

**John H. Wood, Jr.
Public Charter District**

OPERATING GUIDELINES

FOR

SPECIAL EDUCATION SERVICES

John H. Wood, Jr. Public Charter District

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FOR
SPECIAL EDUCATION SERVICES

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John H. Wood, Jr. Public Charter District

POLICY

The special education programs in the John H. Wood, Jr. Public Charter District operate under local district board policies. This operational guidelines manual is to clarify and support local district policy, State Board of Education and Commissioner’s Rules for Special Education Services, and 34 Code of Federal Regulations (Individuals with Disabilities Education Act) IDEA 2004 - Part 300 – final revised regulations dated August 14, 2006. The local district board approved policy manual may be found in the office of the superintendent, the administrative office of each school, and the special education office. The list on the next page includes the most frequently referenced policy sections which relate to special education services.

John H. Wood, Jr. Public Charter District

SCHOOL BOARD POLICY

<u>Section</u>	<u>Policy Area</u>
EHAA	Curriculum
EHBA	Special Programs: Special Education
EHBAA	Child Find Requirements
EHBAB	Compliance with Federal and State Laws Relating to Special Education
EIE	Promotion & Retention
EIF	Graduation
EKB	Testing Programs
FD	Admissions
FEA	Attendance
FL	Family Educational Rights and Privacy Act
FO	Student Discipline
FOA	Student Discipline: Removal by a Teacher
FOD	Student Discipline: Expulsion
FNG	Parent Complaints and Concerns

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Section 1. - REFERRAL PROCESS

I. PRIOR TO INITIAL REFERRALS TO SPECIAL EDUCATION

Title I – Amendments to the Individuals with Disabilities Education Act (IDEA) “Part A-General Provisions 118 Statute 2647 - Sec. 601 (c) Findings – Congress finds the following:

- (5) Almost 30 years of research and experience has demonstrated that the education of children with disabilities can be made more effective by –
- (A) having high expectations for such children and ensuring their access to the general education curriculum in the regular classroom, to the maximum extent possible;
 -
 - (E) supporting high quality, intensive preservice preparation and professional development for all personnel who work with children with disabilities in order to ensure that such personnel have the skills and knowledge necessary to improve the academic achievement and functional performance of children with disabilities, including the use of scientifically based instructional practices;
 - (F) providing incentives for whole-school approaches, scientifically based early reading programs, positive behavioral interventions and supports, and early intervening services to reduce the need to label children as disabled in order to address the learning and behavioral needs of such children.

§300.35 Scientifically based research. Scientifically based research has the meaning given the term in section 9101(37) of the ESEA. (Authority: 20 U.S.C. 1411(e)(2)(C)(xi))

ESEA section 9101 (37)

(37) **SCIENTIFICALLY BASED RESEARCH-** The term scientifically based research —

- (A) means research that involves the application of rigorous, systematic, and objective procedures to obtain reliable and valid knowledge relevant to education activities and programs; and
- (B) includes research that —
 - (i) employs systematic, empirical methods that draw on observation or experiment;
 - (ii) involves rigorous data analyses that are adequate to test the stated hypotheses and justify the general conclusions drawn;
 - (iii) relies on measurements or observational methods that provide reliable and valid data across evaluators and observers, across multiple measurements and observations, and across studies by the same or different investigators;
 - (iv) is evaluated using experimental or quasi-experimental designs in which individuals, entities, programs, or activities are assigned to different conditions and with appropriate controls to evaluate the effects of the condition of interest, with a preference for random-assignment experiments, or other designs to the extent that those designs contain within-condition or across-condition controls;
 - (v) ensures that experimental studies are presented in sufficient detail and clarity to allow for replication or, at a minimum, offer the opportunity to build systematically on their findings; and
 - (vi) has been accepted by a peer-reviewed journal or approved by a panel of independent experts through a comparably rigorous, objective, and scientific review.

§300.309 Determining the existence of a specific learning disability.

- (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 a part of the referral process, the child was provided appropriate instruction 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.*
- (c) *The JHW School must promptly request parental consent to evaluate the child to determine if the child needs special education and related services, and must adhere to the timeframes described in §§300.301 and*

300.303, unless extended by mutual agreement of the child's parents and a group of qualified professionals, as described in 300.306(a)(1)--

- (1) If, prior to a referral, the child has not made adequate progress after an appropriate period of time, when provided instruction, as described in paragraphs (b)(1) and (2) of this section; and*
- (2) Whenever a child is referred for an evaluation.*

The local Student Intervention Team (SIT) is responsible for clearly documenting §300.309 (b)(1)(2) prior to making a referral to the special education department for evaluation of a student suspected of having a learning disability. If the JHW School special education department receives a referral from the Student Intervention Team (SIT) and this section of IDEA §300.309 (b)(1)(2) has not been addressed, the special education department is obligated by the Federal Regulation to return the referral to the Student Intervention Team (SIT) for further discussion and implementation of appropriate instruction to support the student prior to a referral to special education for initial evaluation..

Specific Learning Disability is also found in Section 3 – Disability Criteria.

TAC §89.1011. Referral for Full and Individual Initial Evaluation.

Referral of students for a full and individual initial evaluation for possible special education services shall be a part of the JHW School's overall, general education referral or screening system. Prior to referral, students experiencing difficulty in the general classroom should be considered for all support services available to all students, such as tutorial; remedial; compensatory; response to scientific, research-based intervention; and other academic or behavior support services. If the student continues to experience difficulty in the general classroom after the provision of interventions, district personnel must refer the student for a full and individual initial evaluation. This referral for a full and individual initial evaluation may be initiated by school personnel, the student's parents or legal guardian, or another person involved in the education or care of the student.

(a) Referral of students for a full individual and initial evaluation for possible special education services must be a part of the district's overall, general education referral or screening system. Prior to referral, students experiencing difficulty in the general classroom should be considered for all support services available to all students, such as tutorial; remedial; compensatory; response to scientific, research-based intervention; and other academic or behavior support services. If the student continues to experience difficulty in the general classroom after the provision of interventions, district personnel must refer the student for a full individual and initial evaluation. This referral for a full individual and initial evaluation may be initiated by school personnel, the student's parents or legal guardian, or another person involved in the education or care of the student.

(b) If a parent submits a written request to a school district's director of special education services or to a district administrative employee (i.e., principal, vice-principal, Special Education Instructional Coordinator, or Director of Special Education) for a full individual and initial evaluation of a student, the school district must, not later than the 15th school day after the date the district receives the request:

- (1) provide the parent with prior written notice of its proposal to conduct an evaluation consistent with 34 Code of Federal Regulations (CFR), §300.503; a copy of the procedural safeguards notice required by 34 CFR, §300.504; and an opportunity to give written consent for the evaluation; or

(2) provide the parent with prior written notice of its refusal to conduct an evaluation consistent with 34 CFR, §300.503, and a copy of the procedural safeguards notice required by 34 CFR, §300.504.

(c) Except as otherwise provided in this section, a written report of a full individual and initial evaluation of a student must be completed as follows:

(1) not later than the 45th school day following the date on which the school district receives written consent for the evaluation from the student's parent, except that if a student has been absent from school during that period on three or more school days, that period must be extended by a number of school days equal to the number of school days during that period on which the student has been absent; or

(2) for students under five years of age by September 1 of the school year and not enrolled in public school and for students enrolled in a private or home school setting, not later than the 45th school day following the date on which the school district receives written consent for the evaluation from the student's parent.

(d) The admission, review, and dismissal (ARD) committee must make its decisions regarding a student's initial eligibility determination and, if appropriate, individualized education program (IEP) and placement within 30 calendar days from the date of the completion of the written full individual and initial evaluation report. If the 30th day falls during the summer and school is not in session, the student's ARD committee has until the first day of classes in the fall to finalize decisions concerning the student's initial eligibility determination, IEP, and placement, unless the full individual and initial evaluation indicates that the student will need extended school year services during that summer.

(e) Notwithstanding the timelines in subsections (c) and (d) of this section, if the school district received the written consent for the evaluation from the student's parent at least 35 but less than 45 school days before the last instructional day of the school year, the written report of a full individual and initial evaluation of a student must be provided to the student's parent not later than June 30 of that year. The student's ARD committee must meet not later than the 15th school day of the following school year to consider the evaluation. If, however, the student was absent from school three or more days between the time that the school district received written consent and the last instructional day of the school year, the timeline in subsection (c)(1) of this section applies to the date the written report of the full individual and initial evaluation is required. If an initial evaluation completed not later than June 30 indicates that the student will need extended school year services during that summer, the ARD committee must meet as expeditiously as possible.

(f) If a student was in the process of being evaluated for special education eligibility by a school district and enrolls in another school district before the previous school district completed the full individual and initial evaluation, the new school district must coordinate with the previous school district as necessary and as expeditiously as possible to ensure a prompt completion of the evaluation in accordance with 34 CFR, §300.301(d)(2) and (e) and §300.304(c)(5). The timelines in subsections (c) and (e) of this section do not apply in such a situation if:

(1) the new school district is making sufficient progress to ensure a prompt completion of the evaluation; and

(2) the parent and the new school district agree to a specific time when the evaluation will be completed.

(g) For purposes of subsections (b), (c), and (e) of this section, school day does not include a day that falls after the last instructional day of the spring school term and before the first instructional day of the subsequent fall school term.

(h) For purposes of subsections (c)(1) and (e) of this section, a student is considered absent for the school day if the student is not in attendance at the school's official attendance taking time or at the alternate attendance taking time set for that student. A student is considered in attendance if the student is off campus participating in an activity that is approved by the school board and is under the direction of a professional staff member of the school district, or an adjunct staff member who has a minimum of a bachelor's degree and is eligible for participation in the Teacher Retirement System of Texas.

The John H. Wood, Jr. Public Charter District will use the Student Intervention Team (SIT) to consider all intervention services provided, all scientifically based reading or other programs used, any support services available to all students prior to referral for special education evaluation. Interventions such as tutorials, remedial support, compensatory support, and other services will be considered and documented in detail by the Student Intervention Team (SIT) prior to referral for special education evaluation.

II. APPROPRIATE STUDENT REFERRALS FOR SPECIAL EDUCATION

Children residing within the John H. Wood, Jr. Public Charter District who are suspected of having a disability may be referred by the Student Intervention Team (SIT) for special education evaluation.

- a. For school-age children, intervention services must be documented by the Student Intervention Team (SIT).*
- b. For school-age children, the suspected disability must be interfering with the student's educational progress in order to warrant a referral.*
- c. Students who are new to JHW School and have been receiving special education services in the student's previous district will not go through the referral process. (see Transfers/Temporary Placement in this section and ARD/IEP Section 4).*

TAC §89.1035. Age Ranges for Student Eligibility.

- (a) Pursuant to state and federal law, services provided in accordance with this subchapter shall be available to all eligible students ages 3-21. Services will be made available to eligible students on their third birthday. Graduation with a regular high school diploma pursuant to §89.1070 (b)(1)-(2) of this title (relating to Graduation Requirements) terminates a student's eligibility to receive services in accordance with this subchapter. An eligible student receiving special education services who is 21 years of age on September 1 of a school year shall be eligible for services through the end of that school year or until graduation with a regular high school diploma pursuant to §89.1070 (b)(1)-(2) of this title, whichever comes first.
- (b) In accordance with the Texas Education Code (TEC), §§29.003, 30.002(a), and 30.081, a free, appropriate, public education shall be available from birth to students with visual or auditory impairments. *(See Disability Criteria Section 3 for: TAC §89.1040. Eligibility Criteria)*

III. MEMBERSHIP OF THE CAMPUS STUDENT INTERVENTION TEAM (SIT)

- a. *The membership in the district's overall general education screening system is determined by local campus administration unless specified in JHW School policy.*
- b. *Special education personnel may participate on, but not be assigned primary responsibility for the Student Intervention Team (SIT).*
- c. *Special education personnel may be involved in collecting referral data ONLY for the following students:*
 1. *students who are hospitalized, institutionalized, or admitted to treatment centers.*
 2. *students with multiple-disabilities*
 3. *eligible students with disabilities new to a district*
 4. *students referred to special education during the summer*

IV. GENERAL EDUCATION RESPONSIBILITIES

- a. *The general education teacher will consider the student experiencing difficulty in the general classroom for all support services available to all students such as tutorial, remedial, compensatory, and other services.*
- b. *The general education teacher will discuss, consider, and document student educational concerns and all educational alternatives and options available and those tried, the amount of time tried, and reasons why those tried did not work. For students referred with a suspected learning disability, data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, must have been documented and provided to the child's parents prior to referral for special education evaluation.*
- c. *If the options tried were not successful, the JHW School referral forms required are outlined in the directions of the referral packet. All required information (including Procedural Safeguards) will be completed by the local campus staff with appropriate signatures and dates. Required information includes the TEA publication "A Guide to the Admission, Review and Dismissal Process". The student's referral data shall be maintained for documentation purposes within the special education student's eligibility folder.*
- d. *For students whose Home Language Survey is other than English, the LPAC report, which must have been completed within the past year, must be included with the referral packet. The student should have been tested in English and their primary language. Referral information will also include referral information, LPAC report, LAS scores or equivalent test, amount of time in ESL, and a copy of the Home Language Survey.*

The principal will determine the manner in which referral packets are given to teachers. JHW School recommends that the principal discuss possible instructional alternatives with the teacher prior to the initiation of the Student Intervention Team (SIT) to assure appropriate intervention services and scientifically based programs are being implemented.

V. TIMELINE – INITIAL REFERRAL TO EVALUATION

§300.301 Initial evaluations.

- (a) **General.** *John H. Wood, Jr. Public Charter District must conduct a full and individual initial evaluation, in accordance with §§300.305 and 300.306, before the initial provision of special education and related services to a child with a disability under this part.*
- (b) **Request for initial evaluation.** Consistent with the consent requirements in §300.300, either a parent of a child, or JHW School, may initiate a request for an initial evaluation to determine if the child is a child with a disability.
- (c) **Procedures for initial evaluation.** The initial evaluation--
- (1) (i) Must be conducted within 60 days of receiving parental consent for the evaluation; or
 - (ii) If the State establishes a timeframe within which the evaluation must be conducted, within that timeframe; and
 - (2) Must consist of procedures--
 - (i) To determine if the child is a child with a disability under §300.8; and
 - (ii) To determine the educational needs of the child.
- (d) **Exception.** The timeframe described in paragraph (c)(1) of this section shall not apply to JHW School if--
- (1) The parent of a child repeatedly fails or refuses to produce the child for the evaluation; or
 - (2) A child enrolls in a school of another public agency after the relevant timeframe in paragraph (c)(1) of this section has begun, and prior to a determination by the child's previous public agency as to whether the child is a child with a disability under §300.8.
- (e) The exception in paragraph (d)(2) of this section applies only if the subsequent public agency is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and subsequent public agency agree to a specific time when the evaluation will be completed. (Authority: 20 U.S.C. 1414(a))

TEC §29.004 Full Individual Initial Evaluation.

- a. A written report of a full and individual evaluation of a student for purposes of special education services shall be completed not later than the 45th calendar day following the date on which the JHW School receives written consent for the evaluation signed by the student's parent or legal guardian.
- (1) not later than the 45th school day following the date on which the school district, in accordance with 20 U.S.C. Section 1414(a), as amended, receives consent for the evaluation, signed by the student's parent or legal guardian, except that if a student has been absent days equal to the number of school days during that period which the student has been absent; or
 - (2) for students under five years of age by September 1 of the school year and not enrolled in public school and for students enrolled in a private or home school setting, not later than the 45th school day following the date on which the school district receives written consent for the evaluation, signed by a student's parent or legal guardian.
 - (a-1) If a school district receives written consent signed by a student's parent or legal guardian for a full individual and initial evaluation of a student at least 35 but less than 45 school days before the last instructional day of the school year, the evaluation must be completed and the written report of the evaluation must be provided to the parent or legal guardian not later than June 30 of that year. The student's admission, review, and dismissal committee shall meet not later than the 15th school day of the following school year to consider the evaluation. If a district receives written consent signed by a student's parent or legal guardian less than 35 school days before the last instructional days of the school year or if the district receives the written consent at least 35 but less than 45 school days before the last instructional day of the school year but the student is absent from school during the period of three or more days, Subsection (a)(1) applies to the date the written report of the full individual and initial evaluation is required.
 - (a-2) For purpose of this section "school day" does not include a day that falls after the last instructional day of the spring school term and before the first instructional day of the

subsequent fall school term. The commissioner by rule may determine days during which year-round schools are recessed that, consistent with this subsection, are not considered to be school days for purposes of this section.

(a-3) Subsection (a) does not impair any rights of an infant or toddler with a disability who is receiving early intervention services in accordance with 20 U.S.C. Section 1431.

- b. The evaluation shall be conducted using procedures that are appropriate for the student's most proficient method of communication.

§300.302 Screening for instructional purposes is not evaluation.

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. (Authority: 20 U.S.C. 1414(a)(1)(E))

VI. SPECIAL EDUCATION DEPARTMENT RESPONSIBILITIES

A. Referral Packet

1. *When the Student Intervention Team (SIT) is composed, a Referral Packet will be used at each campus. The Referral Packet includes (but is not limited to) Parental Receipt of Procedural Safeguards, Notice of Evaluation and Consent for Evaluation. Also provided was the TEA publication "[A Guide to the Admission, Review and Dismissal Process](#)".*
2. *The special education designee marks on the Referral packet (or in the special education electronic system): the date parent signed Consent for Evaluation is received by the school and the date the FIE is due.*
3. *The evaluation person determines evaluation needed and contacts appropriate special education personnel to assist and/or conduct evaluation (if student is suspected of having an auditory impairment (AI), visual impairment (VI), bilingual, etc.)*
4. *The evaluation person conducts the evaluation and completes the Full and Individual Evaluation (FIE) written report. The appropriate campus personnel who send the Notice of ARD Meeting are notified when the report is completed.*

B. Schedule ARD/IEP Meeting

The evaluation person on each campus notifies the principal that the data collection is complete and ready for the ARD/IEP committee's review. The Special Education Case Manager or assigned campus assessment staff schedules the ARD/IEP meeting and sends the Notice of ARD/IEP Meeting to the parent and notifies other required participants. (See Procedural Safeguards, section 7 of this manual, for specific requirements on Notice.) The parent must be provided the Notice of ARD/IEP Meeting at least 5 school days prior to the date of the meeting. The parents may waive the 5 day notice if they choose.

C. Timeline for ARD/IEP Meeting:

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.

D. Transfers from Outside the District – already in Special Education

For students who are new to JHW School and have received special education services in the student's previous school district, regular referral procedures are bypassed. Procedures to be followed are included in the ARD/IEP Section 4 of this manual under Transfers.

VII. REFERRALS FOR SPECIFIC AREAS:

§300.305 Additional requirements for evaluations and reevaluations.

- (a) *Review of existing evaluation data. As part of an initial evaluation (if appropriate) and as part of any reevaluation under this part, the IEP Team and other qualified professionals, as appropriate, must--*
- (1) *Review existing evaluation data on the child, including—*
 - (i) *Evaluations and information provided by the parents of the child;*
 - (ii) *Current classroom-based local or State assessments, and classroom-based observations; and*
 - (iii) *Observations by teachers and related services providers; and*
 - (2) *On the basis of that review, and input from the child's parents, identify what additional data, if any, are needed..... (for entire text, see Section 2 – FIE)*

A. Adapted Physical Education (APE)

§300.108 Physical education.

The TEA must ensure that public agencies in the State comply with the following:

- (a) **General.** *Physical education services, specially designed if necessary, must be made available to every child with a disability receiving FAPE, unless the JHW School enrolls children without disabilities and does not provide PE to children without disabilities in the same grades.*
- (b) **Regular physical education.** *Each child with a disability must be afforded the opportunity to participate in the regular physical education program available to nondisabled children unless--*
 - (1) *The child is enrolled full time in a separate facility; or*
 - (2) *The child needs specially designed physical education, as prescribed in the child's IEP.*
- (c) **Special physical education.** *If specially designed physical education is prescribed in a child's IEP, the public agency responsible for the education of that child must provide the services directly or make arrangements for those services to be provided through other public or private programs.*
- (d) **Education in separate facilities.** *The public agency responsible for the education of a child with a disability who is enrolled in a separate facility must ensure that the child receives appropriate physical education services in compliance with this section.*
(Authority: 20 U.S.C. 1412(a)(5)(A))

1. *All students referred for adapted physical education evaluation must have an identified disability.*
 - A. *The request for an adapted physical education evaluation must be made by the Student Intervention Team (SIT) upon initial referral or by the student's ARD/IEP committee.*
 - B. *The evaluation person will monitor the referral and forward the request for APE screening/evaluation to the appropriate person.*

2. *A written report from the adapted physical education evaluation personnel will be made available for ARD/IEP committee consideration and action.*
3. *For more information see (Section 5 – Instructional Arrangements/Service Delivery)*

B. Assistive Technology *(For more information see also FIE Section 2 and ARD/IEP Section 4)*

1. *The Student Intervention Team (SIT) typically does not address specific Assistive Technology recommendations because all evaluations will address Assistive Technology needs for the student. Referral for any additional, specific AT evaluations generally are made by the ARD/IEP Committee after an FIE has been completed and reviewed.*
2. *FIE (Full and Individual Evaluation) - The ARD/IEP Committee will first review the recommendations from the most recent FIE (Full and Individual Evaluation). Assistive technology needs will be discussed and consideration given to the competencies, strengths and weaknesses, and recommendations from the evaluation report.*
3. *The ARD/IEP Committee may recommend additional evaluation by the technology assistance team. The technology assistance team may include any of the following professionals: Occupational Therapist, Physical Therapist, LSSP, Speech Pathologist, Diagnostician, Vision Teacher, others as needed.*
4. *If the technology assistance team is requested for an evaluation, the team member(s) will make written recommendations in an evaluation report for assistive technology services or devices including specific modifications which are needed to implement the student's individual education plan. The ARD/IEP Committee will then consider the recommendations.*
5. *Recommendations for assistive technology for all students from the ARD/IEP Committee meetings will be logged and tracked by the assigned campus assessment personnel to assure follow up occurs in ordering of material, any training required, etc.*

C. Attention Deficit Disorder / Attention Deficit with Hyperactivity Disorder

If the general education staff has documented evidence the student exhibits ADD/ADHD behaviors/symptoms, remember when conferencing with parent:

1. *discuss the educational needs with parent and possible instructional strategies;*
2. *discuss possible need for referral to the Student Intervention Team (SIT) – do not provide information on a specific type of disability which is not your area of expertise and training, etc.;*
3. *discuss other information, the manner in which testing would be conducted (time lines, outcomes, etc.).*
4. *the OHI Disability Report for the physician is not to be provided to the parent by the general education staff.*

If the Student Intervention Team (SIT) or the ARD/IEP Committee makes the referral:

1. *appropriate evaluation measures will be administered,*
2. *Multidisciplinary Team (referring teacher, special education teacher and diagnostician) will meet to determine if student meets criteria as a student with a Learning Disability (LD). If the student qualifies as LD, academic and behavior needs will be addressed at the ARD/IEP meeting. If the student does not qualify as LD, but appears to have an educational need and data indicates a possibility of ADD or ADHD, the team may recommend that the Other Health Impaired (OHI) eligibility be pursued.*

If OHI pursued:

1. *disability forms must be completed by a medical doctor.*
2. *the medical forms are for diagnosis only - we do not pursue medication;*
3. *if the parent has a doctor who knows the child and would be willing (knowledgeable) to fill out forms, that avenue may be pursued.*
4. *the medical doctor is just one member of the multidisciplinary team*

Caution: Remember that a student may be diagnosed by a physician as having ADD or ADHD but the student may not necessarily have an educational need for special education services. Needs of some students may be addressed by the local campus Section 504 committee or classroom strategies. If you have any questions, please review with your JHW School campus personnel or call the JHW School special education office.

D. Homebound Instruction (see also Instructional Arrangement Section 5)

General Education Homebound (GEH)

Any general education student should be referred to the local campus GEH committee. A general education student who is served through the GEH program must meet the following three criteria:

1. *is expected to be confined in personal facility quarters or hospital bedside for a minimum of four consecutive weeks;*
2. *for medical reasons only;*
3. *medical condition is documented by a physician licensed to practice in the United States. Student Attendance Accounting Manual - Section III (4-21)*

Special Education Homebound – The student has already been determined to be a student with a disability and the student is receiving special education services. The JHW School will not use the referral committee or a referral packet in this situation.

