Initial.....	411
	B. Annual.....	412
	C. Reevaluation Planning ARD	412
	D. Brief / Revision ARD	412
	New Provisions (agreements, amendments)	
	E. Dismissal / Change of Placement (summary of age out students)	413
	F. Graduation (Personal Graduation Plans).....	413
IX.	Mutual Agreement / 10 Day Recess	415
X.	Transfers / New to District	415
XI.	Private Nonpublic School Provisions (see also Section 5)	417
	A. Placed by the District.....	417
	B. Placed by the Parent (<i>if FAPE is at issue see Section 5</i>).....	417
XII.	Residential Placements (see also Section 5)	418

Section 4 ADDITIONAL IEP REQUIREMENTS

I.	Specific Areas to Address:	431
	Accommodations – see Supplementary Aids and Services	
	A. Adapted Physical Education (APE)	431
	B. Assistive Technology	431
	C. Auditory Impairment	432
	D. Autism	434
	E. Deaf-Blindness	434
	F. Extended School Year Services (ESY)	435

G. Extracurricular Activities	436
H. FBA / BIP	437
I. Grading and Reporting	437
J. Intensive Remediation	439
K. LEP (Limited English Proficient)	439
L. LRE (Least Restrictive Environment) (Placement – includes Daniel R.R.).....	440
M. Physical Education.....	442
N. Preschool Program for Children with Disabilities	442
O. Prison.....	443
P. Reading Diagnosis (K-2)	
Q. Regional Day School Program for the Deaf (RDSPD)	443
R. Student Success Initiative.....	443
S. Supplementary Aids and Services – Accommodations.....	448
T. Tape Recording.....	449
U. TAKS, SDAA-II, LDAA or District-wide Assessments.....	449
V. Texas School for the Deaf (TSD) and (TSBVI).....	452
W. Transition Planning.....	453
X. Visual Impairment.....	455
II. General Education Teacher Required Involvement.....	457
III. Special Education Teacher Responsibilities.....	459
A. Initial.....	459
B. Annual.....	460
C. Brief/Revision ARD.....	460
D. Transfer ARD.....	461

Section 4 RELATED SERVICES

I. Definitions.....	471
II. Regulations / Categories.....	471
1. Audiology.....	471
2. Counseling.....	472
3. Early Identification.....	472
4. Interpreting Services.....	472
5. Medical Services.....	472
6. Occupational Therapy.....	472
7. Orientation and Mobility.....	473
8. Parent Counseling and Training.....	474
9. Physical Therapy	474
10. Psychological Services.....	474
11. Recreation.....	474
12. Rehabilitation Counseling.....	474
13. School Nurse Services.....	475
14. Social Work.....	475
15. Speech Therapy (not RS in Texas)	475
16. Transportation.....	475
III. Request for Related Services.....	476

Section 4. INDIVIDUAL EDUCATION PROGRAM

I. REQUIRED ARD/IEP

TEC §29.005. Individualized Education Program

- (a) Before a child is enrolled in a special education program of DISD, the district shall establish a committee composed of the persons required under 20 U.S.C. Section 1401(11) to develop the child's individualized education program.

TAC §89.1050. The Admission, Review, and Dismissal (ARD) Committee.

- (a) Devine Independent School District will establish an admission, review, and dismissal (ARD) committee for each eligible student with a disability and for each student for whom a full and individual initial evaluation is conducted pursuant to §89.1011 of this title (relating to Referral for Full and Individual Initial Evaluation). The ARD committee shall be the individualized education program (IEP) team defined in federal law and regulations, including, specifically, 34 Code of Federal Regulations (CFR), §300.344. DISD shall be responsible for all of the functions for which the IEP team is responsible under federal law and regulations and for which the ARD committee is responsible under state law, including, specifically, the following:

<i>The federal reg numbers in TAC 89.1050 are no longer correct due to new IDEA 2004, however, the subject matter they reference and the new reg numbers can be found in the Op.Guide section.</i>		<i>Op. Guideline</i>
	<i>→ below</i>	
(1)	34 CFR, §§300.340-300.349, and Texas Education Code (TEC), §29.005 (Individualized Education Program);	<i>Section 4</i>
(2)	34 CFR, §§300.400-300.402 (relating to placement of eligible students in private schools by a school district);	<i>Section 5</i>
(3)	34 CFR, §§300.452, 300.455, and 300.456 (relating to the development and implementation of service plans for eligible students in private school who have been designated to receive special education and related services);	<i>Section 5</i>
(4)	34 CFR, §§300.520, 300.522, and 300.523, and TEC, §37.004 (Placement of Students with Disabilities);	<i>Section 6</i>
(5)	34 CFR, §§300.532-300.536 (relating to evaluations, re-evaluations, and determination of eligibility);	<i>Section 3</i>
(6)	34 CFR, §§300.550-300.553 (relating to least restrictive environment);	<i>Section 4</i>
(7)	TEC, §28.006 (Reading Diagnosis);	<i>Section 4</i>
(8)	TEC, §28.0211 (Satisfactory Performance on Assessment Instruments Required; Accelerated Instruction);	<i>Section 4</i>
(9)	TEC, §28.0212 (Personal Graduation Plan);	<i>Section 4</i>
(10)	TEC, §28.0213 (Intensive Program of Instruction);	<i>Section 4</i>
(11)	TEC, Chapter 29, Subchapter I (Programs for Students Who Are Deaf or Hard of Hearing);	<i>Section 4</i>
(12)	TEC, §30.002 (Education of Children with Visual Impairments);	<i>Section 4</i>
(13)	TEC, §30.003 (Support of Students Enrolled in the Texas School for the Blind and Visually Impaired or Texas School for the Deaf);	<i>Section 8</i>
(14)	TEC, §33.081 (Extracurricular Activities); <i>(suspension)</i>	<i>Section 6</i>
(15)	TEC, Chapter 39, Subchapter B (Assessment of Academic Skills); and	<i>Section 4</i>
(16)	TEC, §42.151 (Special Education). <i>(funding)</i>	<i>Section 8</i>

§300.112 Individualized education programs (IEP).

The State must ensure that an IEP, or an IFSP that meets the requirements of section 636(d) of the Act, is developed, reviewed, and revised for each child with a disability in accordance with §§300.320 through 300.324, except as provided in §300.300(b)(3)(ii). (Authority: 20 U.S.C. 1412(a)(4))

§300.323 When IEPs must be in effect.