1. *Campus Administrator Responsibilities:*
 - a. *Contact the Director of Special Education /campus assigned assessment personnel*
 - b. *Share new medical developments.*
2. *School Responsibility:*
 - a. *Obtain parent/facility medical information and the Physician's Report. The report states the medical reason for homebound confinement and the amount of time suggested by the physician.*
 - b. *Schedule an ARD/IEP meeting to discuss student's educational needs.*
 - c. *Any student who is placed in the special education homebound instructional arrangement/setting must meet the following four criteria:*
 - *be eligible for special education and related services as determined by an ARD committee;*
 - *is expected to be confined at home or hospital bedside for a minimum of four consecutive weeks;*
 - *for medical reasons only (unless the child is 0 – 5 years of age);*
 - *medical condition is documented by a physician licensed to practice in the United States. 19 TAC §89.63(c)(2)(A)*
 - d. *(see also Instructional Arrangement Section 5)*

E. Limited English Proficient (LEP) *(See also Home Language Survey and LPAC in this Referral Section)*

1. For all LEP (Limited English Proficient) Students:

- A. *The LPAC recommendation, which must have been completed within the past year, must be included with the referral packet. The student should have been tested in English (L1) and their primary language (L2).*
- B. *Referral information will include: Initial referral information, LPAC recommendation, TELPAS scores or equivalent test, ESL objectives, Home Language Survey copy.*
- C. *When the packet is verified, the diagnostician/LSSP then notifies the Director of Special Education for assignment to appropriate bilingual assessment personnel.*

2. Speech only referral: *(for these guidelines, Spanish is referenced as the other language)*

- A. *(LANGUAGE) The language proficiency assessment (ex. LAS, TELPAS, other) should be considered with regard to the following:*
 - i. *If the student is proficient in English and has a lower proficiency in Spanish, the normal procedures for the speech pathologist evaluations are followed.*
 - ii. *If the student is proficient in Spanish and not in English, typically this would not be an appropriate referral. The speech pathologist will write the evaluation report (using information from the cumulative folder) and proceed to ARD.*
 - iii. *If the student is barely proficient in both languages, consult with the Director of JHW School before proceeding.*
 - iv. *If the student is proficient in both languages as outlined by TEA and LPAC requirements, normal procedures in English may be followed.*
- B. *(ARTICULATION) The articulation evaluation should be considered with regard to the following: If the student is misarticulating sounds that are different or not present in Spanish but are in English, therapy would not be appropriate.*

3. Other Referrals (LD, MR, etc.):

- A. *The language evaluation (ex. LAS, IDEA) should be considered with regard to the following:*
 - i. *If the student is proficient in English and less proficient in Spanish, the usual procedures for testing are followed.*
 - ii. *If the student is proficient in Spanish and not in English, typically this will be an inappropriate referral for a Learning Disability. This type of profile is usually an indication that the child needs more time to learn English. The diagnostician/ LSSP will write the FIE or full and individual evaluation report (using information from the cumulative folder) and proceed to ARD. If the student is to be considered for a physical, mental or emotional disability, collaboration with peer evaluators is necessary.*
 - iii. *If the student is barely proficient in both languages, consult with the Director of JHW School before proceeding.*
 - iv. *If the student is above proficient in both languages, normal procedures in English may be followed.*
- B. ***If the student is not proficient in either language, a bilingual assessment should be requested.*** *Consideration should be given to the following:*
 - i. *Students who have been in English speaking schools for less than two years should be given careful consideration relative to referral.*
 - ii. *If the student has received English instruction for two or more years and there is no evidence of previous academic instruction in Spanish or another language, the LPAC may recommend testing in English for additional services or use of an interpreter. This testing should not be confused with state assessment testing requirements and*

recommendations. For further information, refer to District and Campus Coordinator Manual and LPAC Manual.

F. Occupational Therapy and / or Physical Therapy

1. *The Student Intervention Team (SIT) does not refer students for OT or PT because a student must already be eligible for special education services before he/she can be referred for an occupational and/or physical therapy screening or evaluation.*
2. *A student may be referred by the ARD/IEP meeting after review of existing evaluation data and planning the evaluation to be completed. Also, teachers, parents, physicians, and others may request referral through the ARD.*
3. *Occupational and/or physical therapy services are provided to students whose disability, as determined through evaluation, interferes with their ability to benefit from educational programming.*
4. *The Licensed Specialist in School Psychology or Diagnostician is the designated person to monitor the referrals and assure notice and consent has been given to the parents. The Licensed Specialist in School Psychology or Diagnostician will submit the following forms to the therapist when referring a student:*
 - A. *Completed Notice and Consent for a Full and Individual Evaluation;*
 - B. *Referral Packet information from parent, teacher, and current medical information (i.e., vision, hearing, medication, etc.).*
 - C. *OT/PT Medical Referral Form. (This form must be completed by a physician with approval for therapy services to be provided. This must be received by the therapist before any services can be initiated.)*
 - D. *In our district, a Medical Referral Form is required for evaluation or therapy services for both Occupational and / or Physical Therapy.*
5. *Description of Therapy Services*
 - A. *Screening: This is a brief informal observation may be used to determine if a formal evaluation is necessary. It is also used as a tool to provide helpful information about the student to the staff and parents. An ARD/IEP meeting is not necessary when a screening is completed. A parent/teacher conference may be held to discuss screening results if necessary.*
 - B. *Evaluation: The therapist will look at and observe the student, using standardized tests, and clinical evaluations. The evaluation will address and analyze areas that affect the student's ability to benefit from instruction. Areas included in the evaluation are:*
 - i. *sensorimotor functioning*
 - ii. *neuromuscular abilities*
 - iii. *self-care skills*
 - iv. *vocational skills*
 - v. *school/work activities*
 - vi. *perceptual-motor skills*
 - C. *Recommendations: The therapist will complete the evaluation and make appropriate recommendations for the educational setting. Services will be determined by the child's need and how that need can best be met within the school, home, and community settings. An ARD/IEP meeting will be called to discuss therapist's evaluation and recommendations.*
 - D. *Occupational Therapy: Occupational therapy services include the evaluation, consultation, and/or direct services to individuals whose ability to cope with the tasks of living and learning is threatened or impaired by developmental deficits, environmental or sensory deprivation, physical injury, illness, or psychological disability.*
 - E. *Physical Therapy: Physical therapy is the art and science of evaluation, program planning,*

- and implementation of physical or corrective conditions resulting from birth, illness, or injury. Physical therapy includes therapeutic exercise programs designed to develop or restore neuromuscular and / or sensorimotor function, relieve pain, control postural deviations, minimize disabilities, and maintain maximal performance levels within the individual's capabilities.*
- F. Students who experience problems with one or more of the following characteristics may be referred for an OT/PT screening or evaluation:*
- i. Holding head and/or body upright*
 - ii. Using arms and hands in manipulative tasks*
 - iii. Using only one hand when both are preferable*
 - iv. Tightness or weakness in the arms or legs*
 - v. Assuming and maintaining sitting and/or standing without physical assistance.*
 - vi. Impaired walking or using a gait that limits independence in classroom or campus mobility*
 - vii. Severe eye-hand coordination*
 - viii. Oral function (chewing, sucking, swallowing, and drooling)*
 - ix. Self-care that limits independence in classroom or campus (assistance required with dressing, feeding, toileting, personal hygiene, etc.*
 - x. Uncoordinated movement (unable to walk balance beam, frequent falling)*
 - xi. Limited mobility in school (architectural barriers - stairs, narrow doorways).*

G. Psychological Referral

JHW School recommends that the general education teacher consult with the Licensed Specialist in School Psychology (LSSP) or psychologist prior to making a referral if at all possible.

- 1. Student Is Currently Receiving Special Education Services*
 - A. The ARD/IEP Committee will review existing evaluation data, both the formal FIE (Full and Individual Evaluation) and informal evaluation from staff. The ARD/IEP Committee may recommend additional psychological evaluation.*
 - B. If psychological evaluation is recommended during the ARD/IEP meeting, the minutes will document the recommendation and the parent will be provided Notice and Consent for Evaluation.*
 - (1. If parents/surrogates are not in attendance, the Licensed Specialist in School Psychology or Diagnostician will coordinate the completion of the referral for the psychological and be responsible for sending the Notice, Consent for Evaluation, and Informed Consent for Psychological Evaluation..*
 - (2. The diagnostician will inform the psychologist or licensed specialist in school psychology assigned to the campus.*
 - (3. The psychologist or licensed specialist in school psychology will conduct the evaluation, complete the written report, and inform the parent/surrogate of their findings. (see FIE and ARD/IEP sections in this manual)*
 - C. An ARD/IEP meeting to review the psychological evaluation will be scheduled.*
- 2. Student is Not Currently Receiving Special Education Services*
 - A. The general education teacher will follow the Student Intervention Team (SIT) process, completing all required forms. Assigned campus assessment personnel will notify parents of their Procedural Safeguards, providing Notice of Evaluation and obtaining Consent for Evaluation.*

- B. The general education campus teacher or campus designee will submit the completed referral packet to the Licensed Specialist in School Psychologist/Educational Diagnostician.*

VIII. CHILD FIND *Child Find responsibilities for Charter schools apply to students on their campus or family members of students on their campus.*

§300.111 Child find.

(a) General.

(1) The State must have in effect policies and procedures to ensure that--

- (i) All children with disabilities residing in the State, including children with disabilities who are homeless children or are wards of the State, and children with disabilities attending private schools, regardless of the severity of their disability, and who are in need of special education and related services, are identified, located, and evaluated; and
- (ii) A practical method is developed and implemented to determine which children are currently receiving needed special education and related services.

(b) Use of term developmental delay.

The following provisions apply with respect to implementing the child find requirements of this section:

- (1) *A State that adopts a definition of developmental delay under §300.8(b) determines whether the term applies to children aged three through nine, or to a subset of that age range (e.g., ages three through five).*
- (2) *A State may not require JHW School to adopt and use the term developmental delay for any children within its jurisdiction.*
- (3) *If JHW School uses the term developmental delay for children described in §300.8(b), the JHW School must conform to both the State's definition of that term and to the age range that has been adopted by the State.*
- (4) *If TEA does not adopt the term developmental delay, JHW School may not independently use that term as a basis for establishing a child's eligibility under this part.*

(c) Other children in child find. Child find also must include--

- (1) Children who are suspected of being a child with a disability under §300.8 and in need of special education, even though they are advancing from grade to grade; and
- (2) Highly mobile children, including migrant children.

(d) Construction. Nothing in the Act requires that children be classified by their disability so long as each child who has a disability that is listed in §300.8 and who, by reason of that disability, needs special education and related services is regarded as a child with a disability under Part B of the Act. (Authority: 20 U.S.C. 1401(3)); 1412(a)(3))

§300.131 Child find for parentally-placed private school children with disabilities.

(a) General. The JHW School 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 JHW School, in accordance with paragraphs (b) through (e) of this section, and §§300.111 and 300.201.

(b) Child find design. The child find process must be designed to ensure--

- (1) The equitable participation of parentally-placed private school children; and
- (2) An accurate count of those children.

(c) Activities. In carrying out the requirements of this section, the JHW School, or, if applicable, the SEA, must undertake activities similar to the activities undertaken for the agency's public school children.

(d) Cost. The cost of carrying out the child find requirements in this section, including individual evaluations, may not be considered in determining if JHW School has met its obligation under §300.133. (*Private school expenditures-section 5 of this document*)

(e) Completion period. The child find process must be completed in a time period comparable to that for other students attending public schools in the JHW School consistent with §300.301. (*Initial Evaluations-section 2 of this document*) (Authority: 20 U.S.C. 1412(a)(10)(A)(ii))

- (f) **Out-of-state children.** Each LEA in which private, including religious, elementary schools and secondary schools are located must, in carrying out the child find requirements in this section, include parentally-placed private school children who reside in a State other than the State in which the private schools that they attend are located.

§300.19 Homeless children.

Homeless children has the meaning given the term homeless children and youths in section 725 (42 U.S.C. 11434a) of the McKinney-Vento Homeless Assistance Act, as amended, 42 U.S.C. 11431 *et. seq.* (Authority 20 U.S.C. 1401(11))

§300.134 Consultation parentally-placed private school children with disabilities.

To ensure timely and meaningful consultation, the JHW School, or, if appropriate, the TEA, must consult with private school representatives and representatives of parents of parentally-placed private school children with disabilities during the design and development of special education and related services for the children regarding the following:

- (a) **Child find.** The child find process, including--

- (1) *How parentally-placed private school children suspected of having a disability can participate equitably; and*
- (2) *How parents, teachers, and private school officials will be informed of the process.*

The JHW School will disseminate information to the community (including residential treatment centers, day treatment centers, hospitals, mental health institutions, detention and correctional facilities) concerning services offered to all individuals with disabilities and maintain records of efforts that may include:

1. *providing information regarding availability of screenings and other services through the local newspaper, the school tax office mailings, brochures, and other print media;*
2. *identifying and referring individuals with disabilities who may or may not be in school and who may need Special Education and related services using a properly constituted Student Intervention Team (SIT);*
3. *continuing to document persons who are currently receiving needed Special Education and related services and who are not currently receiving needed Special Education and related services;*
4. *reviewing this process on a yearly basis, updating staff about on-going "Child Find" activities implemented in the community;*
5. *maintaining confidentiality of all personally identifiable information used and collected in this system in the same manner that Special Education records are maintained;*
6. *maintaining documentation of all Child Find activities including the dates of each activity and the results of each activity; and*
7. *Annual screening will be performed by qualified JHW School personnel and may include:*
 - *vision screening performed to verify indicators of loss of sight, acuity, or other possible vision related problems;*
 - *hearing screening to verify any hearing risk indicators;*
 - *speech and language screening to verify problems in the formulation or articulation of speech or any delay in the development of language;*
 - *screening for home language*
 - *academic screening for school age children to determine the significance of academic delays; and*
 - *screening secondary level students who are at-risk of dropping out, or who have dropped out, to verify that the reasons for dropping out are not related to a previously unidentified disability.*

All screenings and evaluations resulting from child find activities are free to parents, including parents of home-schooled students and parents of students who attend private school by parent choice.

IX. HOME LANGUAGE SURVEY

TAC §89.1215. Home Language Survey.

- (a) Districts shall conduct only one home language survey of each student. The home language survey shall be administered to each student new to the district, and to students previously enrolled who were not surveyed in the past. Districts shall require that the survey be signed by the student's parent or guardian for students in grades prekindergarten through Grade 8, or by the student in Grades 9-12. The original copy of the survey shall be kept in the student's permanent record.
- (b) The home language survey shall be administered in English and Spanish; for students of other language groups, the home language survey shall be translated into the home language whenever possible. The home language survey shall contain the following questions.
 - (1) "What language is spoken in your home most of the time?"
 - (2) "What language does your child (do you) speak most of the time?"
- (c) Additional information may be collected by the JHW School and recorded on the home language survey.
- (d) The home language survey shall be used to establish the student's language classification for determining whether the district is required to provide a bilingual education or English as a second language program. If the response on the home language survey indicates that a language other than English is used, the student shall be tested in accordance with §89.1225 of this title (relating to Testing and Classification of Students).

TAC §89.1225. Testing and Classification of Students.

- (a) For identifying limited English proficient students, districts shall administer to each student who has a language other than English as identified on the home language survey:
 - (1) in prekindergarten through Grade 1, an oral language proficiency test approved by the Texas Education Agency (TEA); and
 - (2) in Grades 2-12, a TEA-approved oral language proficiency test and the English reading and English language arts sections from a TEA-approved norm-referenced measure, or another test approved by TEA, unless the norm-referenced measure is not valid in accordance with subsection (f)(2)(C) of this section.
- (b) Districts which provide a bilingual education program shall administer an oral language proficiency test in the home language of the students who are eligible for being served in the bilingual education program. If the home language of the students is Spanish, the district shall administer the Spanish version of the TEA-approved oral language proficiency test which was administered in English. If the home language of the students is other than Spanish, the district shall determine the students' level of proficiency using informal oral language assessment measures.
- (c) All the oral language proficiency testing shall be administered by professionals or paraprofessionals who are proficient in the language of the test and trained in language proficiency testing.
- (d) The grade levels and the scores on each test which shall identify a student as limited English proficient shall be established by TEA. The commissioner of education shall review the approved list of tests, grade levels, and scores annually and update the list.
- (e) Students with a language other than English shall be administered the required oral language proficiency test within four weeks of their enrollment. Norm-referenced assessment instruments, however, may be administered within the established norming period.
- (f) For entry into a bilingual education or English as a second language program, a student shall be identified as limited English proficient using the following criteria.
 - (1) At prekindergarten through Grade 1, the score on the English oral language proficiency test is

below the level designated for indicating limited English proficiency under subsection (d) of this section.

- (2) At Grades 2-12:
 - (A) the student's score on the English oral language proficiency test is below the level designated for indicating limited English proficiency under subsection (d) of this section;
 - (B) the student's score on the reading and language arts sections of the TEA-approved norm-referenced measure at his or her grade level is below the 40th percentile; or
 - (C) the student's ability in English is so limited that the administration, at his or her grade level, of the reading and language arts sections of a TEA-approved norm-referenced assessment instrument or other test approved by TEA is not valid.
- (3) In the absence of data required in paragraph (2)(B) of this subsection, evidence that the student is not academically successful as defined in subsection (j) of this section is required.
- (4) The admission review and dismissal (ARD) committee in conjunction with the language proficiency assessment committee shall determine an appropriate assessment instrument and designated level of performance for indicating limited English proficiency as required under subsection (d) of this section for students for whom those tests would be inappropriate as part of the individualized education program (IEP). The decision for entry into a bilingual education or English as a second language program shall be determined by the ARD committee in conjunction with the language proficiency assessment committee in accordance with §89.1220(g) of this title (relating to Language Proficiency Assessment Committee).
- (g) Within the four weeks of their initial enrollment in the district, students shall be identified as limited English proficient and enrolled into the required bilingual education or English as a second language program. Prekindergarten and kindergarten students preregistered in the spring shall be identified as limited English proficient and enrolled in the required bilingual education or English as a second language program within four weeks of the start of the school year in the fall.
- (h) For exit from a bilingual education or English as a second language program, a student may be classified as English proficient at the end of the school year in which a student would be able to participate equally in a regular, all-English, instructional program. This determination shall be based upon all of the following:
 - (1) TEA-approved tests that measure the extent to which the student has developed oral and written language proficiency and specific language skills in English;
 - (2) satisfactory performance on the reading assessment instrument under the Texas Education Code, §39.023(a), or a TEA-approved English language arts assessment instrument administered in English, or a score at or above the 40th percentile on both the English reading and the English language arts sections of a TEA-approved norm-referenced assessment instrument for a student who is enrolled in Grade 1 or 2; and
 - (3) TEA-approved criterion-referenced written tests when available and the results of a subjective teacher evaluation.
- (i) A student may not be exited from the bilingual education or English as a second language program in prekindergarten or kindergarten. A district must ensure that limited English proficient students are prepared to meet academic standards required by TEC, §28.0211.
- (j) For determining whether a student who has been exited from a bilingual education or English as a second language program is academically successful, the following criteria shall be used at the end of the school year:
 - (1) the student meets state performance standards in English of the criterion-referenced assessment instrument required in the Texas Education Code, §39.023, for the grade level as applicable; and
 - (2) the student has passing grades in all subjects and courses taken.
- (k) *see Section 4-ARD/IEP for special education student exit from ESL or bilingual*

X. LANGUAGE PROFICIENCY ASSESSMENT COMMITTEE (LPAC)

TAC §89.1220. Language Proficiency Assessment Committee.

- (a) Districts shall by local board policy establish and operate a language proficiency assessment committee. The district shall have on file policy and procedures for the selection, appointment, and training of members of the language proficiency assessment committee(s).
- (b) In districts required to provide a bilingual education program, the language proficiency assessment committee shall be composed of the membership described in the Texas Education Code, §29.063. If the district does not have an individual in one or more of the school job classifications required, the district shall designate another professional staff member to serve on the language proficiency assessment committee. The district may add other members to the committee in any of the required categories.
- (c) In districts and grade levels not required to provide a bilingual education program, the language proficiency assessment committee shall be composed of one or more professional personnel and a parent of a limited English proficient student participating in the program designated by the district.
- (d) No parent serving on the language proficiency assessment committee shall be an employee of the school district.
- (e) A district shall establish and operate a sufficient number of language proficiency assessment committees to enable them to discharge their duties within four weeks of the enrollment of limited English proficient students.
- (f) All members of the language proficiency assessment committee, including parents, shall be acting for the school district and shall observe all laws and rules governing confidentiality of information concerning individual students. The district shall be responsible for the orientation and training of all members, including the parents, of the language proficiency assessment committee.
- (g) Upon their initial enrollment and at the end of each school year, the language proficiency assessment committee shall review all pertinent information on all limited English proficient students identified in accordance with §89.1225(f) of this title (relating to Testing and Classification of Students), and shall:
 - (1) designate the language proficiency level of each limited English proficient student in accordance with the guidelines issued pursuant to §89.1210(b) and (d) of this title (relating to Program Content and Design);
 - (2) designate the level of academic achievement of each limited English proficient student;
 - (3) designate, subject to parental approval, the initial instructional placement of each limited English proficient student in the required program;
 - (4) facilitate the participation of limited English proficient students in other special programs for which they are eligible provided by the district with either state or federal funds; and
 - (5) classify students as English proficient in accordance with the criteria described in §89.1225(h) of this title (relating to Testing and Classification of Students), and recommend their exit from the bilingual education or English as a second language program.
- (h) Before the administration of the state criterion-referenced test each year, the language proficiency assessment committee shall determine the appropriate assessment option for each limited English proficient student as outlined in Chapter 101, Subchapter AA, of this title (relating to Commissioner's Rules Concerning the Participation of Limited English Proficient Students in State Assessments). The assessment options shall be:
 - (1) administration of the English version criterion-referenced test;
 - (2) administration of the Spanish version criterion-referenced test; or
 - (3) for certain immigrant students, exemption from the criterion-referenced test.
- (i) In determining the appropriate assessment option, the language proficiency assessment committee shall consider the following criteria for each student:

- (1) academic program participation (bilingual education or English as a second language) and language of instruction;
 - (2) language proficiency, including literacy, in English and/or Spanish;
 - (3) number of years enrolled in U.S. schools;
 - (4) previous testing history;
 - (5) level achieved in the state reading proficiency tests in English (RPTE);
 - (6) consecutive years of residence outside of the 50 U.S. states; and
 - (7) schooling outside the U.S.
- (j) The language proficiency assessment committee shall give written notice to the student's parent advising that the student has been classified as limited English proficient and requesting approval to place the student in the required bilingual education or English as a second language program. The notice shall include information about the benefits of the bilingual education or English as a second language program for which the student has been recommended and that it is an integral part of the school program.
- (k) Pending parent approval of a limited English proficient student's entry into the bilingual education or English as a second language program recommended by the language proficiency assessment committee, the district shall place the student in the recommended program, but may count only limited English proficient students with parental approval for bilingual education allotment.
- (l) The language proficiency assessment committee shall monitor the academic progress of each student who has exited from a bilingual or English as a second language program within the past two years to determine whether the student is academically successful as defined in §89.1225(j) of this title (relating to Testing and Classification of Students). Those students who are not academically successful due to limited English proficiency shall be reclassified as limited English proficient (LEP), and shall be recommended for participation in a bilingual education or English as a second language program. Students who are not reclassified as LEP may be placed in compensatory and accelerated instruction or other special language program which addresses their needs.
- (m) The student's permanent record shall contain documentation of all actions impacting the limited English proficient student. This documentation shall include:
- (1) the identification of the student as limited English proficient;
 - (2) the designation of the student's level of language proficiency;
 - (3) the recommendation of program placement;
 - (4) parental approval of entry or placement into the program;
 - (5) the dates of entry into, and placement within, the program;
 - (6) the dates of exemptions from the criterion-referenced test, criteria used for this determination, and additional instructional interventions provided to students to ensure adequate yearly progress;
 - (7) the date of exit from the program and parent notification; and
 - (8) the results of monitoring for academic success, including students formerly classified as limited English proficient, as required under the Texas Education Code, §29.063(c)(4).

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Section 2. - FULL AND INDIVIDUAL EVALUATION

I. INITIAL EVALUATIONS

§300.301 Initial evaluations.

- (a) **General.** The John H. Wood, Jr. Public Charter District must conduct a full and individual initial evaluation, in accordance with §§300.305 and 300.306, before the initial provision of special education and related services to a child with a disability under this part.
- (1) not later than the 45th school day following the date on which the school district, in accordance with 20 U.S.C. Section 1414(a), as amended, receives consent for the evaluation, signed by the student’s parent or legal guardian, except that if a student has been absent days equal to the number of school days during that period which the student has been absent; or
- (2) for students under five years of age by September 1 of the school year and not enrolled in public school and for students enrolled in a private or home school setting, not later than the 45th school day following the date on which the school district receives written consent for the evaluation, signed by a student’s parent or legal guardian.

Action	Initiated By	To Whom	Timeline
Written request is submitted to district administrative employee asking for a student to be evaluated.	<i>Parent/ Surrogate</i>	Principal, Asst. Principal, Ed. Diag, LSSP	No later than 15 days after the date the district receives requests action must take place.
No later than 15 days-parent must be provided with prior written notice of proposal to conduct an evaluation, a copy of procedural safeguards, & opportunity to give written consent for the evaluation or	<i>LSSP/DIAG</i>	Parent/ Surrogate	No later than 15 days after the district received the request.
Provide parent with prior written notice of its refusal to conduct an evaluation and copy of procedural safeguard notice.	LSSP/DIAG	Parent/Surrogate	No later than 15 days after the district received the request.

(a-1) If a school district receives written consent signed by a student’s parent or legal guardian for a full individual and initial evaluation of a student at least 35 but less than 45 school days before the last instructional day of the school year, the evaluation must be completed and the written report of the evaluation must be provided to the parent or legal guardian not later than June 30 of that year. The student’s admission, review, and dismissal committee shall meet not later than the 15th school day of the following school year to consider the evaluation. If a district receives written consent signed by a student’s parent or legal guardian less than 35 school days before the last instructional days of the school year or if the district receives the written consent at least 35 but less than 45 school days before the last instructional day of the school year but the student is absent from school during the period of three or more days, Subsection (a)(1) applies to the date the written report of the full individual and initial evaluation is required.

(a-2) For purpose of this section “school day” does not include a day that falls after the last instructional day of the spring school term and before the first instructional day of the subsequent fall school term. The commissioner by rule may determine days during which year-round schools are recessed that, consistent with this subsection, are not considered to be school days for purposes of this section.

(a-3) Subsection (a) does not impair any rights of an infant or toddler with a disability who is receiving early intervention services in accordance with 20 U.S.C. Section 1431.

(b) Request for initial evaluation. Consistent with the consent requirements in §300.300, either a parent of a child, or the John H. Wood, Jr. Public Charter District, may initiate a request for an initial evaluation to determine if the child is a child with a disability.

(c) Procedures for initial evaluation. The initial evaluation--

**(1) (i) Must be conducted within 45 days of receiving parental consent for the evaluation; or
(ii) If the State establishes a timeframe within which the evaluation must be conducted, within that timeframe; and**

(2) Must consist of procedures--

(i) To determine if the child is a child with a disability under §300.8; and

(ii) To determine the educational needs of the child.

(d) Exception. The timeframe described in paragraph (c)(1) of this section shall not apply to JHW School if--

(1) The parent of a child repeatedly fails or refuses to produce the child for the evaluation; or

(2) A child enrolls in a school of another public agency after the relevant timeframe in paragraph (c)(1) of this section has begun, and prior to a determination by the child's previous public agency as to whether the child is a child with a disability under §300.8.

(e) The exception in paragraph (d)(2) of this section applies only if the subsequent public agency is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and subsequent public agency agree to a specific time when the evaluation will be completed. (Authority: 20 U.S.C. 1414(a))

TEC §29.004. FIE Timeline.

(a) A written report of a full individual and initial evaluation of a student for purposes of special education services shall be completed not later than the 45th calendar day following the date on which the John H. Wood, Jr. Public Charter District local campus, in accordance with 20 U.S.C. Section 1414(a), as amended, receives written consent for the evaluation, signed by the student's parent or legal guardian.

(a-1) If a school district receives written consent signed by a student's parent or legal guardian for a full individual and initial evaluation of a student at least 35 but less than 45 school days before the last instructional day of the school year, the evaluation must be completed and the written report of the evaluation must be provided to the parent or legal guardian no later than June 30th of that year. The student's admission, review, and dismissal committee shall meet not later than the 15th school day of the following school year to consider the evaluation. If a district receives written consent signed by a student's parent or legal guardian less than 35 school days before the last instructional day of the school year or if the district receives the written consent at least 35 school days before the last instructional day of the school year or if the district receives the written consent at least 35 but less than 45 school days before the last instructional day of the school year but the student is absent from school during that time period on three or more days, Subsection (a)(1) applies to the date the written report of the full individual and initial evaluation is required.

(b) The evaluation shall be conducted using procedures that are appropriate for the student's most proficient method of communication.

(c) If a parent or legal guardian makes a written request to a school district's director of special education services or to a district administrative employee for a full individual and initial evaluation of a

student, the district shall, not later than the 15th school day after the date the district receives the request:

- (1) provide an opportunity for the parent or legal guardian to give written consent for the evaluation; or
- (2) refuse to provide the evaluation and provide the parent or legal guardian with notice of procedural safeguards under 20 U.S.C. Section 1415(b).

§300.15 Evaluation. Evaluation means procedures used in accordance with §§300.304 through 300.311 to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs. (Authority: 20 U.S.C. 1414(a)—(c))

§300.302 Screening for instructional purposes is not evaluation.

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. (Authority: 20 U.S.C. 1414(a)(1)(E))

II. RE-EVALUATIONS

§300.303 Reevaluations.

- (a) **General.** The JHW School must ensure that a reevaluation of each child with a disability is conducted in accordance with §§300.304 through 300.311—(found in this FIE Section)
 - (1) If the JHW School determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or
 - (2) If the child’s parent or teacher requests a reevaluation.
- (b) **Limitation.** A reevaluation conducted under paragraph (a) of this section--
 - (1) May occur not more than once a year, unless the parent and the JHW School agree otherwise; and
 - (2) Must occur at least once every 3 years, unless the parent and the JHW School agree that a reevaluation is unnecessary. (Authority: 20 U.S.C. 1414(a)(2))

**Assessment personnel will utilize the “Active Student Tracking Log” to monitor reevaluation timelines. These will be submitted weekly for review by the Director of Special Education. If needed, due to an evaluation reflecting out of compliance date(s) or if an evaluation will be needed within a short period of time, the Director of Special Education will contact campus personnel to ensure that evaluation timelines are being addressed.*

III. EVALUATION PROCEDURES

§300.304 Evaluation procedures.

- (a) **Notice.** The JHW School will provide notice to the parents of a child with a disability, in accordance with §300.503, that describes any evaluation procedures the JHW School proposes to conduct. (*see Section 7 for Notice and Consent including Consent for Certain Psychologicals*)
- (b) **Conduct of evaluation.** In conducting the evaluation, the JHW School will --
 - (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.** The John H. Wood, Jr. Public Charter District 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 academic 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. (Authority: 20 U.S.C. 1414(b)(1)-(3), 1412(a)(6)(B))

IV. REVIEW OF EXISTING EVALUATION DATA (REED)

§300.305 Additional requirements for evaluations and reevaluations.

- (a) **Review of existing evaluation data**-A review of existing evaluation data (REED) is required as part of an initial evaluation, if appropriate, and as part of any reevaluation. The REED must be conducted by the admission, review, and dismissal (ARD) members and other qualified professionals, as appropriate; and
- (b) (1) **Review existing evaluation data on the child, including—**
 - (i) Evaluations and information provided by the parents of the child;
 - (ii) Current classroom-based local or State assessments, and classroom-based observations; and
 - (iii) Observations by teachers and related services providers; and
- (2) **On the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine--**
 - (i) (A) Whether the child is a child with a disability, as defined in §300.8, and the educational needs of the child; or
 - (B) In case of a reevaluation of a child, whether the child continues to have such a disability, and the educational needs of the child;

Students with Other Health Impairment eligibility must have an updated OHI form every 3 years. A REED committee may not continue an Other Health Impairment eligibility without current data from an attending physician.

- (ii) **The present levels of academic achievement and related developmental needs of the child;**
- (iii) (A) **Whether the child needs special education and related services; or**
- (B) **In the case of a reevaluation of a child, whether the child continues to need special education and related services; and**

- (iv) **Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general education curriculum.**

At a student's Temporary Placement ARD, a Review of Existing Evaluation Data (REED) will occur for all students enrolled in the school district with an evaluation more than 3 years old or if current assessment data cannot be obtained. Areas identified as requiring additional information will be addressed through an evaluation at the student's Permanent Placement ARD.

- (b) **Conduct of review.** The group described in paragraph (a) of this section may conduct its review without a meeting.

- (c) **Source of data.** The JHW School must administer such assessments and other evaluation measures as may be needed to produce the data identified under paragraph (a) of this section.

- (d) **Requirements if additional data are not needed.**

- (1) **If the IEP Team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child continues to be a child with a disability, and to determine the child's educational needs, the JHW School must notify the child's parents of—**

- (i) That determination and the reasons for the determination; and

- (ii) The right of the parents to request an assessment to determine whether the child continues to be a child with a disability, and to determine the child's educational needs.

- (2) **The JHW School is not required to conduct the assessment described in paragraph (d)(1)(ii) of this section unless requested to do so by the child's parents.**

- (e) **Evaluations before change in placement.**

- (1) **Except as provided in paragraph (e)(2) of this section, the JHW School 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. JHW assessment personnel and contract support will provide comprehensive evaluations in all previous areas of disability before adding or dismissing any area of 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, the JHW School 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))**

V. DETERMINATION OF ELIGIBILITY

§300.306 Determination of eligibility.

- (a) **General.** Upon completion of the administration of assessments and other evaluation measures-

- (1) **A group of qualified professionals and the parent of the child determines whether the child is a child with a disability, as defined in §300.8, in accordance with paragraph (b) of this section and the educational needs of the child; and**

- (2) **The John H. Wood, Jr. Public Charter District provides a copy of the evaluation report and the documentation of determination of eligibility at no cost to the parent.**

- (b) **Special rule for eligibility determination.** A child must not be determined to be a child with a disability under this part--

- (1) **If the determinant factor for that determination is--**

- (i) **Lack of appropriate instruction in reading, including the essential components of reading instruction (as defined in section 1208(3) of the ESEA); *see below***

- (ii) **Lack of instruction in math; or**

- (iii) **Limited English proficiency; and**

- (2) **If the child does not otherwise meet the eligibility criteria under §300.8(a).**

- (c) **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, the JHW School must--**

- (i) Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, teacher recommendations, as well as recommendations 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. (Authority: 20 U.S.C. 1414(b)(4) and (5))

§300.306(b)(1) - referring to (section 1208 of ESEA – NCLB *from above*) are the Reading components meaning 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.

Following the required timelines, the ARD Committee will meet to review the FIE and determine if the child is a child with a disability and if there is an educational need in order for the student to be eligible for special education services.

VI. ADDITIONAL PROCEDURES FOR IDENTIFYING CHILDREN WITH SPECIFIC LEARNING DISABILITIES

For all additional procedures specific to Learning Disability Eligibility, please see Section 3. - Disability Criteria. Section 3 of this manual will list both the Federal Regulations below and the new state TAC §89.1040(c)(9) Learning Disability Eligibility Criteria.

§300.307 Specific learning disabilities.

§300.308 Additional group members.

§300.309 Determining the existence of a specific learning disability.

§300.310 Observation.

§300.311 Specific documentation for the eligibility determination.

VII. WRITTEN EVALUATION REPORTS (including Related Service Reports)

A written evaluation report for any disability or eligibility for related services will include all of the requirements listed above in §300.311 Written Report (a – b). In addition, specific requirements for each specific disability category found in Section 3-Disability Criteria will also be documented in the written evaluation report.

§300.311 Specific documentation for the eligibility determination.

- (a) For a child suspected of having a specific learning disability, the documentation of the determination of eligibility, as required by §300.306(a)(2), must include a statement of--
 - (1) Whether the child has a specific learning disability;
 - (2) The basis for making the determination, including an assurance that the determination has been made in accordance with §300.306(c)(1);
 - (3) The relevant behavior, if any, noted during the observation of the child and the relationship of that behavior to the child's academic functioning;
 - (4) The educationally relevant medical findings, if any;
 - (5) Whether --
- (i) The child does not achieve adequately for the child's age or to meet State-approved grade-level standards consistent with §300.309(a)(1); and

- (ii) (A) The child does not make sufficient progress to meet age or State-approved grade-level standards consistent with §300.309(a)(2)(i); or
 - (B) The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade-level standards or intellectual development consistent with §300.309(a)(2)(ii).
- (6) The determination of the group concerning the effects of a visual, hearing, or motor disability; mental retardation, emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency on the child's achievement level; and
- (7) If the child has participated in a process that assesses the child's response to scientific, research-based intervention--
 - (i) The instructional strategies used and the student-centered data collected;
 - (ii) The documentation that the child's parents were notified about—
 - (A) The State's policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided;
 - (B) Strategies for increasing the child's rate of learning; and
 - (C) The parents' right to request an evaluation.
- (b) Each group member must certify in writing whether the report reflects the member's conclusion. If it does not reflect the member's conclusion, the group member must submit a separate statement presenting the member's conclusions. (Authority: 20 U.S.C. 1221e-3; 1401(30); 1414(b)(6))

VIII. EVALUATION OF LANGUAGE, PHYSICAL, SOCIOLOGICAL, AND OTHER CONDITIONS.

A. Language Dominance

The evaluation team will first determine the student's dominant language most proficient method of communication (expressively and receptively). The student's dominant language is the language in which the student is most proficient. This determination may be made by formal or informal evaluation. Evaluation instruments must be administered in the student's dominant language (native language or other mode of communication unless it is clearly not feasible to do so). If the primary language of the home is not English, the student will be evaluated in his/her dominant language. Documentation will be Oral Language Proficiency scores, the LPAC report or a description of procedures used to ensure the student was evaluated in his/her dominant language when the examiner is not proficient in that language. Where no bilingual examiner is available, an interpreter may be used. Interpreters will be adequately trained.

B. Language Proficiency

The evaluation team must determine the student's most proficient method of communication. The language proficiency information must indicate the student's skill in understanding and using both receptive and expressive domains, such as oral and written language, reading comprehension, and listening comprehension, when appropriate. Proficiency in both English and the other language(s) must be addressed for Limited English Proficient (LEP) students. (see also detail in the Referral section 1)

TAC §89.1230. Eligible Students with Disabilities. *(language proficiency)*

(a) JHW School will implement assessment procedures which differentiate between language proficiency and handicapping conditions in accordance with Subchapter AA of this chapter (relating to Special Education Services), and will establish placement procedures which ensure that placement in a bilingual education or English as a second language program is not refused solely because the student has a disability.

C. *Physical*

The evaluation of an individual's physical factors (including health, vision, hearing, and psychomotor abilities) must consist of an examination of physical conditions that directly affect the student's ability to profit from the educational process. A general medical examination will be required only when specified by eligibility criteria or when abnormal physical factors have been identified as part of the evaluation of physical factors. The health information collected during the referral process will be sufficient if a complete medical examination is not required by specific eligibility criteria and if there are no indications of need for further physical evaluation.

D. *Emotional/Behavioral*

The evaluation of an individual's emotional and behavioral factors will consist of formally or informally identifying those characteristics manifested in-school or out-of-school behavior, or both, which may influence learning. The evaluation will include behaviors relative to the disability that may affect educational placement, programming, or discipline. Adaptive behavior of all students must be considered to some degree, formal measures are required only when establishing a diagnosis of mental retardation.

E. *Sociological*

The evaluation of an individual's sociological variables must consist of identifying the child's family and community environmental situation influencing learning and behavioral patterns. Students will not be eligible for special education if the only deficiencies identified are directly attributable to a different cultural lifestyle or to their not having had educational opportunities.

F. *Intellectual*

The evaluation of an individual's intellectual functioning must include an evaluation of verbal ability or performance or both. Intellectual functioning should be the last factor assessed, since the student's performance in this area should be analyzed and interpreted in light of all the other data. While the adaptive behavior of all students must be considered to some degree, formal measures of adaptive behavior will be required only when a student is being assessed for intellectual disability. Intelligence must always be addressed.

IX. EVALUATION OF LEARNING COMPETENCIES (Academic Achievement and Functional Performance)

The evaluation will include:

- A. *criterion-referenced or curriculum-referenced assessments designed to aid in the development of the student's IEP; (include any district wide and state testing, benchmarks, etc.)*
- B. *information about the student's strengths and weaknesses; and*
- C. *the specific modifications of instructional content, accommodations, methods and/or materials required by the student to achieve and maintain satisfactory progress, including those that can only be provided through special education services, and those adaptations necessary for the student's progress in general classes and other special and compensatory education programs.*

See also Section IV. previously for §300.305. Additional requirements for evaluations and reevaluations.

X. ASSISTIVE TECHNOLOGY DEVICES AND SERVICES

§300.5 Assistive technology device. 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.

(Authority: 20 U.S.C. 1401(1))

§300.6 Assistive technology service. Assistive technology service means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. The term includes-

- (a) The evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment;*
- (b) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities;*
- (c) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;*
- (d) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;*
- (e) Training or technical assistance for a child with a disability or, if appropriate, that child's family; and*
- (f) Training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of that child.* *(Authority: 20 U.S.C. 1401(2))*

§300.105 Assistive technology; proper functioning of hearing aids.

- (a) The JHW School must ensure that assistive technology devices or assistive technology services, or both, as those terms are defined in §§300.5 and 300.6, respectively, are made available to a child with a disability if required as a part of the child's--*
 - (1) Special education under §300.36;*
 - (2) Related services under §300.34; or*
 - (3) Supplementary aids and services under §§300.38 and 300.114(a)(2)(ii).*
- (b) On a case-by-case basis, the use of school-purchased assistive technology devices in a child's home or in other settings is required if the child's IEP Team determines that the child needs access to those devices in order to receive FAPE. (Authority: 20 U.S.C. 1412(a)(1), 1412(a)(12)(B)(i))*

Each student assessed for determination of a disability will be assessed for assistive technology needs.

XI. SPECIAL PROVISIONS

Any area assessed below requires pre-planning and review of existing evaluation data by the student's ARD/IEP Committee or the request may have come from the initial referral.

A. Adapted Physical Education

Adapted physical education evaluations will be administered by appropriately trained physical education or special education personnel. A written report should be completed to address the student's physical strengths and weaknesses and recommendations for specific services to be considered by the ARD/IEP committee. (see also Instructional Arrangements Section 5)

B. Atlantoaxial Dislocation Condition

Students identified as having Down's Syndrome are at-risk for having a condition of the neck that necessitates restriction of physical education activities. This condition is called Atlantoaxial Dislocation Condition (ADC) or Atlantoaxial Instability. In order to determine the presence or absence of this condition, x-rays are required beginning at approximately three years of age or as

soon as students enroll. Diagnosticians/Licensed Specialists in School Psychology will notify parents of the need for medical release.

C. Attention Deficit Disorder (ADD-ADHD) see also Section 3 – Disability Criteria for OHI

Remember when conferencing with parent/surrogate:

1. discuss the educational needs with parent and possible strategies,
5. discuss possible need for further evaluation,
6. discuss other information the manner in which testing would be conducted (time lines, etc),
7. the general education staff does not provide the parent a copy of the OHI Disability Report for the physician

After the referral is made:

1. appropriate evaluation measures will be administered,
2. Multidisciplinary Team (campus administrator, referring teacher, special education teacher, Licensed Specialist in School Psychology or Diagnostician) will meet to determine if student meets criteria as a student with a Specific Learning Disability (SLD). If the student qualifies as SLD, academic and behavior needs will be addressed at the ARD/IEP meeting. If the student does not qualify as SLD, but appears to have an educational need and data indicates a possibility of ADD or ADHD, the team may recommend that the Other Health Impaired (OHI) eligibility be pursued.

If OHI is pursued:

5. the Physician's Report form must be completed by a medical doctor,
6. the medical form is for diagnosis only - we do not pursue medication,
7. ask if the parent has a doctor who knows the student,
8. the medical doctor is just one member of the multidisciplinary team.

Caution: Remember that a student may be diagnosed by a physician as having ADD or ADHD but the student may not necessarily have an educational need for special education services. Determination of educational need is made by the ARD/IEP Committee considering all data. Needs of some students may be addressed by the local campus Section 504 committee or classroom strategies. If you have any questions, please review with your JHW School campus personnel or call the JHW School special education office.

D. Auditory Impairment

When considering students who have auditory impairments, a professional certified in the education of students with auditory impairments will be assigned to assist in:

1. determining appropriate areas of evaluation;
2. developing or determining appropriate evaluation techniques;
3. conducting evaluations when appropriate; and
4. interpreting data to ensure consideration and understanding of the educational, psychological, and social implications of the disability.

E. Autism

The team of professionals that completes the evaluation process for autism will include a psychologist or LSSP, a speech/language pathologist, a diagnostician, occupational therapist, and any other professional appropriate. The parent is also a critical member of the team.

F. Functional Behavioral Assessment

Functional Behavioral Assessment is completed when a student's behavior impedes educational progress for the student or other students in the classroom. For currently identified students receiving specially designed instruction, a staffing must occur with the referring teacher or administrator

present. The referring teacher or administrator must provide written documentation (i.e., identification of specific behaviors of concern, interventions, outcomes, length of time of implementation). The general education teacher/campus administrator must participate in gathering the information below in order to develop the BIP:

- 1. target the specific behavior that is impeding learning by clearly defining and describing the observable behavior(s).*
- 2. obtain information from a variety of sources including but not limited to: discussions, interviews, records, and direct observation. Also use any standardized instruments if available. Determine duration, frequency, and intensity of any patterns of behavior.*
- 3. identify and describe any antecedents - events that logically serve as the stimulus for the behavior.*
- 4. identify and describe any consequences - this is the action that is following and causes the student to maintain specific behavior - determine effectiveness of each.*
- 5. determine the purpose of the student's behavior - usually to get something, avoid or escape something, or to control the antecedent event.*
- 6. describe the relationship of the behavior to the event and provide possible variables that can be changed in the setting or the situation.*
- 7. develop the behavioral intervention plan (BIP). Teach alternatives to the behavior and include positive reinforcement along with consequences.*
- 8. consistently implement, allow enough time for the BIP to work, and then review as needed.*

G. Homebound or Hospitalized

All students referred for consideration as homebound or hospital need evaluation information that describes the student's functioning in the following areas: health, vision, hearing, social emotional status, general intelligence, academic performance, communication, and motor abilities so the ARD/IEP committee can determine eligibility for special education.

TAC §89.63. Any student who is placed in the special education homebound instructional arrangement/setting must meet the following four criteria:

- be eligible for special education and related services as determined by an ARD committee;
- is expected to be confined at home or hospital bedside for a minimum of four consecutive weeks;
- for medical reasons only (unless the child is 0 – 5 years of age);
- medical condition is documented by a physician licensed to practice in the United States. 19
TAC §89.63(c)(2)(A)

In making eligibility and placement decisions the ARD committee must consider the physician's information. However, the physician's note/information is not the sole determining factor in the committee's decision making process.

General Education Homebound (GEH)

Any general education student should be referred to the local campus GEH committee. For more information see the Student Attendance Accounting Manual.