(a) **General.** At the beginning of each school year, DISD must have in effect, for each child with a disability within its jurisdiction, an IEP, as defined in §300.320.

II. TIMELINE

§300.323 When IEPs must be in effect.

(c) **Initial IEPs; provision of services.** The Devine Independent School District must ensure that--

- (1) A meeting to develop an IEP for a child is conducted within 30-days of a determination that the child needs special education and related services; and
- (2) As soon as possible following development of the IEP, special education and related services are made available to the child in accordance with the child's IEP.

TAC §89.1050 (d) The ARD committee shall make its decisions regarding students referred for a full and individual initial evaluation within 30 calendar days from the date of the completion of the written full and individual initial evaluation report. If the 30th day falls during the summer and school is not in session, the ARD committee shall have until the first day of classes in the fall to finalize decisions concerning the initial eligibility determination, the IEP, and placement, unless the full and individual initial evaluation indicates that the student will need extended school year (ESY) services during that summer.

III. WRITTEN REPORT OF ARD / IEP MEETING

TAC §89.1050 (e) The written report of the ARD committee shall document the decisions of the committee with respect to issues discussed at the meeting. The report shall include the date, names, positions, and signatures of the members participating in each meeting in accordance with 34 CFR, §§300.344, 300.345, 300.348, and 300.349. The report shall also indicate each member's agreement or disagreement with the committee's decisions. In the event TEC, §29.005(d) (1), applies, the district shall provide a written or audiotaped copy of the student's IEP, as defined in 34 CFR, §300.346 and §300.347. In the event TEC, §29.005(d)(2), applies, the district shall make a good faith effort to provide a written or audiotaped copy of the student's IEP, as defined in 34 CFR, §300.346 and §300.347.

IV. DEFINITIONS

§300.10 Core academic subjects. **Core academic subjects** means English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography. (Authority: 20 U.S.C. 1401(4))

§300.11 Day; business day; school day.

- (a) **Day** means calendar day unless otherwise indicated as business day or school day.
- (b) **Business day** means Monday through Friday, except for Federal and State holidays (unless holidays are specifically included in the designation of business day, as in §300.148(c)(1)(ii)).
- (c) (1) **School day** means any day, including a partial day, that children are in attendance at school for instructional purposes.
- (2) **School day** has the same meaning for all children in school, including children with and without disabilities. (Authority: 20 U.S.C. 1221e-3)

§300.14 Equipment. Equipment means--

- (a) Machinery, utilities, and built-in equipment, and any necessary enclosures or structures to house the machinery, utilities, or equipment; and
- (b) All other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture; printed, published and audio-visual instructional materials; telecommunications, sensory, and other technological aids and devices; and books, periodicals, documents, and other related materials.
(Authority: 20 U.S.C. 1401(7))

§300.22 Individualized education program. Individualized education program or IEP means a written statement for a child with a disability that is developed, reviewed, and revised in accordance with §§300.320 through 300.324. (Authority: 20 U.S.C. 1401(14))

§300.23 Individualized education program team. Individualized education program team or IEP Team means a group of individuals described in §300.321 that is responsible for developing, reviewing, or revising an IEP for a child with a disability. (Authority: 20 U.S.C. 1414(d)(1)(B))

§300.37 Secretary. Secretary means the Secretary of Education. (Authority: 20 U.S.C. 1401(28))

§300.38 Special education.

(a) **General.**

- (1) **Special education** means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including--
 - (i) Instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and
 - (ii) Instruction in physical education.
 - (2) **Special education** includes each of the following, if the services otherwise meet the requirements of paragraph (a)(1) of this section--
 - (i) Speech-language pathology services, or any other related service, if the service is considered special education rather than a related service under State standards;
 - (ii) Travel training; and
 - (iii) Vocational education.
- (b) **Individual special education terms defined.** The terms in this definition are defined as follows:
- (1) **At no cost** means that all specially-designed instruction is provided without charge, but does not preclude incidental fees that are normally charged to nondisabled students or their parents as a part of the regular education program.
 - (2) **Physical education** means--
 - (i) The development of--
 - (A) Physical and motor fitness;
 - (B) Fundamental motor skills and patterns; and
 - (C) Skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports); and
 - (ii) Includes special physical education, adapted physical education, movement education, and motor development.
 - (3) **Specially designed instruction** means adapting, as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction--

- (i) To address the unique needs of the child that result from the child's disability; and
 - (ii) To ensure access of the child to the general curriculum, so that he or she can meet the educational standards within the jurisdiction of DISD that apply to all children.
- (4) **Travel training** means providing instruction, as appropriate, to children with significant cognitive disabilities, and any other children with disabilities who require this instruction, to enable them to--
- (i) Develop an awareness of the environment in which they live; and
 - (ii) Learn the skills necessary to move effectively and safely from place to place within that environment (e.g., in school, in the home, at work, and in the community).
- (5) **Vocational education** means--
- (i) 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; and
 - (ii) Includes vocational and technical education.
- (6) **Vocational and technical education** means organized educational activities that--
- (i) Offer a sequence of courses that--
 - (A) Provides individuals with the rigorous and challenging academic and technical knowledge and skills the individuals need to prepare for further education and for careers (other than careers requiring a Master's or doctoral degree) in current or emerging employment sectors;
 - (B) May include the provision of skills or courses necessary to enroll in a sequence of courses that meet the requirements of this subparagraph; and
 - (C) Provides, at the postsecondary level, for a 1- year certificate, an associate degree, or industry-recognized credential; and
 - (ii) Include competency-based applied learning that contributes to the academic knowledge, higher-order reasoning and problem-solving skills, work attitudes, general employability skills, technical skills, and occupation-specific skills, or an individual.
- (Authority: 20 U.S.C.1401(29))

§300.43 Universal design. Universal design has the meaning given the term in section 3 of the Assistive Technology Act of 1998, as amended, 29 U.S.C. 3002.
(Authority: 20 U.S.C. 1401(35))

TEC §29.002. DEFINITION. In this subchapter, "special services" means:

- (1) special education instruction, which may be provided by professional and supported by paraprofessional personnel in the regular classroom or in an instructional arrangement described by Section 42.151; and
- (2) related services, which are developmental, corrective, supportive, or evaluative services, not instructional in nature, that may be required for the student to benefit from special education instruction and for implementation of a student's individualized education program.

V. CONTENT OF THE INDIVIDUALIZED EDUCATION PROGRAM (IEP).

§300.320 Definition of individualized education program.

- (a) **General.** As used in this part, the term individualized education program or IEP means a written statement for each child with a disability that is developed, reviewed, and revised in a meeting in accordance with §§300.320 through 300.324, and that must include--
 - (1) A statement of the child's present levels of academic achievement and functional performance, including--
 - (i) How the child's disability affects the child's involvement and progress in the general education curriculum (i.e., the same curriculum as for nondisabled children); or
 - (ii) For preschool children, as appropriate, how the disability affects the child's participation in appropriate activities;

- (2) (i) A statement of measurable annual goals, including academic and functional goals designed to--
 (A) Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and
 (B) Meet each of the child's other educational needs that result from the child's disability;
 (ii) For children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives;
If the ARD Committee determines an off grade level state assessment is appropriate, the ARD will develop short term objectives in addition to the measurable annual goals required in (2)(i) above.
- (3) A description of--
 (i) How the child's progress toward meeting the annual goals described in paragraph (2) of this section will be measured; and
 (ii) 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;
- (4) A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and 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;
- (5) An explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular education environment and in the activities described in paragraph (a)(4) of this section;
- (6) (i) A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and districtwide assessments consistent with §300.160; and
 (ii) If the IEP Team determines that the child must take an alternate assessment instead of a particular regular State or districtwide assessment of student achievement, a statement of why--
 (A) The child cannot participate in the regular assessment; and
 (B) The particular alternate assessment selected is appropriate for the child; and
- (7) The projected date for the beginning of the services and modifications described in paragraph (a)(4) of this section, and the anticipated frequency, location, and duration of those services and modifications.
- (b) Transition *see [Transition in this Section 4.](#)*
- (c) Transfer of rights at age of majority. *See [VI. Parent Rights below.](#)*
- (d) Construction. Nothing in this section shall be construed to require--
 (1) That additional information be included in a child's IEP beyond what is explicitly required in section 614 of the Act; or
 (2) The IEP Team to include information under one component of a child's IEP that is already contained under another component of the child's IEP.(Authority: 20 U.S.C. 1414(d)(1)(A) and (d)(6))

§300.324 Development, review, and revision of IEP.

- (a) Development of IEP.
 (1) General. In developing each child's IEP, the IEP Team must consider--
 (i) The strengths of the child;
 (ii) The concerns of the parents for enhancing the education of their child;
 (iii) The results of the initial or most recent evaluation of the child; and
 (iv) The academic, developmental, and functional needs of the child.
- (b) *located in IX. of this Section 4.*

TAC §89.1055. Content of the Individualized Education Program (IEP).

- (a) The individualized education program (IEP) developed by the admission, review, and dismissal (ARD) committee for each student with a disability shall comply with the requirements of 34 Code of Federal Regulations (CFR), §300.346 and §300.347, and Part 300, Appendix A.
- (b) *located in X. T. of this section 4. (TAKS)*
- (c) *located in X. F. of this section 4.(ESY)*

TAC §89.1075. General Program Requirements and Local District Procedures.

- (d) Students with disabilities shall have available an instructional day commensurate with that of students without disabilities. The ARD committee shall determine the appropriate instructional setting and length of day for each student, and these shall be specified in the student's IEP.

VI. PARENT RIGHTS / PARTICIPATION *(also in Section 7)*

TEC §29.005.

- (d) If the child's parent is unable to speak English, the district shall:
 - (1) provide the parent with a written or audiotaped copy of the child's individualized education program translated into Spanish if Spanish is the parent's native language; or
 - (2) if the parent's native language is a language other than Spanish, make a good faith effort to provide the parent with a written or audiotaped copy of the child's individualized education program translated into the parent's native language.

TAC §89.1045. Notice to Parents for Admission, Review, and Dismissal (ARD) Committee Meetings.

- (a) A district shall invite the parents and adult student to participate as members of the admission, review, and dismissal (ARD) committee by providing written notice in accordance with 34 Code of Federal Regulations (CFR), §§300.345, 300.503, and 300.505, and Part 300, Appendix A.
- (b) A parent may request an ARD committee meeting at any mutually agreeable time to address specific concerns about his or her child's special education services. DISD must respond to the parent's request either by holding the requested meeting or by requesting assistance through the Texas Education Agency's mediation process. The district should inform parents of the functions of the ARD committee and the circumstances or types of problems for which requesting an ARD committee meeting would be appropriate.

A. Participation

§300.322 Parent Participation.

- (a) **DISD responsibility—general.** The Devine Independent School District must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP meeting or are afforded the opportunity to participate, including--
 - (1) **Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and**
 - (2) **Scheduling the meeting at a mutually agreed on time and place.**
- (b) **Information provided to parents.**
 - (1) **The notice required under paragraph (a)(1) of this section must--**
 - (i) **Indicate the purpose, time, and location of the meeting and who will be in attendance; and**
 - (ii) **Inform the parents of the provisions in §300.321(a)(6) and (c) (relating to the participation of other individuals on the IEP Team who have knowledge or special expertise about the child).**
 - (2) **For a child with a disability beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team, the notice also must--**

- (i) Indicate--
 - (A) That a purpose of the meeting will be the consideration of the postsecondary goals and transition services for the child, in accordance with §300.320(b); and
 - (B) That the agency will invite the student; and
- (ii) Identifies any other agency that will be invited to send a representative.
- (c) **Other methods to ensure parent participation.** If neither parent can attend, DISD must use other methods to ensure parent participation, including individual or conference telephone calls, consistent with §300.328 (related to alternative means of meeting participation).
- (d) **Conducting an IEP meeting without a parent in attendance.** A meeting may be conducted without a parent in attendance if DISD is unable to convince the parents that they should attend. In this case, DISD must keep a record of its attempts to arrange a mutually agreed on time and place.
- (e) **Parent copy of child's IEP.** DISD must give the parent a copy of the child's IEP at no cost to the parent. (Authority: 20 U.S.C. 1414(d)(1)(B)(i))

§300.501 Parent Participation in Meetings.