H. Limited English Proficient

§300.27 Limited English proficient. Limited English proficient has the meaning given the term in section 9101 (25) of the ESEA. (Authority U.S.C. 1401(18))

(See also Home Language Survey and LPAC in this Referral Section)

- 1. For all LEP (Limited English Proficient) Students:*

- A. *The LPAC recommendation, which must have been completed within the past year, must be included with the referral packet. The student should have been tested in English (L1) and Spanish (L2)*
 - B. *If this is a new referral, information will include: Initial referral information, LPAC report, TELPAS scores or equivalent test, ESL objectives, Home Language Survey copy.*
 - C. *If you have planned a reevaluation, this information must be included.*
2. *Speech only referral:*
- A. *(LANGUAGE) The language proficiency assessment (ex. LAS, TELPAS) should be considered with regard to the following:*
 - v. *If the student is proficient in English and has a lower proficiency in Spanish, the normal procedures for the speech pathologist evaluations are followed.*
 - vi. *If the student is proficient in Spanish and not in English, typically this would not be an appropriate referral. The speech pathologist will write the evaluation report (using information from the cumulative folder) and proceed to ARD.*
 - vii. *If the student is barely proficient in both languages, consult with the Director of Special Education before proceeding.*
 - viii. *If the student is proficient in both languages as outlined by TEA and LPAC requirements, normal procedures in English may be followed.*
 - B. *(ARTICULATION) The articulation evaluation should be considered with regard to the following: If the student is misarticulating sounds that are different or not present in Spanish but are in English, therapy would not be appropriate.*
3. *Other Referrals (LD, MR, etc.):*
- A. *The language evaluation (ex. LAS, IDEA) should be considered with regard to the following:*
 - v. *If the student is proficient in English and less proficient in Spanish, the usual procedures for testing are followed.*
 - vi. *If the student is proficient in Spanish and not in English, typically this will be an inappropriate referral for a Learning Disability. This type of profile is usually an indication that the child needs more time to learn English. The diagnostician will write the FIE or full and individual evaluation report (using information from the cumulative folder) and proceed to ARD. If the student is to be considered for a physical, mental or emotional disability, proceed with caution.*
 - vii. *If the student is barely proficient in both languages, consult with the Director of Special Education before proceeding.*
 - viii. *If the student is above proficient in both languages, normal procedures in English may be followed.*
 - B. *If the student is not proficient in either language, a bilingual assessment should be requested. Consideration should be given to the following:*
 - iii. *Students who have been in English speaking schools for less than two years should be given careful consideration relative to referral.*
 - iv. *If the student has received English instruction for two or more years and there is no evidence of previous academic instruction in Spanish or another language, the LPAC may recommend testing in English or use of an interpreter.*

I. Speech Impairment

For students referred for speech/language suspected disability, the evaluation will be performed and documented by a certified speech and language pathologist, certified speech and hearing therapist, or a licensed speech/language pathologist. All of the areas including evaluation of physical, mental, and emotional conditions and learning competencies will be addressed in the evaluation. The written report of evaluation will include the level of severity of the impairment as determined by our Speech

Therapy Guidelines and will state how the communication disorder affects the student's performance in the classroom resulting in an educational need for speech therapy services.

J. Visual Impairment

When considering students who have visual impairments, a professional certified in the education of students with visual impairments will be assigned to assist in:

- 1. determining appropriate areas of evaluation;*
- 2. developing or determining appropriate evaluation techniques;*
- 3. conducting evaluations when appropriate; and*
- 4. interpreting data to ensure consideration and understanding of the educational, psychological, and social implications of the disability; and*
- 5. collecting appropriate medical documentation.*

When considering students from birth through age two that have visual impairments, or students who are deaf-blind, a teacher of infants who have visual impairments or a teacher of students who are deaf-blind, as appropriate, may perform the evaluation specified above.

K. Vocational Evaluation

Special education will collect vocational evaluation data when appropriate. As the ARD/IEP committee begins discussion and planning for entry into the high school curriculum and discusses the graduation plan of the student, vocational evaluation may be determined appropriate. (For information on the Vocational Adjustment Coordination Program see Instructional Arrangements Section.)

- 1. The ARD/IEP committee may recommend vocational evaluation when:
 - A. the student has no specific identified skills which are determined necessary for employment, or*
 - B. the student has no idea of vocational opportunities or careers of any interest.**
- 2. Based on ARD/IEP committee recommendation, occupational preparation needs may be reviewed and may include the following:
 - A. the Full and Individual Evaluation;*
 - B. the current IEP;*
 - C. information about past school performance;*
 - D. interviews with student, parent, and teacher(s). The interviews include attitudes, work habits, behaviors, job readiness, work-related skills, and post-school expectations.**
- 3. The assigned special education evaluator will explain to parents the purpose of the vocational review. Results of the vocational evaluation may be discussed with the student prior to being filed in the student's special education folder. The results will also be discussed at the annual ARD/IEP committee meeting.*
- 4. If the review of the records in #2. above indicates, a vocational interest and aptitude evaluation may be recommended by the ARD/IEP committee. The Special Education Case Manager or assigned assessment personnel is responsible for sending the Notice and Consent for a Full and Individual Evaluation to the parent prior to the evaluation.*
- 5. For students with disabilities whose initial vocational evaluation, does not yield measurable results or sufficient information for planning appropriate occupational preparation, additional vocational evaluation may be required such as: review of work sample and work behaviors analysis.*

Functional Vocational Evaluation.

The ARD/IEP committee will consider any recommendations as a result of Transition Planning. Transition services means a coordinated set of activities for a student with a disability that includes if appropriate a functional vocational evaluation. If the ARD/IEP committee recommends this, a

qualified professional will conduct the evaluation.

1. The evaluation will include but not be limited to: interview with teacher and parents, and other formal or informal evaluations as appropriate.
2. Results of the evaluation including strengths and weaknesses will be addressed in a written report maintained in the eligibility file.

XV. APPRAISAL PERSONNEL (see also Personnel in Section 8-Administration)

§300.156 Personnel qualifications.

(a) **General.** The SEA must establish and maintain qualifications to ensure that personnel necessary to carry out the purposes of this part are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities.

(b) **Related services personnel and paraprofessionals.** The qualifications under paragraph (a) of this section must include qualifications for related services personnel and paraprofessionals that--

- (1) Are consistent with any State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services; and
- (2) Ensure that related services personnel who deliver services in their discipline or profession--
 - (i) Meet the requirements of paragraph (b)(1) of this section; and
 - (ii) Have not had certification or licensure requirements waived on an emergency, temporary, or provisional basis; and
 - (iii) Allow paraprofessionals and assistants who are appropriately trained and supervised, in accordance with State law, regulation, or written policy, in meeting the requirements of this part to be used to assist in the provision of special education and related services under this part to children with disabilities.

(c) for remaining portion see Administrative section 8 of this document

Director of Special Education or Special Education Instructional Coordinator will review referral data, determine suspected disability, and route the referral to the appropriate special education evaluation staff. Professionals will be assigned to conduct evaluations only in the areas for which they have been trained. JHW School appraisal personnel and their responsibilities include:

a. Adapted P.E. teacher or Regional Education Service Center Consultant:

1. administers screening/evaluation for possible adapted physical education services, and
2. completes a written report with recommendations.

b. Auditory Impairments (AI):

Evaluation and services for students with auditory impairments will be provided by appropriately qualified personnel. Personnel from the Regional Day School for the Deaf or other appropriate personnel may be used as needed.

c. Educational Diagnostician:

1. administers intellectual and academic/developmental for initial evaluations and re-evaluations ;
2. participates on ARD/IEP committee and campus Special Education staff meetings as appropriate;
3. participates on multidisciplinary team evaluations for autistic, specific learning disability, and multiple disabilities referrals;
4. assists in evaluation of vocational skills and needs;
5. may serve on the Student Intervention Team or 504 Committee on assigned campus; and
6. interprets evaluation data orally and in a written report to the ARD/IEP committee.

d. Licensed Specialist in School Psychology (LSSP):

1. administers psychological screenings and evaluations;
2. participates on multidisciplinary team evaluations for autistic referrals;
3. develops behavior management plans and consults with staff as needed;

4. *participates on ARD/IEP committee and campus Special Education staff meetings as appropriate; and*
 5. *may serve on Student Intervention Team or 504 Committee on assigned campus, as appropriate.*
 6. *provide Related Service counseling as stated in student's IEP*
 7. *participates in the development of the Functional Behavioral Analysis and resulting Behavior Intervention Plan*
- e. Occupational Therapist/Physical Therapist:
1. *administers screening and evaluation for possible OT/PT services, and*
 2. *assures annual medical release is obtained for continuation of services.*
- f. Psychologist:
1. *administers psychological screenings and evaluations;*
 2. *participates on multidisciplinary team evaluations for autistic referrals;*
 3. *develops behavior intervention plans and consults with staff as needed;*
 4. *participates on ARD/IEP committee as needed; and*
 5. *may serve on Student Intervention Team or 504 Committee on assigned campus, as appropriate.*
- g. Special Education Teachers:
Annually assess student competencies for updating the student's IEP. This will include the review of the State or district wide assessments. Participate in Special Education campus staff meetings. The instructor will also provide updates on IEPs through progress reports. Consideration of any benchmark tests will be used as well. Information for the three year re-evaluation will be provided to the Licensed Specialist in School Psychology/Diagnostician and / or ARD/IEP committee for inclusion in the written eligibility report.
- h. Speech/Language Pathologist:
1. *administers evaluations for all speech impaired referrals;*
 2. *screens or evaluates referrals for oral expression and listening comprehension upon request of educational diagnostician;*
 3. *screens referrals as appropriate upon request;*
 4. *participates on the multidisciplinary team evaluations for autistic referrals when appropriate; and*
 5. *may serve on the Student Assistance Committee or 504 Committee on assigned campus.*
- i. Visual Impairments (VI):
Evaluations and services for students with visual impairments will be conducted by appropriately qualified school personnel, or other appropriate agency personnel such as the Regional Education Service Center consultants.

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Section 3. - DISABILITY CRITERIA

REGULATIONS

§300.8 Child with a disability.

(a) General.

- (1) **Child with a disability** means a child evaluated in accordance with §§300.304 through 300.311 as having mental retardation, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disturbance (referred to in this part as emotional disturbance), an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services.
- (2) (i) Subject to paragraph (a)(2)(ii) of this section, if it is determined, through an appropriate evaluation under §§300.304 through 300.311, that a child has one of the disabilities identified in paragraph (a)(1) of this section, but only needs a related service and not special education, the child is **not a child with a disability** under this part.
(ii) If, consistent with §300.38(a)(2), 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 under paragraph (a)(1) of this section.

(b) Children aged 3-9 (*found in this Section 3 - Disability Criteria*)

(c) Definitions of disability terms (*found in this Section 3 - Disability Criteria*)

§300.306 Determination of eligibility. (*for more information see Section 2 – FIE*)

(a) General. Upon completion of the administration of assessments and other evaluation measures-

- (1) A group of qualified professionals and the parent of the child determines whether the child is a child with a disability, as defined in §300.8, in accordance with paragraph (b) of this section and the educational needs of the child; and
- (2) The John H. Wood, Jr. Public Charter District provides a copy of the evaluation report and the documentation of determination of eligibility at no cost to the parent.

TAC §89.1040. Eligibility Criteria.

- (a) Special education services. To be eligible to receive special education services, a student must be a "child with a disability," as defined in 34 Code of Federal Regulations (CFR), §300.8(a), subject to the provisions of 34 CFR, §300.8(c), the Texas Education Code, §29.003, and this section. The provisions in this section specify criteria to be used in determining whether a student's condition meets one or more of the definitions in federal regulations or in state law.
- (b) Eligibility determination. The determination of whether a student is eligible for special education and related services is made by the student's admission, review, and dismissal committee. Any evaluation or re-evaluation of a student must be conducted in accordance with 34 CFR, §§300.301-300.306 and 300.122. The multidisciplinary team that collects or reviews evaluation data in connection with the determination of a student's eligibility must include, but is not limited to, the following:
 - (1) a licensed specialist in school psychology (LSSP), an educational diagnostician, or other appropriately certified or licensed practitioner with experience and training in the area of the disability; or
 - (2) a licensed or certified professional for a specific eligibility category defined in subsection (c) of this section. (*Subsection (c) is located in each individual disability page 303-316*)

TEC §29.003. Eligibility Criteria

- (a) The TEA shall develop specific eligibility criteria based on the general classifications established by this section with reference to contemporary diagnostic or evaluative terminologies and techniques. Eligible students with disabilities shall enjoy the right to a free appropriate public education, which may include instruction in the regular classroom, instruction through special teaching, or instruction

through contracts approved under this subchapter. Instruction shall be supplemented by the provision of related services when appropriate.

- (b) A student is eligible to participate in the JHW School special education program if the student:
 - (1) is not more than 21 years of age and has a visual or auditory impairment that prevents the student from being adequately or safely educated in public school without the provision of special services; or
 - (2) is at least three but not more than 21 years of age and has one or more of the following disabilities that prevents the student from being adequately or safely educated in public school without the provision of special services:
 - (A) physical disability;
 - (B) mental retardation;
 - (C) emotional disturbance;
 - (D) learning disability;
 - (E) autism;
 - (F) speech disability; or
 - (G) traumatic brain injury.

TAC §89.1035. Age Ranges for Student Eligibility

- (a) Pursuant to state and federal law, services provided in accordance with this subchapter shall be available to all eligible students ages 3-21. Services will be made available to eligible students on their third birthday. Graduation with a regular high school diploma pursuant to §89.1070 (b)(1)-(2) of this title (relating to Graduation Requirements) terminates a student's eligibility to receive services in accordance with this subchapter. An eligible student receiving special education services who is 21 years of age on September 1 of a school year shall be eligible for services through the end of that school year or until graduation with a regular high school diploma pursuant to §89.1070 (b)(1)-(2) of this title, whichever comes first.
- (b) In accordance with the Texas Education Code (TEC), §§29.003, 30.002(a) - (*TEA statewide plan*), and 30.081 (*below*), a free, appropriate, public education shall be available from birth to students with visual or auditory impairments.

TEC §30.081. Legislative Intent Concerning Regional Day Schools for the Deaf

The legislature, by this subchapter, intends to continue a process of providing on a statewide basis a suitable education to deaf or hard of hearing students who are under 21 years of age and assuring that those students have the opportunity to become independent citizens.

I. AUDITORY IMPAIRMENT

§300.8 Child with a disability.

- (c) Definitions of disability terms. The terms used in this definition of a child with a disability are defined as follows:

- (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.

§300.8 Child with a disability.

- (c) Definitions of disability terms. The terms used in this definition of a child with a disability are defined as follows:

- (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.

TAC §89.1040. Eligibility Criteria.

- (c) Eligibility definitions.
- (3) Auditory impairment. A student with an auditory impairment is one who has been determined to meet the criteria for deafness as stated in 34 CFR, §300.8(c)(3), or for hearing impairment as stated in 34 CFR, §300.8(c)(5). The evaluation data reviewed by the multidisciplinary team in connection with the determination of a student's eligibility based on an auditory impairment must include an otological examination performed by an otolaryngologist or by a licensed medical doctor, with documentation that an otolaryngologist is not reasonably available and an audiological evaluation performed by a licensed audiologist. The evaluation data must include a description of the implications of the hearing loss for the student's hearing in a variety of circumstances with or without recommended amplification.

§300.113 Routine checking of hearing aids and external components of surgically implanted medical devices.

- (a) **Hearing aids.** Each public agency must ensure that hearing aids worn in school by children with hearing impairments, including deafness, are functioning properly.
- (b) **External components of surgically implanted medical devices.**
- (1) Subject to paragraph (b)(2) of this section, each public agency must ensure that the external components of surgically implanted medical devices are functioning properly.
- (2) For a child with a surgically implanted medical device who is receiving special education and related services under this part, a public agency is not responsible for the post-surgical maintenance, programming, or replacement of the medical device that has been surgically implanted (or of an external component of the surgically implanted medical device).

II. AUTISM

§300.8 Child with a disability.

- (c) **Definitions of disability terms.** The terms used in this definition of a child with a disability are defined as follows:
- (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, as defined in paragraph (c)(4) of this section. (c)(4) = Emotional Disturbance)
- (b) 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.

TAC §89.1040. Eligibility Criteria.

- (c) Eligibility definitions.
- (1) Autism. A student with autism is one who has been determined to meet the criteria for autism as stated in 34 CFR, §300.8(c)(1). Students with pervasive developmental disorders are included under this category. The team's written report of evaluation must include specific recommendations for behavioral interventions and strategies.

III. DEAF – BLINDNESS

§300.8 Child with a disability.

- (c) **Definitions of disability terms.** The terms used in this definition of a child with a disability are defined as follows:
- (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.

TAC §89.1040. Eligibility Criteria.

- (c) Eligibility definitions.
- (2) Deaf-blindness. A student with deaf-blindness is one who has been determined to meet the criteria for deaf-blindness as stated in 34 CFR, §300.8(c)(2). In meeting the criteria stated in 34 CFR, §300.8(c)(2), a student with deaf-blindness is one who, based on the evaluations specified in subsections (c)(3) and (c)(12) of this section:
- (A) meets the eligibility criteria for auditory impairment specified in subsection (c)(3) of this section and visual impairment specified in subsection (c)(12) of this section;
- (B) meets the eligibility criteria for a student with a visual impairment and has a suspected hearing loss that cannot be demonstrated conclusively, but a speech/language therapist, a certified speech and language therapist, or a licensed speech language pathologist indicates there is no speech at an age when speech would normally be expected;
- (C) has documented hearing and visual losses that, if considered individually, may not meet the requirements for auditory impairment or visual impairment, but the combination of such losses adversely affects the student's educational performance; or
- (D) has a documented medical diagnosis of a progressive medical condition that will result in concomitant hearing and visual losses that, without special education intervention, will adversely affect the student's educational performance.

IV. EMOTIONAL DISTURBANCE

§300.8 Child with a disability.

- (c) **Definitions of disability terms.** The terms used in this definition of a child with a disability are defined as follows:
- (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.**

TAC §89.1040. Eligibility Criteria.

(c) Eligibility definitions.

(4) Emotional disturbance. A student with an emotional disturbance is one who has been determined to meet the criteria for emotional disturbance as stated in 34 CFR, §300.8(c)(4). The written report of evaluation must include specific recommendations for behavioral supports and interventions.

V. INTELLECTUAL DISABILITY

§300.8 Child with a disability.

(c) **Definitions of disability terms.** The terms used in this definition of a child with a disability are defined as follows:

(6) **Mental retardation** means significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a child's educational performance.

TAC §89.1040. Eligibility Criteria.

(c) Eligibility definitions.

(5) Intellectual Disability. A student with an intellectual disability is one who has been determined to meet the criteria for an intellectual disability as stated in 34 CFR, §300.8(c)(6). In meeting the criteria stated in 34 CFR, §300.8(c)(6), a student with an intellectual disability is one who:

(A) has been determined to have significantly sub-average intellectual functioning as measured by a standardized, individually administered test of cognitive ability in which the **overall test score** is at least two standard deviations below the mean, **when taking into consideration the standard error of measurement** of the test; and

(B) concurrently exhibits **deficits in at least two** of the following areas of adaptive behavior: communication, self-care, home living, social/interpersonal skills, use of community resources, self-direction, functional academic skills, work, leisure, health, and safety.

The following **local** guidelines apply:

1. *You must use the overall test score of the individually administered test of cognitive ability.*
2. *You must take into consideration the standard error of measurement of the test given.
Example: If the test given is a Wechsler and the standard error of measurement is + or – 3 and the overall intelligence quotient score is 70, the student is functioning above the intellectually disabled range.*
3. *If non-standardized procedures are used to administer a standardized test or developmental scale because of a severe sensory impairment (e.g. a visual impairment), another severe physical disability, or because of language or communication differences, the adaptations should be noted and the implications for test interpretation should be documented. Normed scores are based on standardized administration procedures and should not be reported if non-standardized procedures are used to administer the test. Reporting ranges or categories of scores may be more appropriate.*
4. *If a student is very young and/or has a severe disability or a severe sensory impairment, a developmental scale may be administered instead of intelligence tests. The student's performance must be within the intellectually disabled range on the developmental scale.*
5. *Some measures of intellectual ability result in a composite or global score rather than individual verbal and performance scores. When an IQ test is used which results in a single score, it is up to the evaluation*

professional to ensure that both verbal and performance skills have been measured and documented. If they have, the single score will suffice as a measure of both verbal and performance ability.

6. *An adaptive behavior scale must be administered and documented. Document deficits in at least two of the areas of adaptive behavior listed in 89.1040 (c)(5)(B) above.*

VI. MULTIPLE DISABILITIES

§300.8 Child with a disability.

(c) **Definitions of disability terms.** The terms used in this definition of a child with a disability are defined as follows:

- (7) **Multiple disabilities** means concomitant impairments (such as mental retardation-blindness, mental retardation-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 does not include deaf-blindness.

TAC §89.1040. Eligibility Criteria.

(c) Eligibility definitions.

(6) Multiple disabilities.

(A) A student with multiple disabilities is one who has been determined to meet the criteria for multiple disabilities as stated in 34 CFR, §300.8(c)(7). In meeting the criteria stated in 34 CFR, §300.8(c)(7), a student with multiple disabilities is one who has a combination of disabilities defined in this section and who meets all of the following conditions:

- (i) the student's disability is expected to continue indefinitely; and
- (ii) the disabilities severely impair performance in two or more of the following areas:
 - (I) psychomotor skills;
 - (II) self-care skills;
 - (III) communication;
 - (IV) social and emotional development; or
 - (V) cognition.

(B) Students who have more than one of the disabilities defined in this section but who do not meet the criteria in subparagraph (A) of this paragraph must not be classified or reported as having multiple disabilities.

VII. NONCATEGORICAL EARLY CHILDHOOD (NCEC) – Developmental Delays

§300.8 Child with a disability.

(b) **Children aged three through nine experiencing developmental delays.** Child with a disability for children aged three through nine (or any subset of that age range, including ages three through five), may, at the discretion of the State and the LEA and in accordance with §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; and

- (2) **Who, by reason thereof, needs special education and related services.**

TAC §89.1040. Eligibility Criteria.

- (c) Eligibility definitions.

- (13) Noncategorical. A student between the ages of 3-5 who is evaluated as having intellectual disability, emotional disturbance, a specific learning disability, or autism may be described as noncategorical early childhood.

VIII. ORTHOPEDIC IMPAIRMENT

§300.8 Child with a disability.

- (c) **Definitions of disability terms.** The terms used in this definition of a child with a disability are defined as follows:

- (8) **Orthopedic impairment** means a severe orthopedic impairment that adversely affects a child's educational performance. The term includes impairments caused by a congenital anomaly, 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).

TAC §89.1040. Eligibility Criteria.

- (c) Eligibility definitions.

- (7) Orthopedic impairment. A student with an orthopedic impairment is one who has been determined to meet the criteria for orthopedic impairment as stated in 34 CFR, §300.8(c)(8). The multidisciplinary team that collects or reviews evaluation data in connection with the determination of a student's eligibility based on an orthopedic impairment must include a licensed physician.

IX. OTHER HEALTH IMPAIRMENT

§300.8 Child with a disability.

- (c) **Definitions of disability terms.** The terms used in this definition of a child with a disability are defined as follows:

- (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.

TAC §89.1040. Eligibility Criteria.

- (c) Eligibility definitions.

- (8) Other health impairment. A student with other health impairment is one who has been determined to meet the criteria for other health impairment 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's Disorder as stated in 34 CFR, §300.8(c)(9). The multidisciplinary team that collects or reviews evaluation data in connection with the determination of a student's eligibility based on other health impairment must include a licensed physician.

*** Students with Other Health Impairment eligibility must have an updated OHI form every 3 years. A REED committee may not continue an Other Health Impairment eligibility without current data from an attending physician.

X. SPECIFIC LEARNING DISABILITY

§300.8 Child with a disability.

- (c) **Definitions of disability terms.** The terms used in this definition of a child with a disability are defined as follows:

(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 mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

§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).
- (b) **Consistency with State criteria.** The JHW School must use the State criteria adopted pursuant to paragraph (a) of this section in determining whether a child has a specific learning disability. (Authority: 20 U.S.C. 1221e-3; 1401(30); 1414(b)(6))

ESEA section 9101 (37)

Definition of (37) SCIENTIFICALLY BASED RESEARCH - (*Found in the Referral Section 1.*)

§300.308 Additional group members.