- (b) **Parent participation in meetings.**
 - (1) The parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to--
 - (i) The identification, evaluation, and educational placement of the child; and
 - (ii) The provision of FAPE to the child.
 - (2) DISD must provide notice consistent with §300.322(a)(1) and (b)(1) to ensure that parents of children with disabilities have the opportunity to participate in meetings described in paragraph (b)(1) of this section.
 - (3) A meeting does not include informal or unscheduled conversations involving DISD personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision if those issues are not addressed in the child's IEP. A meeting also does not include preparatory activities that DISD personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.
- (c) **Parent involvement in placement decisions.**
 - (1) DISD must ensure that a parent of each child with a disability is a member of any group that makes decisions on the educational placement of the parent's child.
 - (2) In implementing the requirements of paragraph (c)(1) of this section, DISD must use procedures consistent with the procedures described in §300.322(a) through (b)(1).
 - (3) If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their child, DISD must use other methods to ensure their participation, including individual or conference telephone calls, or video conferencing.
 - (4) A placement decision may be made by a group without the involvement of a parent, if DISD is unable to obtain the parent's participation in the decision. In this case, DISD must have a record of its attempt to ensure their involvement. (Authority: 20 U.S.C. 1414(e), 1415(b)(1))

§300.327 Educational placements.

Consistent with §300.501(c), DISD must ensure that the parents of each child with a disability are members of any group that makes decisions on the educational placement of their child. (Authority: 20 U.S.C. 1414(e))

§300.328 Alternative means of meeting participation.

When conducting IEP Team meetings and placement meetings pursuant to this subpart, and Subpart E, and carrying out administrative matters under section 615 of the Act (such as scheduling, exchange of witness lists, and status conferences), the parent of a child with a disability and DISD may agree to use alternative means of meeting participation, such as video conferences and conference calls. (Authority: 20 U.S.C. 1414(f))

B. Transfer of Rights at Age of Majority

§300.320 Definition of individualized education program

- (c) **Transfer of rights at age of majority.** Beginning not later than one year before the child reaches the age of majority under State law, the IEP must include a statement that the child has been informed of the child's rights under Part B of the Act, if any, that will transfer to the child on reaching the age of majority under §300.520.

§300.520 Transfer of parental rights at age of majority.

- (a) **General.** A State may provide that, when a child with a disability reaches the age of majority under State law that applies to all children (except for a child with a disability who has been determined to be incompetent under State law)--
- (1) (i) DISD must provide any notice required by this part to both the individual and the parents; and
 - (ii) All other rights accorded to parents under Part B of the Act transfer to the child;
 - (2) All rights accorded to parents under Part B of the Act transfer to children who are incarcerated in an adult or juvenile, State or local correctional institution; and
 - (3) Whenever a State transfers rights under this part pursuant to paragraph (a)(1) or (a)(2) of this section, the agency must notify the individual and the parents of the transfer of rights.
- (b) **Special rule.** If, under State law, a State has a mechanism to determine that a child with a disability who has reached the age of majority under State law that applies to all children and has not been determined incompetent under State law, does not have the ability to provide informed consent with respect to his or her educational program, the State must establish procedures for appointing the parent, or, if the parent is not available another appropriate individual, to represent the educational interests of the student throughout the student's eligibility under Part B of the Act.
(Authority: 20 U.S.C. 1415(m))

TEC §29.017. Transfer of Parental Rights at Age of Majority.

- (a) A student with a disability who is 18 years of age or older or whose disabilities of minority have been removed for general purposes under Chapter 31, Family Code, shall have the same right to make educational decisions as a student without a disability, except that DISD shall provide any notice required by this subchapter or 20 U.S.C. Section 1415 to both the student and the parents. All other rights accorded to parents under this subchapter or 20 U.S.C. Section 1415 transfer to the student.
- (b) All rights accorded to parents under this subchapter or 20 U.S.C. Section 1415 transfer to students who are incarcerated in an adult or juvenile, state or local correctional institution.
- (c) In accordance with 34 C.F.R. Section 300.517, DISD shall notify the student and the parents of the transfer of rights under this section.
- (d) The commissioner shall adopt rules implementing the provisions of 34 C.F.R. Section 300.517(b).

TAC §89.1049. Parental Rights Regarding Adult Students.

- (a) In accordance with 34 Code of Federal Regulations (CFR), §300.347(c) and §300.517, and Texas Education Code (TEC), §29.017, beginning at least one year before a student reaches 18 years of age, the student's individualized education program (IEP) must include a statement that the student has been informed that, unless the student's parent or other individual has been granted guardianship of the student under the Probate Code, Chapter XIII, Guardianship, all rights granted to the parent under the Individuals with Disabilities Education Act (IDEA), Part B, other than the right to receive any notice required under IDEA, Part B, will transfer to the student upon reaching age 18. After the student reaches the age of 18, except as provided by subsection (b) of this section, DISD shall provide any notice required under IDEA, Part B, to both the adult student and the parent.
- (b) In accordance with 34 CFR, §300.517(a)(2), and TEC, §29.017(a), all rights accorded to a parent under IDEA, Part B, including the right to receive any notice required by IDEA, Part B, will transfer to an 18-year-old student who is incarcerated in an adult or juvenile, state or local correctional institution, unless the student's parent or other individual has been granted guardianship of the student under the Probate Code, Chapter XIII, Guardianship.
- (c) In accordance with 34 CFR, §300.517(a)(3), DISD must notify in writing the adult student and parent of the transfer of parental rights, as described in subsections (a) and (b) of this section, at the time the

student reaches the age of 18. This notification is separate and distinct from the requirement that the student's IEP include a statement relating to the transfer of parental rights beginning at least one year before the student reaches the age of 18. This notification is not required to contain the elements of notice referenced in 34 CFR, §300.503, but must include a statement that parental rights have transferred to the adult student and provide contact information for the parties to use in obtaining additional information.

- (d) A notice under IDEA, Part B, that is required to be given to an adult student and parent does not create a right for the parent to consent to or participate in the proposal or refusal to which the notice relates. For example, a notice of an admission, review, and dismissal (ARD) committee meeting does not constitute invitation to, or create a right for, the parent to attend the meeting. However, in accordance with 34 CFR, §300.344(a)(6), the adult student or DISD may invite individuals who have knowledge or special expertise regarding the student, including the parent.
- (e) Nothing in this section prohibits a valid power of attorney from being executed by an individual who holds rights under IDEA, Part B.

VII. MEMBERSHIP OF THE ARD / IEP COMMITTEE

§300.321 IEP Team.

(a) **General.** DISD must ensure that the IEP Team for each child with a disability includes--

- (1) The parents of the child;
- (2) Not less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment); *see TAC §89.1050 (c) below*
- (3) Not less than one special education teacher of the child, or where appropriate, not less than one special education provider of the child;
- (4) A representative of DISD who -
 - (i) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;
 - (ii) Is knowledgeable about the general education curriculum; and
 - (iii) Is knowledgeable about the availability of resources of DISD.*In the Devine Independent School District, this representative is the campus principal or designee approved by the Superintendent as in §300.321 (d).*
- (5) An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in paragraphs (a)(2) through (a)(6) of this section;
- (6) At the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and
- (7) Whenever appropriate, the child with a disability.

(b) **Transition services participants.**

- (1) In accordance with paragraph (a)(7) of this section, DISD must invite a child with a disability to attend the child's IEP meeting if a purpose of the meeting will be the consideration of the postsecondary goals for the child and the transition services needed to assist the child in reaching those goals under §300.320(b).
- (2) If the child does not attend the IEP meeting, DISD must take other steps to ensure that the child's preferences and interests are considered.
- (3) To the extent appropriate, with the consent of the parents or a child who has reached the age of majority, in implementing the requirements of paragraph (b)(1) of this section, DISD must invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services.

(c) **Determination of knowledge and special expertise.** The determination of the knowledge or special expertise of any individual described in paragraph (a)(6) of this section must be made by the party (parents or DISD) who invited the individual to be a member of the IEP Team.

(d) **Designating a DISD representative.** DISD may designate a DISD member of the IEP Team to also serve as the agency representative, if the criteria in paragraph (a)(4) of this section are satisfied.

(e) **IEP Team attendance.** (*Excusal*)

(1) A member of the IEP Team is not required to attend an IEP meeting, in whole or in part, if the parent of a child with a disability and DISD 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 may be excused from attending an IEP 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 DISD 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.

Any excusal from the ARD/IEP Meeting will follow exact guidelines in §300.321 (e) (1-2) and be documented in writing on DISD form provided to you.

(f) **Initial IEP meeting for child under Part C.** In the case of a child who was previously served under Part C of the Act, an invitation to the initial IEP meeting must, at the request of the parent, be sent to the Part C service coordinator or other representatives of the Part C system to assist with the smooth transition of services. (Authority: 20 U.S.C. 1401(30), 1414(d)(1)(A)(7),(B))

TEC §89.1230(b) Eligible Students with Disabilities. A professional member of the language proficiency assessment committee shall serve on the admission, review, and dismissal (ARD) committee of each limited English proficient student who qualifies for services in the special education program.

TAC §89.1050 (c) At least one general education teacher of the student (if the student is, or may be, participating in the general education environment) shall participate as a member of the ARD committee. The special education teacher or special education provider that participates in the ARD committee meeting in accordance with 34 CFR, §300.344(a)(3) *now §300.321(a)(3)*, must be certified in the child's suspected areas of disability. When a specific certification is not required to serve certain disability categories, then the special education teacher or special education provider must be qualified to provide the educational services that the child may need. Districts should refer to §89.1131 of this title (relating to Qualifications of Special Education, Related Service, and Paraprofessional Personnel) to ensure that appropriate teachers and/or service providers are present and participate at each ARD committee meeting.

VIII. ARD / IEP MEETINGS:

A. Initial

TEC §29.005. Individualized Education Program.

(a) Before a child is enrolled in a special education program of a DISD, the district shall establish a committee composed of the persons required under 20 U.S.C. Section 1401(11) to develop the child's individualized education program.

DISD will follow all requirements in this document Section 4 including I. through VII. on previous pages.

B. Annual Review

§300.324 Development, review, and revision of IEP

(b) Review and revision of IEPs.

- (1) **General.** DISD must ensure that, subject to paragraph (b)(2) of this section, the IEP Team--
 - (i) Reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved; and
 - (ii) Revises the IEP, as appropriate, to address--
 - (A) Any lack of expected progress toward the annual goals described in §300.320(a)(2), and in the general education curriculum, if appropriate;
 - (B) The results of any reevaluation conducted under §300.303;
 - (C) Information about the child provided to, or by, the parents, as described under §300.305(a)(2);
 - (D) The child's anticipated needs; or
 - (E) Other matters.
- (2) **Requirement with respect to regular education teacher.** A regular education teacher of the child, as a member of the IEP Team, must, consistent with paragraph (a)(3) of this section, participate in the review and revision of the IEP of the child.

§300.116 Placements.

In determining the educational placement of a child with a disability, including a preschool child with a disability, DISD must ensure that--

(b) The child's placement--

- (1) Is determined at least annually;
- (2) Is based on the child's IEP; and
- (3) Is as close as possible to the child's home, unless the parent agrees otherwise;

C. Reevaluation Planning ARD

§300.324 Development, review, and revision of IEP

- (a) (5) **Consolidation of IEP Team meetings.** To the extent possible, DISD must encourage the consolidation of reevaluation meetings for the child and other IEP Team meetings for the child.

DISD will conduct a Review of Existing Evaluation Data ([described in the FIE Section 2](#)) prior to additional evaluation taking place. If the student is a special education student and the 3 year reevaluation is due within the next 12 months, the Annual ARD/IEP Committee may conduct the Review of Existing Evaluation Data and plan the evaluation during that Annual ARD Meeting.

The Case Manager or Diagnostician will contact all other service providers prior to the planning ARD or Annual ARD to gather input and to work toward consolidating all other required evaluations into one comprehensive Full and Individual Evaluation for the student, including Speech, OT/PT, etc..