The determination of whether a child suspected of having a specific learning disability is a child with a disability, as defined in §300.8, must be made by the child's parents and a team of qualified professionals, which must include--

- (a) (1) The child's regular teacher; or
- (2) If the child does not have a regular teacher, a regular classroom teacher qualified to teach a child of his or her age; or

(3) For a child of less than school age, an individual qualified by the SEA to teach a child of his or her age; and

(b) At least one person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or remedial reading teacher. (Authority: 20 U.S.C. 1221e-3; 1401(30); 1414(b)(6))

The team of qualified professionals (including the parent) will meet as an ARD/IEP Committee to review the FIE and determine if the child is a child with a disability and if there is an educational need in order for the student to meet eligibility criteria for special education services.

§300.309 Determining the existence of a specific learning disability.

(a) The group described in §300.306 may determine that a child has a specific learning disability, as defined in §300.8(c)(10), if-

(1) The child does not achieve adequately for the child's age or to meet State-approved grade-level standards in one or more of the following areas, when provided with learning experiences and instruction appropriate for the child's age or State-approved grade-level standards:

- (i) Oral expression.
- (ii) Listening comprehension.
- (iii) Written expression.
- (iv) Basic reading skill.
- (v) Reading fluency skills.
- (vi) Reading comprehension.
- (vii) Mathematics calculation.
- (viii) Mathematics problem solving.

(2) (i) The child does not make sufficient progress to meet age or State-approved grade-level standards in one or more of the areas identified in paragraph (a)(1) of this section when using a process based on the child's response to scientific, research-based intervention; or

(ii) The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, that is determined by the group to be relevant to the identification of a specific learning disability, using appropriate assessments consistent with §§300.304 and 300.305; and

(3) The group determines that its findings under paragraph (a)(1) and (2) of this section are not primarily the result of--

- (i) A visual, hearing, or motor disability;
- (ii) Mental retardation;
- (iii) Emotional disturbance;
- (iv) Cultural factors; or
- (v) Environmental or economic disadvantage.
- (vi) Limited English proficiency.

**If a student has failed the vision or hearing screening as part of the referral process (initial or reevaluation) JHW staff (campus administrators, assessment personnel, and/or SPED Case Managers) will work with facility administration to schedule and obtain the needed medical services.*

(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 a 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.

(c) The JHW School must promptly request parental consent to evaluate the child to determine if the child needs special education and related services, and must adhere to the timeframes described in 300.301 and 300.303, unless extended by mutual written agreement of the child's parents and a group of qualified professionals, as described in 300.306(1)(1)--

(1) If, prior to a referral, a child has not made adequate progress after an appropriate period of time when provided instruction, as described in paragraphs (b)(1) and (b)(2) of this section; and

(2) Whenever a child is referred for an evaluation.

Referenced above: section 1111(b)(8)(D) and (E) of the ESEA (No Child Left Behind) refers to the Academic Standards, Academic Assessments and Accountability Requirements.

§300.310 Observation.

- (a) The JHW School must ensure that the child is observed in the child’s learning environment, including the regular classroom setting, to document the child’s academic performance and behavior in the areas of difficulty.**
- (b) The group described in §300.306(a)(1), in determining whether a child has a specific learning disability, must decide to—**
 - (1) Use information from an observation in routine classroom instruction and monitoring of the child’s performance that was done before the child was referred for an evaluation; or**
 - (2) Have at least one member of the group described in §300.306(a)(1) conduct an observation of the child’s academic performance in the regular classroom after the child has been referred for an evaluation and parental consent, consistent with §300.300(a), is obtained.**
- (c) In the case of a child of less than school age or out of school, a group member must observe the child in an environment appropriate for a child of that age. (Authority: 20 U.S.C. 1221e-3; 1401(30); 1414(b)(6))**

§300.311 Specific documentation for the eligibility determination.

- (a) For a child suspected of having a specific learning disability, the documentation of the determination of eligibility, as required by §300.306(a)(2), must include a statement of--**
 - (1) Whether the child has a specific learning disability;**
 - (2) The basis for making the determination, including an assurance that the determination has been made in accordance with §300.306(c)(1);**
 - (3) The relevant behavior, if any, noted during the observation of the child and the relationship of that behavior to the child’s academic functioning;**
 - (4) The educationally relevant medical findings, if any;**
 - (5) Whether --**
 - (i) The child does not achieve adequately for the child’s age or to meet State-approved grade-level standards consistent with §300.309(a)(1); and**
 - (ii) (A) The child does not make sufficient progress to meet age or State-approved grade-level standards consistent with §300.309(a)(2)(i); or**
 - (B) The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade-level standards or intellectual development consistent with §300.309(a)(2)(ii).**
 - (6) The determination of the group concerning the effects of a visual, hearing, or motor disability; mental retardation, emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency on the child’s achievement level; and**
 - (7) If the child has participated in a process that assesses the child’s response to scientific, research-based intervention--**
 - (i) The instructional strategies used and the student-centered data collected;**
 - (ii) The documentation that the child’s parents were notified about—**
 - (A) The State’s policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided;**
 - (B) Strategies for increasing the child’s rate of learning; and**
 - (C) The parents’ right to request an evaluation.**
- (b) Each group member must certify in writing whether the report reflects the member’s conclusion. If it does not reflect the member’s conclusion, the group member must submit a separate statement presenting the member’s conclusions. (Authority: 20 U.S.C. 1221e-3; 1401(30); 1414(b)(6))**

TAC §89.1040. Eligibility Criteria.

- (c) Eligibility definitions.**
 - (9) Learning disability.**
 - (A) Prior to and as part of the evaluation described in subparagraph (B) of this paragraph and 34 CFR, §§300.307-300.311, and in order to ensure that underachievement in a student**

suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or mathematics, the following must be considered:

- (i) **data that demonstrates the student was provided appropriate instruction in reading** (as described in 20 United States Code (USC), §6368(3)), **and/or mathematics** within general education settings delivered by qualified personnel; and
 - (ii) **data-based documentation of repeated assessments of achievement** at reasonable intervals, reflecting formal evaluation of student progress during instruction. Data-based documentation of repeated assessments may include, but is not limited to, response to intervention progress monitoring results, in-class tests on grade-level curriculum, or other regularly administered assessments. Intervals are considered reasonable if consistent with the assessment requirements of a student's specific instructional program.
- (B) A student with a learning disability is one who:
- (i) has been determined through a **variety** of assessment tools and strategies to meet the criteria for a specific learning disability as stated in 34 CFR, §300.8(c)(10), in accordance with the provisions in 34 CFR, §§300.307-300.311; and
 - (ii) does not achieve adequately for the student's age or meet state-approved grade-level standards in oral expression, listening comprehension, written expression, basic reading skill, reading fluency skills, reading comprehension, mathematics calculation, or mathematics problem solving when provided appropriate instruction, **as indicated by performance on multiple measures such as in-class tests; grade average over time (e.g. six weeks, semester); norm- or criterion-referenced tests; statewide assessments; or a process based on the student's response to scientific, research-based intervention;** and
 - (I) does not make sufficient progress when provided a process based on the student's response to scientific, research-based intervention (as defined in 20 USC, §7801(37)), as indicated by the student's performance relative to the performance of the student's peers on repeated, curriculum-based assessments of achievement at reasonable intervals, reflecting student progress during classroom instruction; or
 - (II) exhibits a pattern of strengths and weaknesses in performance, achievement, or both relative to age, grade-level standards, or intellectual ability, as indicated by significant **variance** among specific areas of cognitive function, such as working memory and verbal comprehension, **or** between specific areas of cognitive function and academic achievement.

The following local guidelines apply:

Due to the changes in criteria for determining a child has a specific learning disability, special education referrals MUST be discussed with local campus administration. Determine the degree of training / support necessary for a thorough understanding of the federal and state requirements prior to referral for special education evaluation:

Referrals:

- * *the discrepancy model was NOT required by the TEA rules*
- * *the process used was based on the child's response to scientific research-based intervention and instruction by a highly qualified teacher*
- * *the student meets criteria in 300.8 (c)(10) that are NOT primarily the result of visual, hearing, or motor disabilities, of intellectual disability, of emotional disturbance, or of environmental, cultural, or economic disadvantage or LEP.*

Re-evaluations: The committee reviewing existing evaluation data in determining the need for additional evaluations is encouraged to consider a comprehensive reevaluation of those students who qualified solely upon the use of the previous discrepancy model.

The JHW School will provide a specific checklist / form which will incorporate all of the data elements from pages 312-315 required for the comprehensive review of each student in the determination of specific learning disability. This will assist the Student Intervention Team (SIT) to document appropriately prior to referral for evaluation of a student suspected of having a specific learning disability.

XI. SPEECH OR LANGUAGE IMPAIRMENT

§300.8 Child with a disability.

(c) **Definitions of disability terms.** The terms used in this definition of a child with a disability are defined as follows:

(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.

§300.34 Related services.

(15) **Speech-language pathology services** includes--

- (i) Identification of children with speech or language impairments;
- (ii) Diagnosis and appraisal of specific speech or language impairments;
- (iii) Referral for medical or other professional attention necessary for the habilitation of speech or language impairments;
- (iv) Provision of speech and language services for the habilitation or prevention of communicative impairments; and
- (v) Counseling and guidance of parents, children, and teachers regarding speech and language impairments.

TAC §89.1040. Eligibility Criteria.

(c) Eligibility definitions.

(10)Speech impairment. A student with a speech impairment is one who has been determined to meet the criteria for speech or language impairment as stated in 34 CFR, §300.8(c)(11). The multidisciplinary team that collects or reviews evaluation data in connection with the determination of a student's eligibility based on a speech impairment must include a certified speech and hearing therapist, a certified speech and language therapist, or a licensed speech/language pathologist.

XII. TRAUMATIC BRAIN INJURY

§300.8 Child with a disability.

(c) **Definitions of disability terms.** The terms used in this definition of a child with a disability are defined as follows:

(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 or degenerative, or to brain injuries induced by birth trauma.

TAC §89.1040. Eligibility Criteria.

(c) Eligibility definitions.

- (11) Traumatic brain injury. A student with a traumatic brain injury is one who has been determined to meet the criteria for traumatic brain injury as stated in 34 CFR, §300.8(c)(12). The multidisciplinary team that collects or reviews evaluation data in connection with the determination of a student's eligibility based on a traumatic brain injury must include a licensed physician, in addition to the licensed or certified practitioners specified in subsection (b)(1) of this section. *(TAC §89.1040. b.1. is found on page 301)*

XIII. VISUAL IMPAIRMENT

§300.8 Child with a disability.

(c) Definitions of disability terms. The terms used in this definition of a child with a disability are defined as follows:

- (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); 1401(30))

TAC §89.1040. Eligibility Criteria.

(c) Eligibility definitions.

(12) Visual impairment.

- (A) A student with a visual impairment is one who has been determined to meet the criteria for visual impairment as stated in 34 CFR, §300.8(c)(13). The visual loss should be stated in exact measures of visual field and corrected visual acuity at a distance and at close range in each eye in a report by a licensed ophthalmologist or optometrist. The report should also include prognosis whenever possible. If exact measures cannot be obtained, the eye specialist must so state and provide best estimates. In meeting the criteria stated in 34 CFR, §300.8(c)(13), a student with a visual impairment is one who:
- (i) has been determined by a licensed ophthalmologist or optometrist:
 - (I) to have no vision or to have a serious visual loss after correction; or
 - (II) to have a progressive medical condition that will result in no vision or a serious visual loss after correction; and
 - (ii) has been determined by the following evaluations to have a need for special services:
 - (I) a functional vision evaluation by a certified teacher of students with visual impairments or a certified orientation and mobility specialist. The evaluation must include the performance of tasks in a variety of environments requiring the use of both near and distance vision and recommendations concerning the need for a clinical low vision evaluation; and
 - (II) a learning media assessment by a professional certified in the education of students with visual impairments. The learning media assessment must include recommendations concerning which specific visual, tactual, and/or auditory learning

media are appropriate for the student and whether or not there is a need for ongoing evaluation in this area.

(B) A student with a visual impairment is functionally blind if, based on the preceding evaluations, the student will use tactual media (which includes braille) as a primary tool for learning to be able to communicate in both reading and writing at the same level of proficiency as other students of comparable ability.

(C) Beginning with the 2014-2015 school year, a full individual and initial evaluation of a student suspected of having a visual impairment must include an orientation and mobility evaluation conducted by a person who is appropriately certified as an orientation and mobility specialist and must be conducted in a variety of lighting conditions and in a variety of settings, including in the student's home, school, and community and in settings unfamiliar to the student.

(D) Beginning with the 2014-2015 school year, a person who is appropriately certified as an orientation and mobility specialist must participate, as part of a multidisciplinary team, in evaluating data used in making the determination of the student's eligibility as a student with a visual impairment.

(E) Beginning with the 2014-2015 school year, the scope of any reevaluation of a student who has been determined, after the full individual and initial evaluation, to be eligible for the district's special education program on the basis of a visual impairment must be determined, in accordance with 34 CFR, §§300.122 and 300.303-300.311, by a multidisciplinary team that includes an appropriately certified orientation and mobility specialist.

Section 4. - ARD/IEP SECTION
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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 the JHW School, 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) The John H. Wood, Jr. Public Charter District must establish an admission, review, and dismissal (ARD) committee for each eligible student with a disability and for each student for whom a full individual initial evaluation is conducted pursuant to §89.1011 of this title (relating to Full Individual and Initial Evaluation). The ARD committee is the individualized education program (IEP) team defined in federal law and regulations, including, specifically, 34 Code of Federal Regulations (CFR), §300.321. The JHW School is 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 the following:

<u>TAC §89.1050(a):</u>	<u><i>Op. Guideline below</i></u>
(1) 34 CFR, §§300.320-300.325, and Texas Education Code (TEC), §29.005 (individualized education programs);	<i>Section 4</i>
(2) 34 CFR, §§300.145-300.147 (relating to placement of eligible students in private schools by a school district);	<i>Section 5</i>
(3) 34 CFR, §§300.132, 300.138, and 300.139 (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, §300.530 and §300.531, and TEC, §37.004 (Disciplinary Placement of Students with Disabilities);	<i>Section 6</i>
(5) 34 CFR, §§300.302-300.306 (relating to evaluations, re-evaluations, and determination of eligibility);	<i>Section 3</i>
(6) 34 CFR, §§300.114-300.117 (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>

(b) For a student from birth through two years of age with visual and/or auditory impairments, an individualized family services plan (IFSP) meeting must be held in place of an ARD committee meeting in accordance with 34

CFR, §§300.320-300.324, and the memorandum of understanding between the Texas Education Agency and the Department of Assistive and Rehabilitative Services. For students three years of age and older, school districts must develop an IEP.

§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)) (*§§300.320 Definition of IEP, .321 IEP Team, .322 Parent Participation, .323 when IEPs must be in effect, .324 Development of IEP) (300.300(b) Parent Consent)*

§300.323 When IEPs must be in effect.

- (a) **General.** At the beginning of each school year, the JHW School must have in effect, for each child with a disability within its jurisdiction, an IEP, as defined in §300.320.
- (b) **Preschool (PPCD);** (c)**Timeline below;** (d)**Teacher Accessibility and Input;** (e)**Transfer Instate;** (f)**Transfer Out of state;** (g)**Records** (*all found in this section 4 of this document*)

II. TIMELINE

§300.323 When IEPs must be in effect.

- (c) **Initial IEPs; provision of services.** The John H. Wood, Jr. Public Charter 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 school district must take steps to ensure that one or both parents are present at each ARD committee meeting or are afforded the opportunity to participate, including notifying the parents of the meeting early enough to ensure that they will have an opportunity to attend and scheduling the meeting at a mutually agreed upon time and place. Additionally, a school district must allow parents who cannot attend an ARD committee meeting to participate in the meeting through other methods such as through telephone calls or video conferencing. The school district must provide the parents with written notice of the ARD committee meeting that meets the requirements in 34 CFR, §300.322, at least five school days before the meeting unless the parents agree to a shorter timeframe.

Attempts

*In accordance with State and Federal requirements, the JHW School will attempt to notify parents early of ARD/IEP meetings and arrange a mutually agreeable time and location. After the first Notice of ARD Meeting is provided, if the parent does not respond, the JHW School will document and send a second Notice of ARD. If the parent responded by requesting to participate by telephone, but was unable to be reached at the time of the meeting, another Notice of ARD must be sent. After 3 documented attempts and no response, the JHW School may go forward with the ARD Meeting as scheduled. The first attempt **MUST** be in written form, the second and the third may be a follow-up phone call. All dates of scheduling attempts and personnel initials must be documented on the Notice form and in the deliberations of the ARD meeting.*

III. WRITTEN REPORT OF ARD / IEP MEETING

TAC §89.1050 (e) Upon receipt of a written request for an ARD committee meeting from a parent, the school district must:

- (1) schedule and convene a meeting in accordance with the procedures in subsection (d) of this section; or
- (2) within five school days, provide the parent with written notice explaining why the district refuses to convene a meeting.

Upon written or verbal request from a parent/surrogate, an ARD committee meeting will be scheduled to address their questions/concerns. Campus assessment personnel will ascertain if additional personnel (i.e., Special Education administrative staff, Related Service personnel) need to be invited to the ARD meeting.

Action	Initiated By	To Whom	Timeline	Location
<i>Upon notification from parent or surrogate of the need for an ARD committee meeting, campus Special Education staff will schedule a meeting no longer than 1 week from notification unless agreed upon by parent.</i>	<i>SPED Case Manager/LSSP/DIAG</i>	<i>Required ARD Committee members & requested additional staff (if needed).</i>	<i>1 Calendar Week (unless agreed upon by parent).</i>	
<i>Campus assessment personnel through communication with parent or surrogate will ascertain what additional resources may be needed at the parent requested ARD and contact staff.</i>	<i>LSSP/DIAG</i>	<i>Special Education administrative staff, Related Service personnel</i>	<i>Within 24 hours of scheduling the ARD committee meeting.</i>	
<i>If a requested ARD committee meeting will not be scheduled, parent or surrogate will be provided written notice.</i>	<i>SPED Case Manager/LSSP/DIAG</i>	<i>Parent or Surrogate</i>	<i>Within 5 school days.</i>	

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))

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

§300.39 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 the child can meet the educational standards within the jurisdiction of the JHW School 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--
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.
- (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))

§300.44 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 ,
 - (B) Meet each of the child's other educational needs that result from the child's disability;
- * The special education teacher responsibilities in the IEP process are to:*
1. *complete the draft PLAAFPS and IEP measurable annual goals within 7days of the scheduled ARD, reflect current data points (ELA and Math) in the PLAAFPS from assessment sources (i.e.*

STAR Ren., Brigrance), Remember the general education teacher(s) to the extent appropriate, should participate in the development, review, and revision of the student's IEP),

2. *indicate which accommodations are being utilized and provide state assessment*
3. *ARDC will decide in what manner (i.e., inclusion support, content mastery, or resource) that the accepted IEP goals will be supported.*

(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 alternate 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;

**The Related Service provider responsibilities in the IEP process are to:*

1. complete the draft IEP measurable annual goals, based on appropriate evaluation, selecting a minimum of one goal and two objectives for each area for the ARDC to review

2. based on the provided information, the ARDC members will determine the frequency and duration of the services.

(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;

- (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 section 612(a)(16) of the Act; 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.

Documentation for provision of services described in the IEP will be through a variety of information and sources based on the most appropriate means for the individual service and environment. Special education instructional and related services will be documented by progress on the IEP, student attendance and lesson plans. In addition, portfolios may be maintained as well as provider logs. Provider logs will be maintained by each service provider and reviewed at the IEP meeting as appropriate. Any service interruption resulting from special education staff absence will be reported to the appropriate administration following local district procedures.

(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.

(2) **Consideration of special factors.** The IEP Team must...

- (i) In the case of a child whose behavior impedes the child’s learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior.
- (ii) In the case of a child with limited English proficiency, consider the language needs of the child as those needs relate to the child's IEP;
- (iii) In the case of a child who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP Team determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child;
- (iv) Consider whether the child needs assistive technology devices and services.
- (v) Consider the communication needs of the child, and in the case of a child who is deaf or hard of hearing, consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode;

(b) Review and revision of IEP. *located in this Section 4 of the document.*

Action	Initiated By	To Whom	Timeline
Students who have failed one or more classes in a grading period will have an ARD meeting scheduled to review current programming/needs/supports.	Campus Administration	LSSP/Ed. Diag	Within two weeks of grades being posted in a grading period.
Instructional staff for the area(s) of concern will complete a, “Failure ARD Data Sheet” for the student’s audit folder and input information into eSped for the Failure ARD.	Campus Administration	Instructional Staff	Seven days prior to date of ARD.
<u>Updating information entered into eSped will include:</u> <ul style="list-style-type: none"> • Updating PLAAFP(s)-academic/behavioral • Accommodation(s) • IEP (if needed) 	Instructional Staff		Seven days prior to ARD.

Student Refusals

Action	Initiated By	To Whom	Timeline
Students who have refused special education services and/or related services for 3 classes/sessions a staff meeting will be held.	Instructional staff/Related Service Provider	LSSP/Ed. Diag	Within one week of 3 rd refusal.
Students who continue to refuse classes/sessions and have missed a total of 6 will have an ARD scheduled.	Instructional staff/Related Service Provider	LSSP/Ed. Diag	Within one week of 6 th refusal.

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 must comply with the requirements of 34 Code of Federal Regulations (CFR), §300.320 and §300.324.
- (b) *located in next section 4.ADDITIONAL IEP INFORMATION (U. - TAKS)*
- (c) *located in next section 4.ADDITIONAL IEP INFORMATION (F. - ESY)*

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

- (e) Students with disabilities must have available an instructional day commensurate with that of students without disabilities. The ARD committee must determine the appropriate instructional setting and length of day for each student, and these must be specified in the student's IEP.
- (f) School districts that jointly operate their special education programs as a shared services arrangement, in accordance with TEC, §29.007, must do so in accordance with procedures developed by the Texas Education Agency (TEA).
- (g) School districts that contract for services from non-public day schools must do so in accordance with 34 Code of Federal Regulations, §300.147, and procedures developed by the TEA.

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.

A. Participation

§300.322 Parent Participation.

(a) JHW School responsibility—general. The John H. Wood, Jr. Public Charter District must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP Team 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.

JHW staff will utilize the "Student-Parent Contact Form" to document notification efforts to parent(s).

(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), and §300.321(f) (relating to the participation of the Part C service coordinator or other representatives of the Part C system at the initial IEP Team meeting for a child previously served under Part C of the Act).

(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 an IEP Team meeting, the JHW School 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 the JHW School is unable to convince the parents that they should attend. In this case, the JHW School must keep a record of its attempts to arrange a mutually agreed on time and place such as:

- (1) Detailed records of telephone calls made or attempted and the results of those calls;
- (2) Copies of correspondence sent to the parents and any responses received; and
- (3) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

(4) Alternative methods may also be used including conference calls, certified letters, and email.

JHW staff will utilize the "Student-Parent Contact Form" to document notification efforts to parent(s).

(e) Use of interpreters or other action, as appropriate. The JHW School must take whatever action is necessary to ensure that the parent understands the proceedings of the IEP Team meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English.