D. Brief / Revision ARD (New Provisions: Agreements, Amendments)

§300.324 Development, review, and revision of IEP

- (a) (4) **Agreement.** In making changes to a child's IEP after the annual IEP meeting for a school year, the parent of a child with a disability and DISD may agree not to convene an IEP meeting for the purposes of making those changes, and instead may develop a written document to amend or modify the child's current IEP.
- (6) **Amendments.** Changes to the IEP may be made either by the entire IEP Team or, as provided in paragraph (a) (4) of this section, by amending the IEP rather than by redrafting the entire IEP. Upon request, a parent must be provided with a revised copy of the IEP with the amendments incorporated.

DISD PROCEDURES FOR AN ARD AMENDMENT

- (A) At each annual ARD meeting, the Educational Diagnostician / LSSP / School

Psychologist / Licensed SLP should provide to parents an explanation regarding ARD Amendments. (*This must be documented in the deliberations of that meeting.*) An Amendment can be done with the written agreement of the parent/guardian/adult student without holding an ARD meeting.

1. An ARD Amendment can *ONLY* be implemented for the following:
 - i. Amending current IEP goals and objectives (including a BIP)
 - ii. Amending current Related Services (time, duration, site, etc.)
2. An ARD Amendment *cannot* be used to:
 - i. Make any type of programmatic change (i.e. Change Placement or Instructional Arrangement, dismiss from program, add OT/PT/Counseling Services, etc.)
 - ii. Develop a new IEP (not previously approved by an ARD Committee)
 - iii. Address changes in education, behavior, or any area that might require significant schedule or placement changes
 - iv. Conduct a Functional Behavioral Assessment and, if necessary, develop a Behavior Intervention Plan, or
 - v. Manifestation Determination Review

(B) The parent must sign the ***Parental Agreement for ARD Amendment*** naming the District Representative who is to be responsible for determining the need of an ARD Amendment and handling any ARD Amendment.

1. Only assessment personnel, licensed speech/language pathologists, special education supervisors, or the special education director may be designated as the District Representative based on their expertise regarding special education issues.
2. The ***Parental Agreement for ARD Amendment form must be signed each year at the annual ARD and the original MUST be filed in the student's audit folder at DISD's special education office.*** Should there be the need to change the District Representative, another form must be signed and filed in the student audit folder at the district's special education office.

(C). The campus or parent is to contact the District when they believe that there is the need for an ARD Amendment.

(D). The District Representative review the issue and if the District representative determines that the issue may be addressed by an ARD Amendment, that individual will contact the party requesting the Amendment to inform them of their determination.

- i. The District Representative will contact the parent(s) by telephone or in person [if they are not the requesting party] and explain the issue, as well as the proposed Amendment.
- ii. The district representative will contact the campus administrator and teacher(s), if the parent(s) are the requesting party and explain the issue, as well as the proposed Amendment.

(E). The District Representative will obtain the parent(s)/campus' agreement to the Amendment, then make the agreed upon Amendment changes to the ARD paperwork. The District Representative will complete the ***ARD Amendment Notice*** form and make copies of both the Amended ARD document and the ***ARD Amendment Notice***. The representative will send one set of copies to the parent(s) and one set of copies to the campus to record the amendment. The originals will be filed in the student's audit folder at the district special education office.

Any agreement or amendment to the ARD/IEP Meeting will follow exact guidelines in §300.324 (a) (4 and 6). The agreement in §300.324 (a) (4) must be documented in writing on DISD form provided to you.

E. Dismissal / Change of Placement

§300.305 Additional requirements for evaluations and reevaluations.

(e) Evaluations before change in placement.

- (1) **Except as provided in paragraph (e)(2) of this section, DISD must evaluate a child with a disability in accordance with §§300.304 through 300.311 before determining that the child is no longer a child with a disability.**
- (2) **The evaluation described in paragraph (e)(1) of this section is not required before the termination of a child's eligibility under this part due to graduation from secondary school with a regular diploma, or due to exceeding the age eligibility for FAPE under State law.**
- (3) **For a child whose eligibility terminates under circumstances described in paragraph (e)(2) of this section, DISD must provide the child with a summary of the child's academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child's postsecondary goals. (Authority: 20 U.S.C. 1414(c))**

F. Graduation

TAC §89.1070. Graduation Requirements.

- (a) Graduation with a regular high school diploma under subsection (b) or (d) of this section terminates a student's eligibility for special education services under this subchapter and Part B of the Individuals with Disabilities Education Act (IDEA), 20 United States Code, §§1400 et seq. In addition, as provided in Texas Education Code (TEC), §42.003(a), graduation with a regular high school diploma under subsection (b) or (d) of this section terminates a student's entitlement to the benefits of the Foundation School Program.
- (b) A student receiving special education services may graduate and be awarded a high school diploma if:
 - (1) the student has satisfactorily completed the state's or district's (whichever is greater) minimum curriculum and credit requirements for graduation applicable to students in general education, including satisfactory performance on the exit level assessment instrument; or
 - (2) the student has satisfactorily completed the state's or district's (whichever is greater) minimum curriculum and credit requirements for graduation applicable to students in general education and has been exempted from the exit-level assessment instrument under TEC, §39.027(a)(2)(B).
- (c) A student receiving special education services may also graduate and receive a regular high school diploma when the student's admission, review, and dismissal (ARD) committee has determined that the student has successfully completed:
 - (1) the student's individualized education program (IEP) and met one of the following conditions:
 - (A) full-time employment, based on the student's abilities and local employment opportunities, in addition to sufficient self-help skills to enable the student to maintain the employment without direct and ongoing educational support of DISD;
 - (B) demonstrated mastery of specific employability skills and self-help skills which do not require direct ongoing educational support of DISD; or
 - (C) access to services which are not within the legal responsibility of public education, or employment or educational options for which the student has been prepared by the academic program;
 - (2) the state's or district's (whichever is greater) minimum credit requirements for students without disabilities; and
 - (3) the state's or district's minimum curriculum requirements to the extent possible with modifications/substitutions only when it is determined necessary by the ARD committee for the student to receive an appropriate education.
- (d) A student receiving special education services may also graduate and receive a regular high school diploma upon the ARD committee determining that the student no longer meets age eligibility requirements and has completed the requirements specified in the IEP.
- (e) When considering a student's graduation under subsection (c) of this section, the student shall be evaluated prior to graduation as required by 34 CFR, §300.534(c), and the ARD committee shall consider the evaluation, the views of the parent and/or student as appropriate, and, when appropriate, seek in writing and consider written recommendations from adult service agencies.