(f) Parent copy of child's IEP. The JHW School 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) The JHW School 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 JHW School personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision. A meeting also does not include preparatory activities that JHW School 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) The JHW School 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, the JHW School must use procedures consistent with the procedures described in §300.322(a) through (b)(1). (*found on previous page*)
- (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, the JHW School 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 the JHW School is unable to obtain the parent's participation in the decision. In this case, the JHW School 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), the JHW School 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 of this part, 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 the JHW School 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) The JHW School 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 JHW School must notify the individual and the parents of the transfer of rights.
- (b) **Special rule.** 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.
(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 the JHW School 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, the JHW School 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), §300.320(c) and §300.520, 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, the JHW School shall provide any notice required under IDEA, Part B, to both the adult student and the parent.
- (b) In accordance with 34 CFR, §300.520(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, §300.520(a)(3), a school district 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, which 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, §300.321(a)(6), the adult student or the school district 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.** The JHW School must ensure that the IEP Team for each child with a disability includes--

(1) **The parents of the child** this is also inclusive of assigned surrogate parents;

**JHW staff will utilize the "Student-Parent Contact Form" to document efforts to parent(s).*

Attempts

*In accordance with State and Federal requirements, the JHW School will attempt to notify parents early of ARD/IEP meetings and arrange a mutually agreeable time and location. After the first Notice of ARD Meeting is provided, if the parent does not respond, the JHW School will document and send a second Notice of ARD. If the parent responded by requesting to participate by telephone, but was unable to be reached at the time of the meeting, another Notice of ARD must be sent. After 3 documented attempts and no response, the JHW School may go forward with the ARD Meeting as scheduled. The first attempt **MUST** be in written form, the second and the third may be a follow-up phone call. All dates of scheduling attempts and personnel initials must be documented on the Notice form and in the deliberations of the ARD meeting.*

(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*

**General education teachers will be notified of an ARD by the SPED Case Manager or Campus Assessment Personnel. The notification may occur through a hard copy of the ARD meeting notice, email, or Outlook appointment.*

(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 the JHW School 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 the JHW School.**

In the John H. Wood, Jr. Public Charter 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 JHW School, 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, the JHW School 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 Team meeting, the JHW School must take other steps to ensure that the child's preferences and interests are considered.** **If a student does not participate in an ARD meeting that where postsecondary goals are developed and transition services reviewed, the assigned campus personnel must meet with the student utilizing the "ARD Meeting Attendance Refusal" form.*

(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, the JHW School 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 JHW School) who invited the individual to be a member of the IEP Team.

(d) **Designating a JHW School representative.** The JHW School may designate a JHW School 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 described in paragraph (a)(2) through (a)(5) of §300.321, is not required to attend an IEP meeting, in whole or in part, if the parent of a child with a disability and the JHW School 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 (e)(1) 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 the JHW School 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 the JHW School 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. 1414 (d)(1)(B) – (d)(1)(D))

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 The Admission, Review, and Dismissal (ARD) Committee.

(c) ARD committee membership.

(1) ARD committees must include the following:

(A) the parents of the student;

(B) not less than one regular education teacher of the student (if the student is, or may be, participating in the regular education environment);

(C) not less than one special education teacher of the student, or where appropriate, not less than one special education provider of the student;

(D) a representative of the school district who:

(i) is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of students with disabilities;

(ii) is knowledgeable about the general education curriculum; and

(iii) is knowledgeable about the availability of resources of the school district;

(E) an individual who can interpret the instructional implications of evaluation results, who may be a member of the committee described in subparagraphs (B)-(D) and (F) of this paragraph;

(F) at the discretion of the parent or the school district, other individuals who have knowledge or special expertise regarding the student, including related services personnel, as appropriate;

(G) whenever appropriate, the student with a disability;

- (H) to the extent appropriate, with the consent of the parents or a student who has reached the age of majority, a representative of any participating agency that is likely to be responsible for providing or paying for transition services;
- (I) a representative from career and technical education (CTE), preferably the teacher, when considering initial or continued placement of a student in CTE; and
- (J) a professional staff member who is on the language proficiency assessment committee who may be a member of the committee described in subparagraphs (B) and (C) of this paragraph, if the student is identified as an English language learner.
- (2) The special education teacher or special education provider that participates in the ARD committee meeting must be appropriately certified or licensed as required by 34 CFR, §300.18 and §300.156.
- (3) If the student is:
- (A) a student with a suspected or documented visual impairment, the ARD committee must include a teacher who is certified in the education of students with visual impairments;
 - (B) a student with a suspected or documented auditory impairment, the ARD committee must include a teacher who is certified in the education of students with auditory impairments; or
 - (C) a student with suspected or documented deaf-blindness, the ARD committee must include a teacher who is certified in the education of students with visual impairments and a teacher who is certified in the education of students with auditory impairments.
- (4) An ARD committee member is not required to attend an ARD committee meeting if the conditions of either 34 CFR, §300.321(e)(1), regarding attendance, or 34 CFR, §300.321(e)(2), regarding excusal, have been met.

VIII. ARD / IEP MEETINGS (Development of the IEP):

A. Initial

TEC §29.005. Individualized Education Program.

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

B. Annual Review

§300.324 Development, review, and revision of IEP

(b) Review and revision of IEPs.

- (1) **General.** The JHW School must ensure that, subject to paragraph (b)(2) and (b)(3) 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;**
**General education and SPED instructors will meet every 6 weeks (earlier if needed) to review student progress (academically and behaviorally) this will be documented through the "6 Week Student Progress Meeting with General Education Instructor" form.*
 - (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) **Consideration of special factors.** The IEP Team must...

- (i) In the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior.
 - (ii) In the case of a child with limited English proficiency, consider the language needs of the child as those needs relate to the child's IEP;
 - (iii) In the case of a child who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP Team determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child;
 - (v) Consider whether the child needs assistive technology devices and services.
 - (iv) Consider the communication needs of the child, and in the case of a child who is deaf or hard of hearing, consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode;
- (3) 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, the JHW School 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;

For placement in its entirety, please see LRE in next part of section 4.

C. Reevaluation Planning ARD

§300.324 Development, review, and revision of IEP

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

The JHW School 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 Special Education Case Manager or Licensed Specialist in School Psychology/ 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.**

- (i) 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 the JHW School 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.
- (ii) If changes are made to the child's IEP in accordance with paragraph (a)(4)(i) of this section, the JHW School must ensure that the child's IEP Team is informed of those changes.
- (5) **Consolidation of IEP Team meetings.** To the extent possible, the JHW School must encourage the consolidation of reevaluation meetings for the child and other IEP Team meetings for the child.
- (6) **Amendments.** Changes to the IEP may be made either by the entire IEP Team at an IEP Team meeting 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.

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

- a. *The campus administrator must approve the decision to complete a proposed amendment to the IEP.*
- b. *Discuss the proposed amendment with appropriate IEP team members including discussion with the parents in person or by phone.*
- c. *Complete the district form provided to you and obtain parent signature of agreement to amend the IEP.*
- d. *Distribute the signed amendment to all IEP team members and implementers.*
- e. *File the original amendment with the parent signature in the student's eligibility form with the Annual IEP being amended.*
- f. *The proposed amendment must contain all required elements of Prior Written Notice*

Changes that require an ARD/IEP meeting. The amendment procedure MAY NOT be used for the following changes:

- i. *Change in placement decisions*
- ii. *Manifestation Determination*
- iii. *Change services, add/drop services*
- iv. *Eligibility determination or change*
- v. *Review lack of progress*
- vi. *Review of FAPE*

Changes that DO NOT require an ARD/IEP meeting. The amendment procedure MAY be used for the following changes:

- vii. *State and district testing including grade level, expected achievement level*
- viii. *Transportation*
- ix. *Accommodations or revision of existing modifications*

E. Dismissal / Change of Placement

§300.305 Additional requirements for evaluations and reevaluations.

For §300.305 in its entirety, see Section 2. FIE

(e) Evaluations before change in placement.

- (1) Except as provided in paragraph (e)(2) of this section, the JHW School 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, the JHW School 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))**

TAC §89.1225. Testing and Classification of Students.

- (k) The ARD committee in conjunction with the language proficiency assessment committee shall determine an appropriate assessment instrument and performance standard requirement for exit under subsection (h) of this section for students for whom those tests would be inappropriate as part of the IEP. The decision to exit a student who receives both special education and special language services from the bilingual education or English as a second language program is determined by the ARD committee in conjunction with the language proficiency assessment committee in accordance with applicable provisions of subsection (h) of this section.

F. Graduation (see also letter E. Dismissal - e.3. above)

TAC §89.1070. Graduation Requirements.

- (a) Graduation with a regular high school diploma under subsections (b)(1), (b)(2)(D), (f)(1), (f)(2), or (f)(3)(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 and entitlement to the benefits of the Foundation School Program, as provided in Texas Education Code (TEC), §42.003(a).
- (b) A student entering Grade 9 in the 2014-2015 school year and thereafter who receives special education services may graduate and be awarded a regular high school diploma if the student meets one of the following conditions.
 - (1) The student has demonstrated mastery of the required state standards (or district standards if greater) in Chapters 110-118, 126-128, and 130 of this title and satisfactorily completed credit requirements for graduation under the Foundation High School Program specified in §74.12 of this title (relating to Foundation High School Program) applicable to students in general education as well as satisfactory performance as established in the TEC, Chapter 39, on the required state assessments, unless the student's admission, review, and dismissal (ARD) committee has determined that satisfactory performance on the required state assessments is not necessary for graduation.
 - (2) The student has demonstrated mastery of the required state standards (or district standards if greater) in Chapters 110-118, 126-128, and 130 of this title and satisfactorily completed credit requirements for graduation under the Foundation High School Program specified in §74.12 of this title through courses, one or more of which contain modified curriculum that is aligned to the standards applicable to students in general education, as well as satisfactory performance as established in the TEC, Chapter 39, on the required state assessments, unless the student's ARD committee has determined that satisfactory performance on the required state assessments is not necessary for graduation. The

student must also successfully complete the student's individualized education program (IEP) and meet one of the following conditions.

(A) Consistent with the IEP, the student has obtained full-time employment, based on the student's abilities and local employment opportunities, in addition to mastering sufficient self-help skills to enable the student to maintain the employment without direct and ongoing educational support of the local school district.

(B) Consistent with the IEP, the student has demonstrated mastery of specific employability skills and self-help skills that do not require direct ongoing educational support of the local school district.

(C) The student has access to services that 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.

(D) The student no longer meets age eligibility requirements.

(c) A student receiving special education services may earn an endorsement under §74.13 of this title (relating to Endorsements) if the student:

(1) satisfactorily completes the requirements for graduation under the Foundation High School Program specified in §74.12 of this title as well as the additional credit requirements in mathematics, science, and elective courses as specified in §74.13(e) of this title with or without modified curriculum;

(2) satisfactorily completes the courses required for the endorsement under §74.13(f) of this title without any modified curriculum; and

(3) performs satisfactorily as established in the TEC, Chapter 39, on the required state assessments.

(d) In order for a student receiving special education services to use a course to satisfy both a requirement under the Foundation High School Program specified in §74.12 of this title and a requirement for an endorsement under §74.13 of this title, the student must satisfactorily complete the course without any modified curriculum.

(e) A student receiving special education services who entered Grade 9 before the 2014-2015 school year may graduate and be awarded a high school diploma under the Foundation High School Program as provided in §74.1021 of this title (relating to Transition to the Foundation High School Program), if the student's ARD committee determines that the student should take courses under that program and the student satisfies the requirements of that program. Subsection (c) of this section applies to a student transitioning to the Foundation High School Program under this subsection.

(f) A student receiving special education services who entered Grade 9 before the 2014-2015 school year may graduate and be awarded a regular high school diploma if the student meets one of the following conditions.

(1) The student has demonstrated mastery of the required state standards (or district standards if greater) in Chapters 110-118, 126-128, and 130 of this title and satisfactorily completed credit requirements for graduation (under the recommended or distinguished achievement high school programs in Chapter 74, Subchapter F, of this title (relating to Graduation Requirements, Beginning with School Year 2007-2008) or Chapter 74, Subchapter G, of this title (relating to Graduation Requirements, Beginning with School Year 2012-2013)), as applicable, including satisfactory performance as established in the TEC, Chapter 39, on the required state assessments.

(2) The student has demonstrated mastery of the required state standards (or district standards if greater) in Chapters 110-118, 126-128, and 130 of this title and satisfactorily completed credit requirements for graduation (under the minimum high school program in Chapter 74, Subchapter F or G, of this title), as applicable, including participation in required state assessments. The student's ARD committee will determine whether satisfactory performance on the required state assessments is necessary for graduation.

(3) The student has demonstrated mastery of the required state standards (or district standards if greater) in Chapters 110-118, 126-128, and 130 of this title through courses, one or more of which contain modified content that is aligned to the standards required under the minimum high school program in Chapter 74, Subchapter F or G, of this title, as applicable, as well as the satisfactorily completed credit requirements under the minimum high school program, including participation in required state assessments. The student's ARD committee will determine whether satisfactory performance on the required state assessments is necessary for graduation. The student graduating under this subsection must also successfully complete the student's IEP and meet one of the following conditions.

(A) Consistent with the IEP, the student has obtained full-time employment, based on the student's abilities and local employment opportunities, in addition to mastering sufficient self-help skills to enable the student to maintain the employment without direct and ongoing educational support of the local school district.

(B) Consistent with the IEP, the student has demonstrated mastery of specific employability skills and self-help skills that do not require direct ongoing educational support of the local school district.

(C) The student has access to services that 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.

(D) The student no longer meets age eligibility requirements.

(g) All students graduating under this section must be provided with a summary of academic achievement and functional performance as described in 34 Code of Federal Regulations (CFR), §300.305(e)(3). This summary must consider, as appropriate, the views of the parent and student and written recommendations from adult service agencies on how to assist the student in meeting postsecondary goals. An evaluation as required by 34 CFR, §300.305(e)(1), must be included as part of the summary for a student graduating under subsections (b)(2)(A), (B), or (C) or (f)(3)(A), (B), or (C) of this section.

(h) Students who participate in graduation ceremonies but who are not graduating under subsections (b)(2)(A), (B), or (C) or (f)(3)(A), (B), or (C) of this section and who will remain in school to complete their education do not have to be evaluated in accordance with subsection (g) of this section.

(i) Employability and self-help skills referenced under subsections (b)(2) and (f)(3) of this section are those skills directly related to the preparation of students for employment, including general skills necessary to obtain or retain employment.

(j) For students who receive a diploma according to subsections (b)(2)(A), (B), or (C) or (f)(3)(A), (B), or (C) of this section, the ARD committee must 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.

(k) For purposes of this section, modified curriculum and modified content refer to any reduction of the amount or complexity of the required knowledge and skills in Chapters 110-118, 126-128, and 130 of this title. Substitutions that are specifically authorized in statute or rule must not be considered modified curriculum or modified content.

§29.001 High School Diploma and Certificate ; Academic Achievement Record

(b-11) In adopting rules under Subsection (b-1), the State Board of Education shall allow a student who is unable to participate in physical activity due to disability or illness to substitute one credit in English language arts, mathematics, science, or social studies or one academic elective credit for the physical education credit required under Subsection (b-1)(3)(B). A credit allowed to be substituted under this subsection may not also be used by the student to satisfy a graduation requirement other than completion of the physical education credit. The rules must provide that the determination regarding a student's ability to participate in physical activity will be made by:

(1) if the student receives special education services under Subchapter A, Chapter 29, the student's Admission, Review, and Dismissal Committee

(2) if the student does not receive special education services under Subsection A, Chapter 29, but is covered by Section 504, Rehabilitation Act of 1973 (29 U.S.C. Section 794), the committee established for the student under the Act, or

(3) if each of the committees described by Subdivisions (1) and (2) is inapplicable, a committee established by the school district persons with appropriate knowledge regarding the student.

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 (TAKS); 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.

Graduation - Effective May 11, 2007

Senate Bill (SB) 673 / Participation of students with disabilities in graduation ceremonies.

SB 673 allows students with disabilities to participate in a graduation ceremony after four years of high school. The intent of SB 673 is to allow students with disabilities to participate in graduation ceremonies with students they entered high school with four years earlier. SB 673 takes immediate effect (May 11, 2007) and supersedes current local board policies/procedures pertaining to the participation of students with disabilities in graduation ceremonies. An implementation chart has been developed to assist in establishing a process to ensure proper implementation of this new state law.

View/Download the Implementation Chart: <http://www.tea.state.tx.us/taa/comm051107-a1.doc>

While the Texas Education Agency has general rule-making authority regarding the implementation of special education services to students with disabilities, the Agency is not requiring documentation pertaining to the implementation of SB 673 based on the extremely short timeline. However, the Agency does recommend that school personnel establish a basic process/procedure regarding their interactions with parents and/or adult students for use in addressing this legislation as part of the spring 2007 graduation ceremonies.

Important Note:

School districts are not required to convene an admission, review, and dismissal (ARD) committee meeting to implement the requirements of SB 673. The Agency will revisit SB 673 over the summer/early fall regarding the implementation of this new legislation. Updates will be posted to this web page.

IX. 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 The Admission, Review, and Dismissal (ARD) Committee.

(f) All members of the ARD committee must have the opportunity to participate in a collaborative manner in developing the IEP. A decision of the ARD committee concerning required elements of the IEP must be made by mutual agreement if possible. The ARD 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 parent who disagrees must be offered a single opportunity to recess and reconvene the ARD committee meeting. The period of time for reconvening the ARD committee meeting must not exceed ten school days, unless the parties mutually agree otherwise. The ARD committee must schedule the reconvened meeting at a mutually agreed upon time and place. The opportunity to recess and reconvene 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 that may lead to a placement in a disciplinary alternative education program. The requirements of this subsection do not prohibit the ARD committee from recessing an ARD committee meeting for reasons other than the failure to reach mutual agreement about all required elements of an IEP.

(2) During the recess, the ARD committee members must consider alternatives, gather additional data, prepare further documentation, and/or obtain additional resource persons who may assist in enabling the ARD committee to reach mutual agreement.

(3) If a recess is implemented as provided in paragraph (1) of this subsection and the ARD committee still cannot reach mutual agreement, the school district must implement the IEP that it has determined to be appropriate for the student.

(4) When mutual agreement is not reached, a written statement of the basis for the disagreement must be included in the IEP. The parent who disagrees must be offered the opportunity to write his or her own statement of disagreement.

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

X. TRANSFERS / NEW TO DISTRICT

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

(i) A school district must comply with the following for a student who is newly enrolled in the school district.

(1) When a student transfers to a new school district within the state in the same school year 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, the new school district must meet the requirements of 34 CFR, §300.323(e), regarding the provision of special education services. The timeline for completing the requirements outlined in 34 CFR, §300.323(e)(1) or (2), is 30 school days from the date the student is verified as being a student eligible for special education services.

(2) When a student transfers from a school district in another state in the same school year 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, the new school district must meet the requirements of 34 CFR, §300.323(f), regarding the provision of special education services. If the new school district determines that an evaluation is necessary, the evaluation is considered a full individual and initial evaluation and must be completed within the timelines established by §89.1011(c) and (e) of this title. The timeline for completing the requirements in 34 CFR, §300.323(f)(2), if appropriate, is 30 calendar days from the date of the completion of the evaluation report. If the school district determines that an evaluation is not necessary, the timeline for completing the requirements outlined in 34 CFR, §300.323(f)(2), is 30 school days from the date the student is verified as being a student eligible for special education services.

(3) In accordance with TEC, §25.002, and 34 CFR, §300.323(g), the school district in which the student was previously enrolled must furnish the new school district with a copy of the student's records, including the student's special education records, not later than the 10th working day after the date a request for the information is received by the previous school district.

§300.304 Evaluation procedures.

(c) Other evaluation procedures.

(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, consistent with §300.301 (d)(2) and (e), to ensure prompt completion of full evaluations. *§300.301 (d)(2) and (e) found in FIE section.*

§300.323 When IEPs must be in effect.

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

(b) Preschool (PPCD);

(c)Timeline; (d)Teacher Accessibility and Input; *(all found in this section 4 of this document)*

(e) IEPs for children who transfer public agencies in the same state.

If a child with a disability (who had an IEP that was in effect in a previous public agency in the same State) transfers to a new public agency in the same State, and enrolls in a new school within the same school year, the new public agency (in consultation with the parents) must provide FAPE to the child (including services comparable to those described in the child's IEP from the previous public agency), until the new public agency either---

- (1) Adopts the child's IEP from the previous public agency; or
- (2) Develops, adopts, and implements a new IEP that meets the applicable requirements in §§300.320 through 300.324.

A system of monitoring ARD meetings timelines will occur through weekly submission of the "Active Student Tracking Form" from campus assessment personnel which will be cross checked against PEIMS information.

(f) IEPs for children who transfer from another State. If a child with a disability (who had an IEP that was in effect in a previous public agency in another State) transfers to a public agency in a new State, and enrolls in a new school within the same school year, the new public agency (in consultation with the parents) must provide the child with FAPE (including services comparable to those described in the child's IEP from the previous public agency), until the new public agency--

- (1) Conducts an evaluation pursuant to §§300.304 through 300.306 (if determined to be necessary by the new public agency); and
- (2) Develops, adopts, and implements a new IEP, if appropriate, that meets the applicable requirements in §§300.320 through 300.324.

(g) Transmittal of records. To facilitate the transition for a child described in paragraphs (d) and (f) of this section –

- (1) 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 34 CFR 99.31(a)(2); and
- (2) 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))

A system of monitoring ARD committee meeting timelines has been developed and will be implemented. Student data will be monitored through cross-checking of the "Active Student Tracking Form" and PEIMS information.

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

(f) All members of the ARD committee must have the opportunity to participate in a collaborative manner in developing the IEP. A decision of the ARD committee concerning required elements of the IEP must be made by mutual agreement if possible. The ARD 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 parent who disagrees must be offered a single opportunity to recess and reconvene the ARD committee meeting. The period of time for reconvening the ARD committee meeting must not exceed ten school days, unless the parties mutually agree otherwise. The ARD committee must schedule the reconvened meeting at a mutually agreed upon time and place. The opportunity to recess and reconvene 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 that may lead to a placement in a disciplinary alternative education program. The requirements of this subsection do not prohibit the ARD committee from recessing an ARD committee meeting for reasons other than the failure to reach mutual agreement about all required elements of an IEP.

(2) During the recess, the ARD committee members must consider alternatives, gather additional data, prepare further documentation, and/or obtain additional resource persons who may assist in enabling the ARD committee to reach mutual agreement.

(3) If a recess is implemented as provided in paragraph (1) of this subsection and the ARD committee still cannot reach mutual agreement, the school district must implement the IEP that it has determined to be appropriate for the student.

(4) When mutual agreement is not reached, a written statement of the basis for the disagreement must be included in the IEP. The parent who disagrees must be offered the opportunity to write his or her own statement of disagreement.

(g) Whenever a school district proposes or refuses to initiate or change the identification, evaluation, or educational placement of a student or the provision of a free appropriate public education to the student, the school district must provide prior written notice as required in 34 CFR, §300.503. This notice must be provided to the parent at least five school days before the school district proposes or refuses the action unless the parent agrees to a shorter timeframe.

(h) If the student's parent is unable to speak English and the parent's native language is Spanish, the school district must provide a written copy or audio recording of the student's IEP translated into Spanish. If the student's parent is unable to speak English and the parent's native language is a language other than Spanish, the school district must make a good faith effort to provide a written copy or audio recording of the student's IEP translated into the parent's native language.

(i) A school district must comply with the following for a student who is newly enrolled in the school district.

(1) When a student transfers to a new school district within the state in the same school year 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, the new school district must meet the requirements of 34 CFR, §300.323(e), regarding the provision of special education services. The timeline for completing the requirements outlined in 34 CFR, §300.323(e)(1) or (2), is 30 school days from the date the student is verified as being a student eligible for special education services.

(2) When a student transfers from a school district in another state in the same school year 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, the new school district must meet the requirements of 34 CFR, §300.323(f), regarding the provision of special education services. If the new school district determines that an evaluation is necessary, the evaluation is considered a full individual and initial evaluation and must be completed within the timelines established by §89.1011(c) and (e) of this title. The timeline for completing the requirements in 34 CFR, §300.323(f)(2), if appropriate, is 30 calendar days from the date of the completion of the evaluation report. If the school district determines that an evaluation is not necessary, the timeline for completing the requirements outlined in 34 CFR, §300.323(f)(2), is 30 school days from the date the student is verified as being a student eligible for special education services.

(3) In accordance with TEC, §25.002, and 34 CFR, §300.323(g), the school district in which the student was previously enrolled must furnish the new school district with a

copy of the student's records, including the student's special education records, not later than the 10th working day after the date a request for the information is received by the previous school district.

(j) All disciplinary actions regarding students with disabilities must be determined in accordance with 34 CFR, §§300.101(a) and 300.530-300.536; TEC, Chapter 37, Subchapter A; and §89.1053 of this title (relating to Procedures for Use of Restraint and Time-Out).

XI. PRIVATE NONPUBLIC SCHOOL PROVISIONS *(see Section 5. Instructional Arrangements)*
The John H. Wood, Jr. Public Charter District employees will refer the parent back to the school district where the private school is located.

§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 the JHW School; or
 - (2) Placed in private schools by their parents under the provisions of §300.148
(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)) (*§300.114 is LRE*)

A. Placed by the District

§300.325 Private school placements by public agencies.

- (a) **Developing IEPs.**
- (1) Before the JHW School places a child with a disability in, or refers a child to, a private school or facility, the JHW School must initiate and conduct a meeting to develop an IEP for the child in accordance with §§300.320 and 300.324. (*§300.320 is Definition of IEP and §300.324 is Development of IEP*)
 - (2) The JHW School must ensure that a representative of the private school or facility attends the meeting. If the representative cannot attend, the JHW School 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 the JHW School.
 - (2) If the private school or facility initiates and conducts these meetings, the JHW School 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 the JHW School and the SEA. (Authority: 20 U.S.C. 1412(a)(10)(B))

B. Placed by the Parent

§300.37 Services plan. Services plan means a written statement that describes the special education and related services the JHW School 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), §300.137, 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, a school district's obligations with respect to students placed by their parents in private schools are governed by 34 CFR, §§300.130-300.144.
 - (1) For purposes of subsections (a) and (d) of this section only, private school is defined as a private elementary or secondary school, including any pre-school, religious school, and institutional day or residential school, that:
 - (A) as required by 34 CFR, §300.13 and §300.130, is a nonprofit entity that meets the definition of nonprofit in 34 CFR, §77.1; and
 - (B) provides elementary or secondary education that incorporates an adopted curriculum designed to meet basic educational goals, including scope and sequence of courses, and formal review and documentation of student progress.
 - (2) A home school must meet the requirements of paragraph (1)(B) of this subsection, but not paragraph (1)(A) of this subsection, to be considered a private school for purposes of subsections (a) and (d) of this section.
- (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 the local school district, 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 the district 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, §§300.130-300.144, or subsection (e) 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 paragraphs (1)-(3) of this subsection. The public school district where a student resides is responsible for providing special education and related services to a student whose parents choose dual enrollment.
 - (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 the district 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, §§300.114-300.120, and the policies and procedures of the district.
 - (3) For students served under the provisions of this subsection, the school district (JHW School) 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 the school district.
- (d) Parents of an eligible student ages 3 or 4 who decline dual enrollment for their student may request a services plan as described in 34 CFR, §§300.130-300.144. The public school district where the private school is located is responsible for the development of a services plan, if the student is designated to receive services under 34 CFR, §300.132.

- (e) 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.
- (f) 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, §§300.151-300.153. Additionally, parents may request mediation as outlined in 34 CFR, §300.506. The procedures in 34 CFR, §§300.300, 300.504, 300.507, 300.508, and 300.510-300.518 (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))

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Section 4. ADDITIONAL IEP INFORMATION

I. SPECIFIC AREAS TO ADDRESS IN THE ARD / IEP MEETING

A. Adapted Physical Education (APE)

§300.108 Physical education.

The TEA must ensure that public agencies in the State comply with the following:

- (a) **General.** Physical education services, specially designed if necessary, must be made available to every child with a disability receiving FAPE, unless the JHW School enrolls children without disabilities and does not provide PE to children without disabilities in the same grades.
- (b) **Regular physical education.** Each child with a disability must be afforded the opportunity to participate in the regular physical education program available to nondisabled children unless--
 - (1) The child is enrolled full time in a separate facility; or
 - (2) The child needs specially designed physical education, as prescribed in the child's IEP.
- (c) **Special physical education.** If specially designed physical education is prescribed in a child's IEP, the public agency responsible for the education of that child must provide the services directly or make arrangements for those services to be provided through other public or private programs.
- (d) **Education in separate facilities.** The public agency responsible for the education of a child with a disability who is enrolled in a separate facility must ensure that the child receives appropriate physical education services in compliance with this section.

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

1. *All students referred for adapted physical education evaluation must have an identified disability.*
 - C. *The request for an adapted physical education first requires an evaluation be conducted. The evaluation request may have come from the Student Intervention Team upon initial referral or by the student's ARD/IEP committee.*
 - D. *APE is provided upon consideration of a current evaluation and written report.*
4. *If APE is provided, the goals and objectives will be approved by the ARD/IEP Committee.*
5. *Parents will receive progress reports toward the APE goals/objectives in the same timeframe as nondisabled students.*

B. Assistive Technology

§300.5 Assistive technology device. 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 that device.

(Authority: 20 U.S.C. 1401(1))

§300.6 Assistive technology service. Assistive technology service means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. The term includes-

- (a) The evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment;
- (b) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities;
- (c) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;
- (d) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;
- (e) Training or technical assistance for a child with a disability or, if appropriate, that child's family; and

- (f) **Training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of that child.**
(Authority: 20 U.S.C. 1401(2))

§300.105 Assistive technology; proper functioning of hearing aids.

- (a) **Each public agency must ensure that assistive technology devices or assistive technology services, or both, as those terms are defined in §§300.5 and 300.6, respectively, are made available to a child with a disability if required as a part of the child's--**
- (1) **Special education under §300.36;**
 - (2) **Related services under §300.34; or**
 - (3) **Supplementary aids and services under §§300.38 and 300.114(a)(2)(ii).**
- (b) **On a case-by-case basis, the use of school-purchased assistive technology devices in a child's home or in other settings is required if the child's IEP Team determines that the child needs access to those devices in order to receive FAPE.**

§300.324 Development, review, and revision of IEP

- (a) (2) **Consideration of special factors. The IEP Team must--**
- (v) **Consider whether the child needs assistive technology devices and services.**

C. Auditory Impairment

§300.324 Development, review, and revision of IEP

- (a) (2) **Consideration of special factors. The IEP Team must--**
- (iv) **Consider the communication needs of the child, and in the case of a child who is deaf or hard of hearing, consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode; and**
 - (v) **Consider whether the child needs assistive technology devices and services.**

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

- (b) **For a child from birth through two years of age with visual and/or auditory impairments, an individualized family services plan (IFSP) meeting must be held in place of an ARD committee meeting in accordance with 34 CFR, §§300.320-300.324, and the memorandum of understanding between the Texas Education Agency (TEA) and Texas Interagency Council on Early Childhood Intervention. For students three years of age and older, the JHW School must develop an IEP.**

TEC § 29.301. Definitions. In this subchapter:

- (1) **"Admission, review, and dismissal committee" means the committee required by State Board of Education rules to develop the individualized education program required by the Individuals with Disabilities Education Act (20 U.S.C. Section 1400 et seq.) for any student needing special education.**
- (2) **"American Sign Language" means a complete, visual, and manual language with its own grammar and syntax.**
- (3) **"English" includes writing, reading, speech, speech reading, cued speech, and any English-based manual-visual method of communication.**
- (4) **"Unique communication mode" or "appropriate language mode" includes English and American Sign Language.**

TEC § 29.302. Findings.

- (a) **The legislature finds that it is essential for the well-being and growth of students who are deaf or hard of hearing that educational programs recognize the unique nature of deafness and the hard-of-hearing**

condition and ensure that all students who are deaf or hard of hearing have appropriate, ongoing, and fully accessible educational opportunities. Students who are deaf or hard of hearing may choose to use a variety of language modes and languages, including oral and manual-visual language. Students who are deaf may choose to communicate through the language of the deaf community, American Sign Language, or through any of a number of English-based manual-visual languages. Students who are hard of hearing may choose to use spoken and written English, including speech reading or lip reading, together with amplification instruments, such as hearing aids, cochlear implants, or assistive listening systems, to communicate with the hearing population. Students who are deaf or hard of hearing may choose to use a combination of oral or manual-visual language systems, including cued speech, manual signed systems, and American Sign Language, or may rely exclusively on the oral-aural language of their choice. Students who are deaf or hard of hearing also may use other technologies to enhance language learning.

- (b) The legislature recognizes that students who are deaf or hard of hearing should have the opportunity to develop proficiency in English, including oral or manual-visual methods of communication, and American Sign Language.

TEC §29.303. Unique Communication. Students who are deaf or hard of hearing must have an education in which their unique communication mode is respected, used, and developed to an appropriate level of proficiency. Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.

TEC §29.305. Language Mode Peers.

If practicable and not in conflict with any admission, review, and dismissal committee recommendations, a student who is deaf or hard of hearing must have an education in the company of a sufficient number of peers using the same language mode and with whom the student can communicate directly. If practicable, the peers must be of the same or approximately the same age and ability. Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.

TEC §29.306. Familial and Advocate Involvement. A student who is deaf or hard of hearing must have an education in which the student's parents or legal guardians and advocates for the student's parents or legal guardians are involved in determining the extent, content, and purpose of programs. Other individuals, including individuals who are deaf or hard of hearing, may be involved at the discretion of parents or legal guardians or the JHW School.

TEC §29.307. Role Models. A student who is deaf or hard of hearing shall be given the opportunity to be exposed to deaf or hard-of-hearing role models.

TEC §29.308. Regional Programs. Regional programs for students who are deaf or hard of hearing shall meet the unique communication needs of students who can benefit from those programs. Appropriate funding for those programs shall be consistent with federal and state law, and money appropriated to school districts for educational programs and services for students who are deaf or hard of hearing may not be allocated or used for any other program or service.

TEC §29.310. Procedures and Materials for Assessment and Placement

- (a) Procedures and materials for assessment and placement of students who are deaf or hard of hearing shall be selected and administered so as not to be racially, culturally, or sexually discriminatory.
- (b) A single assessment instrument may not be the sole criterion for determining the placement of a student.
- (c) The procedures and materials for the assessment and placement of a student who is deaf or hard of hearing shall be in the student's preferred mode of communication. All other procedures and materials used with any student who is deaf or hard of hearing and who has limited English proficiency shall be in the student's preferred mode of communication.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.

TEC §29.311. Educational Programs.

- (a) Educational programs for students who are deaf or hard of hearing must be coordinated with other public and private agencies, including:
- (1) agencies operating early childhood intervention programs;
 - (2) preschools;
 - (3) agencies operating child development programs;
 - (4) nonpublic, nonsectarian schools;
 - (5) agencies operating regional occupational centers and programs; and
 - (6) the Texas School for the Deaf.
- (b) As appropriate, the programs must also be coordinated with postsecondary and adult programs for persons who are deaf or hard of hearing.

TEC §29.312. Psychological Counseling Services. Appropriate psychological counseling services for a student who is deaf or hard of hearing shall be made available at the student's school site in the student's primary mode of communication. In the case of a student who is hard of hearing, appropriate auditory systems to enhance oral communication shall be used if required by the student's admission, review, and dismissal committee.

TEC §29.313. Evaluation of Programs. Each school district must provide continuous evaluation of the effectiveness of programs of the district for students who are deaf or hard of hearing. If practicable, evaluations shall follow program excellence indicators established by the TEA. Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.

TEC §29.314. Transition into Regular Class.

In addition to satisfying requirements of the admission, review, and dismissal committee and to satisfying requirements under state and federal law for vocational training, the JHW School shall develop and implement a transition plan for the transition of a student who is deaf or hard of hearing into a regular class program if the student is to be transferred from a special class or center or nonpublic, nonsectarian school into a regular class in a public school for any part of the school day. The transition plan must provide for activities:

- (1) to integrate the student into the regular education program and specify the nature of each activity and the time spent on the activity each day; and
- (2) to support the transition of the student from the special education program into the regular education program. Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.

D. Autism

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

(e) For students eligible under §89.1040(c)(1) of this title (relating to Eligibility Criteria), the strategies described in this subsection must be considered, based on peer-reviewed, research-based educational programming practices to the extent practicable and, when needed, addressed in the IEP:

- (1) extended educational programming (for example: extended day and/or extended school year services that consider the duration of programs/settings based on assessment of behavior, social skills, communication, academics, and self-help skills);
- (2) daily schedules reflecting minimal unstructured time and active engagement in learning activities (for example: lunch, snack, and recess periods that provide flexibility

- within routines; adapt to individual skill levels; and assist with schedule changes, such as changes involving substitute teachers and pep rallies);
- (3) in-home and community-based training or viable alternatives that assist the student with acquisition of social/behavioral skills (for example: strategies that facilitate maintenance and generalization of such skills from home to school, school to home, home to community, and school to community);
- (4) positive behavior support strategies based on relevant information, for example:
- (A) antecedent manipulation, replacement behaviors, reinforcement strategies, and data-based decisions; and
 - (B) a behavioral intervention plan developed from a functional behavioral assessment that uses current data related to target behaviors and addresses behavioral programming across home, school, and community-based settings;
- (5) beginning at any age, consistent with subsection (h) of this section, futures planning for integrated living, work, community, and educational environments that considers skills necessary to function in current and post-secondary environments;
- (6) parent/family training and support, provided by qualified personnel with experience in

Autism Spectrum Disorders (ASD), that, for example:

- (A) provides a family with skills necessary for a student to succeed in the home/community setting;
 - (B) includes information regarding resources (for example: parent support groups, workshops, videos, conferences, and materials designed to increase parent knowledge of specific teaching/management techniques related to the student's curriculum); and
 - (C) facilitates parental carryover of in-home training (for example: strategies for behavior management and developing structured home environments and/or communication training so that parents are active participants in promoting the continuity of interventions across all settings);
- (7) suitable staff-to-student ratio appropriate to identified activities and as needed to achieve social/behavioral progress based on the student's developmental and learning level (acquisition, fluency, maintenance, generalization) that encourages work towards individual independence as determined by, for example:
- (A) adaptive behavior evaluation results;
 - (B) behavioral accommodation needs across settings; and
 - (C) transitions within the school day;
- (8) communication interventions, including language forms and functions that enhance effective communication across settings (for example: augmentative, incidental, and naturalistic teaching);
- (9) social skills supports and strategies based on social skills assessment/curriculum and provided across settings (for example: trained peer facilitators (e.g., circle of friends), video modeling, social stories, and role playing);
- (10) professional educator/staff support (for example: training provided to personnel who work with the student to assure the correct implementation of techniques and strategies described in the IEP); and
- (11) teaching strategies based on peer reviewed, research-based practices for students with ASD (for example: those associated with discrete-trial training, visual supports,

applied behavior analysis, structured learning, augmentative communication, or social skills training).

- (f) If the ARD committee determines that services are not needed in one or more of the areas specified in subsection (e) of this section, the IEP must include a statement to that effect and the basis upon which the determination was made.

E. **Deaf-Blindness** ([see letter C. Auditory Impairment and letter X. Visual Impairment - also for TSD/TSBVI see letter V.](#))

F. **Extended School Year Services (ESY)**

§300.106 Extended school year services.

(a) **General.**

(1) The JHW School must ensure that extended school year services are available as necessary to provide FAPE, consistent with paragraph (a)(2) of this section.

(2) Extended school year services must be provided only if a child's IEP team determines, on an individual basis, in accordance with §§300.320 through 300.324, that the services are necessary for the provision of FAPE to the child. (*§§300.320 Definition of IEP, .321 IEP Team, .322 Parent Participation, .323 when IEPs must be in effect, .324 Development of IEP*)

(3) In implementing the requirements of this section, a public agency may not--

- (i) Limit extended school year services to particular categories of disability; or
- (ii) Unilaterally limit the type, amount, or duration of those services.

(b) **Definition.** As used in this section, the term extended school year services means special education and related services that--

(1) Are provided to a child with a disability--

- (i) Beyond the normal school year of the JHW School;
- (ii) In accordance with the child's IEP; and
- (iii) At no cost to the parents of the child; and

(2) Meet the standards of the SEA.

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

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

- (c) If the ARD committee determines that the student is in need of extended school year (ESY) services, as described in §89.1065 of this title (relating to Extended School Year Services), then the IEP must identify which of the goals and objectives in the IEP will be addressed during ESY services.

TAC §89.1065. Extended School Year Services.

Extended school year (ESY) services are defined as individualized instructional programs beyond the regular school year for eligible students with disabilities.

- (1) The need for ESY services must be determined on an individual student basis by the admission, review, and dismissal (ARD) committee in accordance with 34 Code of Federal Regulations (CFR), §300.106, and the provisions of this section. In determining the need for and in providing ESY services, a school district may not:

(A) limit ESY services to particular categories of disability; or

(B) unilaterally limit the type, amount, or duration of ESY services.

(2) The need for ESY services must be documented from formal and/or informal evaluations provided by the district or the parents. The documentation must demonstrate that in one or more critical areas addressed in the current individualized education program (IEP) goals and objectives, the student has exhibited, or reasonably may be expected to exhibit, severe or substantial regression that cannot be recouped within a reasonable period of time. Severe or substantial regression means that the student has been, or will be, unable to maintain one or more acquired critical skills in the absence of ESY services.

(3) The reasonable period of time for recoupment of acquired critical skills must be determined on the basis of needs identified in each student's IEP. If the loss of acquired critical skills would be particularly severe or substantial, or if such loss results, or reasonably may be expected to result, in immediate physical harm to the student or to others, ESY services may be justified without consideration of the period of time for recoupment of such skills. In any case, the period of time for recoupment must not exceed eight weeks.

(4) A skill is critical when the loss of that skill results, or is reasonably expected to result, in any of the following occurrences during the first eight weeks of the next regular school year:

(A) placement in a more restrictive instructional arrangement;

(B) significant loss of acquired skills necessary for the student to appropriately progress in the general curriculum;

(C) significant loss of self-sufficiency in self-help skill areas as evidenced by an increase in the number of direct service staff and/or amount of time required to provide special education or related services;

(D) loss of access to community-based independent living skills instruction or an independent living environment provided by noneducational sources as a result of regression in skills; or

(E) loss of access to on-the-job training or productive employment as a result of regression in skills.

(5) If the district does not propose ESY services for discussion at the annual review of a student's IEP, the parent may request that the ARD committee discuss ESY services pursuant to 34 CFR, §300.321.

(6) If a student for whom ESY services were considered and rejected loses critical skills because of the decision not to provide ESY services, and if those skills are not regained after the reasonable period of time for recoupment, the ARD committee must reconsider the current IEP if the student's loss of critical skills interferes with the implementation of the student's IEP.

(7) For students enrolling in a district during the school year, information obtained from the prior school district as well as information collected during the current year may be used to determine the need for ESY services.

(8) The provision of ESY services is limited to the educational needs of the student and must not supplant or limit the responsibility of other public agencies to continue to provide care and treatment services pursuant to policy or practice, even when those services are similar to, or the same as, the services addressed in the student's IEP. No student will be denied ESY services because the student receives care and treatment services under the auspices of other agencies.

(9) Districts are not eligible for reimbursement for ESY services provided to students for reasons other than those set forth in this section.

The following guidelines will be used to assist in identifying students who may need ESY services:

1. *Throughout the school year, after holiday breaks, etc., keep documentation (student work, anecdotal records, charting, Extended School Year Services Data Forms, etc.) on any student experiencing regression on critical IEP skills that you will be recommending ESY services. Report information you feel pertinent to the campus assessment personnel.*
2. *The ARD/IEP committee will consider the need for ESY services for:*
 - a. *students who appear to have experienced severe and/or substantial regression - recoupment problems during this data gathering,*
 - b. *other students referred by school personnel on an individual basis for consideration for ESY services, and*
 - c. *students referred by parents or guardians for ESY services consideration.*
3. *The ARD/IEP committee will determine the appropriate IEP goals and objectives from the current IEP and amount of services needed to prevent severe/substantial regression.*
4. *The IEPs of students receiving ESY services will be reviewed at the beginning of the fall term to determine whether ESY services provided were appropriate to prevent regression, or if progress was made. (Follow steps 1 - 5 above)*
5. *For students who transfer into the JHW School in the spring semester and data is not provided, attempts will be made to contact the student's teacher from the sending district to obtain documentation of regression. The FIE will be one source of data and the student's teacher will begin documentation. An IEP meeting will be convened if ESY should need to be discussed*

Additional ESY Considerations

For some students regression might be considered substantial even though recoupment does occur within the six to eight weeks (includes the 2 weeks of additional reteach). This is particularly true in critical skill areas such as health and safety. This must be an educational decision by the ARD/IEP committee, based on knowledge of the individual student's needs and current IEP goals and objectives.

1. *ESY services are not automatic year after year. The need must be determined each year by the ARD/IEP committee.*
2. *ESY services to be provided will be determined by the ARD/IEP committee for the individual student. Summer school is not synonymous with ESY services.*
3. *Services are not to be provided simply for recreational reasons or because the student would benefit from them or gain new skills.*

4. *The issue is whether the benefits accrued to the student during the school year on critical goals and objectives will be significantly jeopardized if the student is not provided an educational program during the summer months.*

G. Extracurricular Activities

§300.107 Nonacademic services.

The State must ensure the following:

- (a) Each public agency must take steps, including the provision of supplementary aids and services determined appropriate and necessary by the child's IEP Team, to provide nonacademic and extracurricular services and activities in the manner necessary to afford children with disabilities an equal opportunity for participation in those services and activities.
- (b) Nonacademic and extracurricular services and activities may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the public agency, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the public agency and assistance in making outside employment available.
(Authority: 20 U.S.C. 1412(a)(1))

§300.117 Nonacademic settings.

In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in §300.107, each public agency must ensure that each child with a disability participates with nondisabled children in those services and activities to the maximum extent appropriate to the needs of that child. The JHW School must ensure that each child with a disability has the supplementary aids and services determined by the child's IEP Team to be appropriate and necessary for the child to participate in nonacademic settings.

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

§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--
- (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;

TEC §33.081. Extracurricular Activities.

- (e) Suspension of a student with a disability that significantly interferes with the student's ability to meet regular academic standards must be based on the student's failure to meet the requirements of the student's individualized education program. The determination of whether a disability significantly interferes with a student's ability to meet regular academic standards must be made by the student's admission, review, and dismissal committee. For purposes of this subsection, "student with a disability" means a student who is eligible for a district's special education program under Section 29.003(b).

- (f) A student suspended under this section may practice or rehearse with other students for an extracurricular activity but may not participate in a competition or other public performance.

H. FBA (Functional Behavior Assessment) / BIP (Behavior Improvement Plan)

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

- (g) If the ARD committee determines that a behavior improvement plan or a behavioral intervention plan is appropriate for a student, that plan must be included as part of the student's IEP and provided to each teacher with responsibility for educating the student.

§300.324 Development, review, and revision of IEP

- (a) (2) **Consideration of special factors.** The IEP Team must--
(i) **In the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior.**

I. Grading and Reporting

TEC §28.0214. Finality of Grade.

- (a) An examination or course grade issued by a classroom teacher is final and may not be changed unless the grade is arbitrary, erroneous, or not consistent with the JHW School grading policy applicable to the grade, as determined by the board of trustees of the school district in which the teacher is employed.
- (b) A determination by a school district board of trustees under Subsection (a) is not subject to appeal. This subsection does not prohibit an appeal related to a student's eligibility to participate in extracurricular activities under Section 33.081.

§300.320 Definition of individualized education program.

- (a) (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;**

Each student receiving special education instruction has an individual education program (IEP) which addresses the student's educational needs, educational goals and objectives.

- 1. The special education teacher will utilize a lesson plan which reflects the Goals as stated on the IEP and follows the TEKS. Grades should evolve from the Goals with supporting documentation of how the grade was determined.*
- 2. Numerical grades will be recorded for each subject area in a grade book. Recommended minimum mastery level on an IEP objective should be 70%, as a grade of 70 is required for passing for nondisabled students. If 70% is too high for mastery, the appropriateness of the goal should be reconsidered.*
- 3. Care should be taken to ensure that goals are written at a level which continues to challenge the student's abilities. This may necessitate accommodations in curriculum, methods, pacing, materials, criteria, etc.*
- 4. If the student with disabilities fails to meet the expectations addressed in the IEP, the responsible teacher (general or special education) will review the IEP for appropriateness of goals/objectives,*

instructional levels, materials, and methods. The teacher must document on the IEP the efforts made to try to help the student achieve success. The responsible teacher must notify the campus administrator and assigned assessment personnel regarding any student who is not meeting expectations. An IEP meeting must be convened to review current program and discuss potential additional supports.