- (f) Students who participate in graduation ceremonies but who are not graduating under subsection (c) of this section and who will remain in school to complete their education do not have to be evaluated in accordance with subsection (e) of this section.
- (g) Employability and self-help skills referenced under subsection (c) of this section are those skills directly related to the preparation of students for employment, including general skills necessary to obtain or retain employment.
- (h) Students with disabilities who are eligible to take the exit level assessment instrument but have not performed satisfactorily are eligible for instruction in accordance with the TEC, §39.024.
- (i) For students who receive a diploma according to subsection (c) of this section, the ARD committee shall determine needed educational services upon the request of the student or parent to resume services, as long as the student meets the age eligibility requirements.

TEC §28.0212. Personal Graduation Plan

- (a) A principal shall designate a guidance counselor, teacher, or other appropriate individual to develop and administer a personal graduation plan for each student enrolled in a junior high, middle, or high school who:
 - (1) does not perform satisfactorily on an assessment instrument administered under Subchapter B, Chapter 39; or
 - (2) is not likely to receive a high school diploma before the fifth school year following the student's enrollment in grade level nine, as determined by the district.
- (b) A personal graduation plan must:
 - (1) identify educational goals for the student;
 - (2) include diagnostic information, appropriate monitoring and intervention, and other evaluation strategies;
 - (3) include an intensive instruction program described by Section 28.0213;
 - (4) address participation of the student's parent or guardian, including consideration of the parent's or guardian's educational expectations for the student; and
 - (5) provide innovative methods to promote the student's advancement, including flexible scheduling, alternative learning environments, on-line instruction, and other interventions that are proven to accelerate the learning process and have been scientifically validated to improve learning and cognitive ability.
- (c) Notwithstanding Subsection (b), a student's individualized education program developed under Section 29.005 may be used as the student's personal graduation plan under this section.

XI. MUTUAL AGREEMENT / 10 DAY RECESS

TEC §29.005.

- (b) The committee shall develop the individualized education program by agreement of the committee members or, if those persons cannot agree, by an alternate method provided by the agency. Majority vote may not be used to determine the individualized education program.
- (c) If the individualized education program is not developed by agreement, the written statement of the program required under 20 U.S.C. Section 1401(11) must include the basis of the disagreement.

TAC §89.1050

- (h) All members of the ARD committee shall have the opportunity to participate in a collaborative manner in developing the IEP. A decision of the committee concerning required elements of the IEP shall be made by mutual agreement of the required members if possible. The committee may agree to an annual IEP or an IEP of shorter duration.

- (1) When mutual agreement about all required elements of the IEP is not achieved, the party (the parents or adult student) who disagrees shall be offered a single opportunity to have the committee recess for a period of time not to exceed ten school days. This recess is not required when the student's presence on the campus presents a danger of physical harm to the student or others or when the student has committed an expellable offense or an offense which may lead to a placement in an alternative education program (AEP). The requirements of this subsection (h) do not prohibit the members of the ARD committee from recessing an ARD committee meeting for reasons other than the failure of the parents and DISD from reaching mutual agreement about all required elements of an IEP.
- (2) During the recess the committee members shall consider alternatives, gather additional data, prepare further documentation, and/or obtain additional resource persons which may assist in enabling the ARD committee to reach mutual agreement.
- (3) The date, time, and place for continuing the ARD committee meeting shall be determined by mutual agreement prior to the recess.
- (4) If a ten-day recess is implemented as provided in paragraph (1) of this subsection and the ARD committee still cannot reach mutual agreement, the district shall implement the IEP which it has determined to be appropriate for the student.
- (5) When mutual agreement is not reached, a written statement of the basis for the disagreement shall be included in the IEP. The members who disagree shall be offered the opportunity to write their own statements.
- (6) When a district implements an IEP with which the parents disagree or the adult student disagrees, the district shall provide prior written notice to the parents or adult student as required in 34 CFR, §300.503.
- (7) Parents shall have the right to file a complaint, request mediation, or request a due process hearing at any point when they disagree with decisions of the ARD committee.

Contact the Special Education Coordinator or Director for consultation when an ARD meeting is going to reconvene due to parental disagreement.

XII. TRANSFERS / NEW TO DISTRICT

§300.304(c)

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

§300.323 When IEPs must be in effect.

(e) Program for children who transfer public agencies.

- (1) (i) **In the case of a child with a disability who transfers public agencies within the same academic year, who enrolls in a new school, and who had an IEP that was in effect in the same State, the public agency, in consultation with the parents, must provide FAPE to the child, including services comparable to those described in the previously held IEP, until such time as the public agency adopts the previously held IEP or develops, adopts, and implements a new IEP that is consistent with Federal and State law.**
- (ii) **In the case of a child with a disability who transfers public agencies within the same academic year, who enrolls in a new school, and who had an IEP that was in effect in another State, DISD, in consultation with the parents, must provide the child with FAPE, including services comparable to those described in the previously held IEP, until such time as DISD conducts an evaluation pursuant to §§300.304 through 300.306, if determined to be necessary by DISD, and develops a new IEP, if appropriate, that is consistent with Federal and State law.**

- (2) To facilitate the transition for a child described in paragraph (e)(1) of this section--
- (i) The new public agency in which the child enrolls must take reasonable steps to promptly obtain the child's records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the child, from the previous public agency in which the child was enrolled, pursuant to section 99.31(a)(2) of title 34, Code of Federal Regulations; and
 - (ii) The previous public agency in which the child was enrolled must take reasonable steps to promptly respond to the request from the new public agency.
- (Authority: 20 U.S.C. 1414(d)(2)(A)-(C))

TAC §89.1050

- (f) For a student who is new to the Devine Independent School District:
- (1) when a student transfers within the state, the ARD committee may, but is not required to, meet when the student enrolls and a copy of the student's IEP is available, the parent(s) indicate in writing that they are satisfied with the current IEP, and the district determines that the current IEP is appropriate and can be implemented as written; or
 - (2) if the conditions of subsection (f)(1) of this section are not met, then the ARD committee must meet when the student enrolls and the parents verify that the student was receiving special education services in the previous school district, or the previous school district verifies in writing or by telephone that the student was receiving special education services. At this meeting, the ARD committee must do one of the following:
 - (A) the ARD committee may determine that it has appropriate evaluation data and other information to develop and begin implementation of a complete IEP for the student; or
 - (B) the ARD committee may determine that valid evaluation data and other information from the previous school district are insufficient or unavailable to develop a complete IEP. In this event, the ARD committee may authorize the provision of temporary special education services pending receipt of valid evaluation data from the previous school district or the collection of new evaluation data by the current school district. In this situation, a second ARD committee meeting must be held within 30 school days from the date of the first ARD committee meeting to finalize or develop an IEP based on current information.
 - (3) In accordance with TEC, §25.002, the school district in which the student was previously enrolled shall furnish the new school district with a copy of the student's records, including the child's special education records, not later than the 30th calendar day after the student was enrolled in the new school district. The Family Educational Rights and Privacy Act (FERPA), 20 U.S.C., §1232g, does not require the student's current and previous school districts to obtain parental consent before requesting or sending the student's special education records if the disclosure is conducted in accordance with 34 CFR, §99.31(a)(2) and §99.34. (FERPA)

XI. PRIVATE NONPUBLIC SCHOOL PROVISIONS *(see Section 5. Instructional Arrangements)*

§300.2 Applicability of this part to State and local agencies.

- (c) **Private schools and facilities.** Each public agency in the State is responsible for ensuring that the rights and protections under Part B of the Act are given to children with disabilities--
- (1) Referred to or placed in private schools and facilities by DISD; or
 - (2) Placed in private schools by their parents under the provisions of §300.148(b)
- (Authority: 20 U.S.C. 1412)

§300.118 Children in public or private institutions.

Except as provided in §300.149(d) (regarding agency responsibility for general supervision for some individuals in adult prisons), an SEA must ensure that §300.114 is effectively implemented, including, if necessary, making arrangements with public and private institutions (such as a memorandum of agreement or special implementation procedures).

(Authority: 20 U.S.C. 1412(a)(5))

A. Placed by the District

§300.325 Private school placements by public agencies.

(a) Developing IEPs.

- (1) Before DISD places a child with a disability in, or refers a child to, a private school or facility, DISD must initiate and conduct a meeting to develop an IEP for the child in accordance with §§300.320 and 300.324.**
- (2) DISD must ensure that a representative of the private school or facility attends the meeting. If the representative cannot attend, DISD must use other methods to ensure participation by the private school or facility, including individual or conference telephone calls.**

(b) Reviewing and revising IEPs.

- (1) After a child with a disability enters a private school or facility, any meetings to review and revise the child's IEP may be initiated and conducted by the private school or facility at the discretion of DISD.**
- (2) If the private school or facility initiates and conducts these meetings, DISD must ensure that the parents and an agency representative--**
 - (i) Are involved in any decision about the child's IEP; and**
 - (ii) Agree to any proposed changes in the IEP before those changes are implemented.**

(c) Responsibility. Even if a private school or facility implements a child's IEP, responsibility for compliance with this part remains with DISD and the SEA. (Authority: 20 U.S.C. 1412(a)(10)(B))

B. Placed by the Parent

§300.36 Services plan. Services plan means a written statement that describes the special education and related services DISD will provide to a parentally-placed child with a disability enrolled in a private school who has been designated to receive services, including the location of the services and any transportation necessary, consistent with §300.132, and is developed and implemented in accordance with §§300.137 through 300.139. (Authority: 20 U.S.C. 1412(a)(10)(A))

TAC §89.1096. Provision of Services for Students Placed by their Parents in Private Schools or Facilities.

- (a) Except as specifically provided in this section, in accordance with 34 Code of Federal Regulations (CFR), §300.454, no eligible student who has been placed by his or her parent(s) in a private school or facility has an individual right to receive some or all of the special education and related services that the student would receive if he or she were enrolled in a public school district. Except as specifically set forth in this section, DISD's obligations with respect to students placed by their parents in private schools are governed by 34 CFR, §§300.450-300.462.**
- (b) When a student with a disability who has been placed by his or her parents directly in a private school or facility is referred to DISD, the local district shall convene an admission, review, and dismissal (ARD) committee meeting to determine whether the district can offer the student a free appropriate public education (FAPE). If DISD determines that it can offer a FAPE to the student, the district is not responsible for providing educational services to the student, except as provided in 34 CFR, §§300.450-300.462 or subsection (d) of this section, until such time as the parents choose to enroll the student in public school full-time.**
- (c) Parents of an eligible student ages 3 or 4 shall have the right to "dual enroll" their student in both the public school and the private school beginning on the student's third birthday and continuing until the end of the school year in which the student turns five or until the student is eligible to attend a district's public school kindergarten program, whichever comes first, subject to the following.**
 - (1) The student's ARD committee shall develop an individualized education program (IEP) designed to provide the student with a FAPE in the least restrictive environment appropriate for the student.**

- (2) From the IEP, the parent and DISD shall determine which special education and/or related services will be provided to the student and the location where those services will be provided, based on the requirements concerning placement in the least restrictive environment set forth in 34 CFR, §§300.550-300.553, and the policies and procedures of the district.
- (3) For students served under the provisions of this subsection, DISD shall be responsible for the employment and supervision of the personnel providing the service, providing the needed instructional materials, and maintaining pupil accounting records. Materials and services provided shall be consistent with those provided for students enrolled only in the public school and shall remain the property of DISD.
- (d) The school district shall provide special transportation with federal funds only when the ARD committee determines that the condition of the student warrants the service in order for the student to receive the special education and related services (if any) set forth in the IEP.
- (e) Complaints regarding the implementation of the components of the student's IEP that have been selected by the parent and the district under subsection (c) of this section may be filed with the Texas Education Agency under the procedures in 34 CFR, §§300.660-300.662. The procedures in 34 CFR, §§300.504-300.515 (relating to due process hearings) do not apply to complaints regarding the implementation of the components of the student's IEP that have been selected by the parent and the district under subsection (c).

XII. RESIDENTIAL PLACEMENTS *(see also Section 5 Instructional Arrangements)*

§300.104 Residential placement.

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. (Authority: 20 U.S.C. 1412(a)(1), 1412(a)(10)(B))