5. *If a student with disabilities is not be progressing toward mastery of the goal by the annual ARD, the ARD/IEP committee must convene to discuss the student's needs and make recommendations to help the student achieve success.*
 6. *An ARD/IEP committee will meet if the student is not attending school to discuss the appropriateness of the IEP, need for additional testing, and pursuit of compulsory attendance, if appropriate. Campus staff must follow the "Protocol for Absent Students" that has been individually developed for each campus.*
- ***For students who are showing a pattern of chronic absences district/campus staff will engage in active measures to increase student attendance and access to special education and related services listed in the IEP.*
- *10 documented absences (excused and unexcused) will have a staff meeting scheduled with school and facility personnel.*
 - *Students who have 15 documented absences (excused and unexcused) will have an ARD meeting schedule with school and facility personnel.*
 - *ARD meetings will continue scheduled and held in intervals of 5 after the 15th absence is identified in PEIMS.*
7. *The grading of a special education student in a general education classroom is based upon the ARD/IEP committee recommendations for, if any, accommodations of TEKS and other accommodations of pacing, methods, and materials needed. When accommodations have been recommended by the ARD/IEP committee, the special education teacher is responsible for:*
 - a. *informing the general education teacher of the recommended accommodations;*
 - b. *providing information concerning the student's achievement levels, learning style, and behavioral needs;*
 - c. *offering assistance to the general education teacher on a scheduled basis, as recommended by the ARD/IEP committee; and*
 - d. *documenting contacts with the general education teacher. At a minimum a meeting between the general and special education teacher will occur once per 6 weeks and documented through the "6-Week Student Progress Meeting with General Education Teacher."*
 8. *On occasion, the ARD/IEP committee will recommend that a specific subject be taught in a combination general education/special education instructional arrangement. The special education student's grade, in this situation, may be determined proportionately by the general and special education teachers who provide the instruction, as determined by the ARD/IEP committee.*
 9. *Unless the ARD/IEP committee designates otherwise,*
 - a. *when a student is enrolled in the homebound program, the general classroom teacher will be responsible for grading all assignments and recording grades on the report card and permanent record for all subject areas.*

J. Intensive Remediation

TEC §28.0213. Intensive Program of Instruction.

- (a) The JHW School shall offer an intensive program of instruction to a student who does not perform satisfactorily on an assessment instrument administered under Subchapter B, Chapter 39.
- (b) The JHW School shall design the intensive program of instruction described by Subsection (a) to:
 - (1) enable the student to:

- (A) to the extent practicable, perform at the student's grade level at the conclusion of the next regular school term; or
 - (B) attain a standard of annual growth specified by the school district and reported by the district to the TEA; and
- (2) if applicable, carry out the purposes of Section 28.0211.
- (c) The JHW School shall use funds appropriated by the legislature for an intensive program of instruction to plan and implement intensive instruction and other activities aimed at helping a student satisfy state and local high school graduation requirements. The commissioner shall distribute funds to districts that implement a program under this section based on the number of students identified by the district who:
 - (1) do not perform satisfactorily on an assessment instrument administered under Subchapter B, Chapter 39; or
 - (2) are not likely to receive a high school diploma before the fifth school year following the student's enrollment in grade nine, as determined by the district.
 - (d) A school district's determination of the appropriateness of a program for a student under this section is final and does not create a cause of action.
 - (e) For a student in a special education program under Subchapter A, Chapter 29, who does not perform satisfactorily on an assessment instrument administered under Section 39.023(a), (b), or (c), the student's admission, review, and dismissal committee shall design the program to:
 - (1) enable the student to attain a standard of annual growth on the basis of the student's individualized education program; and
 - (2) if applicable, carry out the purposes of Section 28.0211.

K. LEP (Limited English Proficient)

§300.324 Development, review, and revision of IEP

- (a) (2) **Consideration of special factors.** The IEP Team must--
 - (ii) **In the case of a child with limited English proficiency, consider the language needs of the child as those needs relate to the child's IEP;**
 - (iv) **Consider the communication needs of the child, and in the case of a child who is deaf or hard of hearing, consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode;**

TAC §89.1230. Eligible Students with Disabilities.

- (a) The JHW School will implement assessment procedures which differentiate between language proficiency and handicapping conditions in accordance with Subchapter AA of this chapter (relating to Special Education Services), and shall establish placement procedures which ensure that placement in a bilingual education or English as a second language program is not refused solely because the student has a disability.

(See also Home Language Survey and LPAC in section 1-Referral and assessment in Section 2-FIE)

Limited English Proficient (LEP) Students with Disabilities

For all LEP (Limited English Proficient) Students:

- A. The LPAC report, must have been completed within the past year for each Annual ARD to review.*
- B. The ARD/IEP committee will determine placement based on current assessment and IEP Goals and Objectives needed.*
- C. The ARD/IEP committee will include the LPAC representative and will ensure that placement in a bilingual education or English as a second language program, if appropriate, is not refused solely because the student has a disability.*

L. LRE (Least Restrictive Environment - Placement)

§300.114 LRE requirements.

(a) General.

- (1) Except as provided in §300.324(d)(2) (regarding children with disabilities in adult prisons), the State must have in effect policies and procedures to ensure that public agencies in the State meet the LRE requirements of this section and §§300.115 through 300.120.**
- (2) Each public agency must ensure that--**
 - (i) 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 nondisabled; and**
 - (ii) Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.**
- (b) Additional requirement-State funding mechanism.**
 - (1) General.**
 - (i) A State funding mechanism must not result in placements that violate the requirements of paragraph (a) of this section; and**
 - (ii) A State must not use a funding mechanism by which the State distributes funds on the basis of the type of setting in which a child is served that will result in the failure to provide a child with a disability FAPE according to the unique needs of the child, as described in the child's IEP.**
 - (2) Assurance. If the State does not have policies and procedures to ensure compliance with paragraph (b)(1) of this section, the State must provide the Secretary an assurance that the State will revise the funding mechanism as soon as feasible to ensure that the mechanism does not result in placements that violate that paragraph.**

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

§300.115 Continuum of alternative placements. (see also Section 5)

- (a) Each public agency must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services.**
- (b) The continuum required in paragraph (a) of this section must--**
 - (1) Include the alternative placements listed in the definition of special education under §300.39 (instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions); and**
 - (2) Make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement.**

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

A Free Appropriate Public Education will be provided to all children through a continuum of services that may include self-contained developmental classrooms, resource classes, inclusion support, and content mastery services.

Each campus will utilize the revised ARD agenda reflected the need for the discussion of decision making related to the provision of instructional services.

§300.116 Placements.

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

- (a) The placement decision--**
 - (1) 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**
 - (2) Is made in conformity with the LRE provisions of this subpart, including §§300.114 through 300.118;**
- (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) Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled;
- (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 * *If the committee recommends the student receive part or all instruction in a special education setting, please review the following topics: Removal from General Education Classroom, Removal from General Education Campus, Opportunity to Participate, and Consideration of Harmful Effects*
- (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. (*regular = public schools K-12th*)
(Authority: 20 U.S.C. 1412(a)(5))

§300.117 Nonacademic settings

§300.118 Children in public or private institutions

§300.119 Technical assistance and training - SEA

§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;

§300.110 Program options.

The State must ensure that each public agency takes steps to ensure that its children with disabilities have available to them the variety of educational programs and services available to nondisabled children in the area served by the agency, including art, music, industrial arts, consumer and homemaking education, and vocational education. (Authority: 20 U.S.C. 1412(a)(2), 1413(a)(1))

L.R.E. Questions the A.R.D. Committee may Discuss:

The following are points for discussion and documentation as an ARD/IEP committee determines the appropriateness of the Least Restrictive Environment for a student with disabilities. {based on Daniel R.R. v. State Board of Education, 874 F.2d 1036(5th Cir. 1989)}

1. *Can education in the general classroom, with the use of supplementary aids and services be achieved satisfactorily for the student?*
 - a. *Has the JHW School taken steps to accommodate the student with disabilities in the general classroom?*
 - (1) *Did the district provide supplementary aids and services?*
 - (2) *Did the district provide accommodations?*
 - b. *Are the services provided sufficient?*
 - (1) *the district does not have to provide every conceivable supplementary aid or service.*
 - (2) *IDEA (Individuals with Disabilities Education Act) does not require general education teachers to devote all or most of their time to one student with a disability.*
 - (3) *IDEA does not require that general education teachers modify the general education program beyond recognition.*
 - (4) *General education teachers are not required to modify the general education curriculum to the extent that the student with disabilities is not required to learn any of the skills normally taught in general education.*
 - c. *Will the student receive an educational benefit from general education?*
 - (1) *Can the student grasp the TEKS curriculum elements of the general education curriculum?*

- (2) Consider and document the nature and severity of the student's disability in relation to receiving educational benefit from general education.
 - d. Examine the student's overall educational experience in the mainstreamed environment balancing the benefits of general and special education for each individual student.
 - e. What effect does the presence of the student with disabilities' have on the general classroom environment and thus on the education that the other students are receiving.
 - (1) Discuss and document any disruptions in the classroom.
 - (2) Does the student require so much of the teacher's attention that the teacher will have to ignore the other students' needs in order to attend the student with disabilities.
2. If education in a general classroom cannot be achieved satisfactorily, determine whether the student has been mainstreamed to the maximum extent appropriate for that student.
- a. Determine if all academic and non-academic classes in general education with nondisabled peers has been considered or tried.
 - b. Determine if mainstreaming for lunch, recess, or other times has been considered.

M. Physical Education

§300.108 Physical education.

The TEA must ensure that public agencies in the State comply with the following:

- (a) **General.** Physical education services, specially designed if necessary, must be made available to every child with a disability receiving FAPE, unless the JHW School enrolls children without disabilities and does not provide PE to children without disabilities in the same grades.
 - (b) **Regular physical education.** Each child with a disability must be afforded the opportunity to participate in the regular physical education program available to nondisabled children unless--
 - (1) The child is enrolled full time in a separate facility; or
 - (2) The child needs specially designed physical education, as prescribed in the child's IEP.
 - (c) **Special physical education.** If specially designed physical education is prescribed in a child's IEP, the public agency responsible for the education of that child must provide the services directly or make arrangements for those services to be provided through other public or private programs.
 - (d) **Education in separate facilities.** The public agency responsible for the education of a child with a disability who is enrolled in a separate facility must ensure that the child receives appropriate physical education services in compliance with this section.
- (Authority: 20 U.S.C. 1412(a)(5)(A))

N. Prison

§300.324 Development, review, and revision of IEP

(d) Children with disabilities in adult prisons.

- (1) **Requirements that do not apply.** The following requirements do not apply to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons:
 - (i) The requirements contained in §300.160 and §300.320(a)(6) (relating to participation of children with disabilities in general assessments).
 - (ii) The requirements in §300.320(b) (relating to transition planning and transition services), do not apply with respect to the children whose eligibility under Part B of the Act will end, because of their age, before they will be eligible to be released from prison based on consideration of their sentence and eligibility for early release.
- (2) **Modifications of IEP or placement.**
 - (i) Subject to paragraph (c)(2)(ii) of this section, the IEP Team of a child with a disability who is convicted as an adult under State law and incarcerated in an adult prison may modify the child's IEP or placement if the State has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.

(ii) The requirements of §§300.320 (relating to IEPs), and 300.112 (relating to LRE), do not apply with respect to the modifications described in paragraph (d)(2)(i) of this section.

(Authority: 20 U.S.C. 1412(a)(1), 1412(a)(12)(A)(i), 1414(d)(3),(4)(B), and(7); and 1414(e))

O. Reading (K – 2nd grade) – Accelerated Instruction

TEC §28.006. Reading Diagnosis.

- (a) The commissioner shall develop recommendations for school districts for:
 - (1) administering reading instruments to diagnose student reading development and comprehension;
 - (2) training educators in administering the reading instruments; and
 - (3) applying the results of the reading instruments to the instructional program.
- (b) The commissioner shall adopt a list of reading instruments that a school district may use to diagnose student reading development and comprehension. A district-level committee established under Subchapter F, Chapter 11, may adopt a list of reading instruments for use in the district in addition to the reading instruments on the commissioner's list. Each reading instrument adopted by the commissioner or a district-level committee must be based on scientific research concerning reading skills development and reading comprehension. A list of reading instruments adopted under this subsection must provide for diagnosing the reading development and comprehension of students participating in a program under Subchapter B, Chapter 29.
- (c) Each school district shall administer, at the kindergarten and first and second grade levels, a reading instrument on the list adopted by the commissioner or by the district-level committee. The district shall administer the reading instrument in accordance with the commissioner's recommendations under Subsection (a)(1).

- (g) The JHW School shall notify the parent or guardian of each student in kindergarten or first or second grade who is determined, on the basis of reading instrument results, to be at risk for dyslexia or other reading difficulties. The JHW School shall implement an accelerated reading instruction program that provides reading instruction that addresses reading deficiencies to those students and shall determine the form, content, and timing of that program. The admission, review, and dismissal committee of a student who participates in JHW School's special education program under Subchapter B, Chapter 29, and who does not perform satisfactorily on a reading instrument under this section shall determine the manner in which the student will participate in an accelerated reading instruction program under this subsection.
- (h) The JHW School shall make a good faith effort to ensure that the notice required under this section is provided either in person or by regular mail and that the notice is clear and easy to understand and is written in English and in the parent or guardian's native language.

P. Regional Day School Program for the Deaf (RDSPD)

TAC §89.1080. Regional Day School Program for the Deaf.

In accordance with the Texas Education Code (TEC), §§30.081-30.087, local school districts shall have access to regional day school programs for the deaf operated by school districts at sites previously established by the State Board of Education (SBOE). Any student who has a hearing impairment which severely impairs processing linguistic information through hearing, even with recommended amplification, and which adversely affects educational performance shall be eligible for consideration for the Regional Day School Program for the Deaf, subject to the admission, review, and dismissal (ARD) committee recommendations.

Q. Student Success Initiative (SSI)

Excerpts below from: [Grade Placement Committee Manual: for Grade Advancement Requirements of the SSI TEC §28.0211 and TAC §101](#)

For continuous updated information, refer to the TEA website www.tea.state.tx.us/student.assessment/

Students Receiving Special Education Services

Students subject to SSI requirements include those served by special education who take STAAR. The admission, review, and dismissal (ARD) committee of each student receiving special education services will determine appropriate assessment options for the individual student and make any decision involving accelerated instruction and promotion. The flowcharts found on the TEA website:

www.tea.state.tx.us/student.assessment/ outline how the SSI grade advancement requirements affect students served by special education who take STAAR. **In the case where a student's IEP states that the student is to take STAAR and the student does not meet SSI assessment expectations, the ARD committee will serve as the GPC.**

For each SSI grade level and subject area listed below, the ARD committee will determine which assessment is appropriate for the individual student.

SSI Requirements for Students Served By Special Education Who Take STAAR

For 2014-2015 school year (and 2015 Fall), please review "2014-2015 School Year Flowchart for Students Taking STAAR" found in Student Success Initiative Manual page 8. In the area of Reading, follow activities outlined. However, due to the revised Math TEKS the SSI requirements for grades 3 & 8 were suspended. The SSI grade-advancement requirements for mathematics will be reinstated in the 2015-2016 school year.

READING:

Enrolled Grade 5 Students Who Take STAAR Reading

Based on the ARD committee decision, some grade 5 students who are instructed in the grade 5 reading TEKS will take STAAR. The flowchart for STAAR grade 5 reading on page 8 outlines how the SSI grade advancement requirements affect all students who take the STAAR grade 5 reading test, including students served by special education.

Enrolled grade 8 Students Who Take STAAR Reading

Based on the ARD committee decision, some grade 8 students who are instructed in the grade 8 reading TEKS will take STAAR. The flowchart for STAAR grade 5 reading on page 8 outlines how the SSI grade advancement requirements affect all students who take the STAAR grade 8 reading test, including students served by special education.

MATH:

Enrolled Grade 5 Students Who Take STAAR Mathematics

Based on the ARD committee decision, some grade 5 students who are instructed in the grade 5 mathematics TEKS will take STAAR. The flowchart for STAAR grade 5 mathematics on page ** outlines how the SSI grade advancement requirements affect all students who take the STAAR grade 5 mathematics test, including students served by special education.

Enrolled grade 8 Students Who Take STAAR Mathematics (Suspended 2014-2015)

Based on the ARD committee decision, some grade 8 students who are instructed in the grade 8 mathematics TEKS will take STAAR. The flowchart for STAAR grade 5 mathematics on page 8 outlines how the SSI grade advancement requirements affect all students who take the STAAR grade 8 mathematics test, including students served by special education.

The ARD committee makes assessment and instructional decisions for students receiving special education services, including those who take STAAR. If a student has not met the passing standard after two STAAR testing opportunities, the ARD committee will meet to prescribe accelerated instruction for that student and to determine if the student will take STAAR or an alternate assessment for the third testing opportunity. If a student has not met the passing standard after three testing opportunities, the ARD committee will determine whether the student will be promoted or retained. The ARD committee decision regarding promotion does not have to be unanimous but must follow the general rules governing ARD committee decision-making as set forth in 19 TAC §89.1050.

TEC § 28.0211. Satisfactory Performance on Assessment, Instruments Required; Accelerated Instruction

- (a) Except as provided by Subsection (b) or (e), a student may not be promoted to:
 - (1) the sixth grade program to which the student would otherwise be assigned if the student does not perform satisfactorily on the fifth grade mathematics and reading assessment instruments under Section 39.023; or
 - (2) the ninth grade program to which the student would otherwise be assigned if the student does not perform satisfactorily on the eighth grade mathematics and reading assessment instruments under Section 39.023.
- (b) The JHW School shall provide to a student who initially fails to perform satisfactorily on an assessment instrument specified under Subsection (a) at least two additional opportunities to take the assessment instrument. A school district may administer an alternate assessment instrument to a student who has failed an assessment instrument specified under Subsection (a) on the previous two opportunities. Notwithstanding any other provision of this section, a student may be promoted if the student performs at grade level on an alternate assessment instrument under this subsection that is appropriate for the student's grade level and approved by the commissioner.
- (c) Each time a student fails to perform satisfactorily on an assessment instrument specified under Subsection (a), the school district in which the student attends school shall provide to the student accelerated instruction in the applicable subject area, including reading instruction for a student who fails to perform satisfactorily on a reading assessment instrument.

For students receiving special education services who have not met the passing standard on the 1st administration, the school and parents must determine accelerated instruction. The decision should be documented either through an agreement to amend the student's individualized education program (IEP) or through an admission, review, and dismissal (ARD) committee meeting.

The ARD, of which the parent/guardian/surrogate is a member, may determine at that time that the student will not participate in the 2nd administration due to not being appropriate based on the student's individual needs and whether the student will be promoted or retained.

In this case, the ARD committee must document justification for these decisions in the student's IEP. However, if the student does not participate in the 2nd administration, the school must continue to provide accelerated instruction for the remainder of the school year.

If a student does not meet the passing standard for the 2nd time, the school must document **additional** accelerated instruction through an agreement to amend the student's IEP or through an ARD committee meeting. The ARD, of which the parent/guardian/surrogate is a member, may determine at that time that the student will not participate in the 3rd administration and decide whether the student will be promoted or retained. If the ARD committee decides to promote the student, it must **ensure that the student completes all required accelerated instruction prior to being placed in or promoted to the next grade.**



- (d) In addition to providing accelerated instruction to a student under Subsection (c), the district shall notify the student's parent or guardian of:
- (1) the student's failure to perform satisfactorily on the assessment instrument;
 - (2) the accelerated instruction program to which the student is assigned; and
 - (3) the possibility that the student might be retained at the same grade level for the next school year.
- (e) A student who, after at least three attempts, fails to perform satisfactorily on an assessment instrument specified under Subsection (a) shall be retained at the same grade level for the next school year in accordance with Subsection (a). The student's parent or guardian may appeal the student's retention by submitting a request to the grade placement committee established under Subsection (c). The JHW School shall give the parent or guardian written notice of the opportunity to appeal. The grade placement committee may decide in favor of a student's promotion only if the committee concludes, using standards adopted by the board of trustees, that if promoted and given accelerated instruction, the student is likely to perform at grade level.

If the student participated in the 3rd administration and **does not** meet the passing standard, then the ARD committee, of which the parent/guardian/surrogate, will determine whether the student will be promoted or retained. The decision **does not** have to be unanimous, but must follow the general rules governing ARD committee decision-making.

- (f) The JHW School shall provide to a student who, after three attempts, has failed to perform satisfactorily on an assessment instrument specified under Subsection (a) accelerated instruction during the next school year as prescribed by an educational plan developed for the student by the student's grade placement committee established under Subsection (c). The JHW School shall provide that accelerated instruction regardless of whether the student has been promoted or retained. The educational plan must be designed to enable the student to perform at the appropriate grade level by the conclusion of the school year. During the school year, the student shall be monitored to ensure that the student is progressing in accordance with the plan.

In addition to accelerated instruction, the plan shall include **interim progress reports** to parents and the opportunity for parent consultation with teacher and/or principal as needed.

It is mandatory that the method and frequency of the interim progress reports be reflected in the IEP Amendment or ARD deliberations. Also, this will be provided by campus general education personnel or administration.

The JHW School shall administer to the student the assessment instrument for the grade level in which the student is placed at the time the district regularly administers the assessment instruments for that school year.

- (g) This section does not preclude the retention at a grade level, in accordance with state law or JHW School policy, of a student who performs satisfactorily on an assessment instrument specified under Subsection (a).

- (h) In each instance under this section in which a school district is specifically required to provide notice to a parent or guardian of a student, the JHW School shall make a good faith effort to ensure that such notice is provided either in person or by regular mail and that the notice is clear and easy to understand and is written in English or the parent or guardian's native language.
- (i) The admission, review, and dismissal committee of a student who participates in a district's special education program under Subchapter B, Chapter 29, and who does not perform satisfactorily on an assessment instrument specified under Subsection (a) and administered under Section 39.023(a) or (b) shall determine:
 - (1) the manner in which the student will participate in an accelerated instruction program under this section; and
 - (2) whether the student will be promoted or retained under this section.
- (j) A school district or open-enrollment charter school shall provide students required to attend accelerated programs under this section with transportation to those programs if the programs occur outside of regular school hours.
- (k) The commissioner shall adopt rules as necessary to implement this section, including rules concerning when school districts shall administer assessment instruments required under this section and which administration of the assessment instruments will be used for purposes of Section 39.051.
- (l) The commissioner shall issue a report to the legislature not later than December 1, 2000, that reviews the enrollment of students in accelerated instruction and the quality and availability of accelerated instruction programs, including accelerated instruction-related teacher professional development programs.
- (m) The commissioner shall certify, not later than July 1 of each school year or as soon as practicable thereafter, whether sufficient funds have been appropriated statewide for the purposes of this section. A determination by the commissioner is final and may not be appealed. For purposes of certification, the commissioner may not consider Foundation School Program funds. This section may be implemented only if the commissioner certifies that sufficient funds have been appropriated during a school year for administering the accelerated instruction programs specified under this section.

Text of subsection (n) effective until **January 1, 2008**

- (n) This section applies to the assessment instrument administered to students in:
 - (1) the third grade beginning with the 2002-2003 school year;
 - (2) the fifth grade beginning with the 2004-2005 school year; and
 - (3) the eighth grade beginning with the 2007-2008 school year.

Text of subsection (o) effective until **January 1, 2008**

- (o) Subsection (n) and this subsection expire January 1, 2008. Added by Acts 1999, 76th Leg., ch. 396, § 2.12, eff. Sept. 1, 1999.

TAC §101.2001. Policy.

TAC §101.2003. Grade Advancement Testing Requirements.

TAC §101.2005. Test Administration and Schedule.

TAC §101.2007. Role of Grade Placement Committee.

TEC §39.024. Satisfactory Performance

- (a) Except as otherwise provided by this subsection, the State Board of Education shall determine the level of performance considered to be satisfactory on the assessment instruments. The admission, review, and dismissal committee of a student being assessed under Section 39.023(b) shall determine the level of performance considered to be satisfactory on the assessment instruments administered to that student in accordance with criteria established by agency rule.

TEC § 39.023. Adoption and Administration of Instruments

- (a) The TEA shall adopt or develop appropriate criterion-referenced assessment instruments designed to assess essential knowledge and skills in reading, writing, mathematics, social studies, and science. All students, except students assessed under Subsection (b) or (l) or exempted under Section 39.027, shall be assessed in:
 - (1) mathematics, annually in grades three through seven without the aid of technology and in grades eight through 11 with the aid of technology on any assessment instruments that include algebra;
 - (2) reading, annually in grades three through nine;
 - (3) writing, including spelling and grammar, in grades four and seven;
 - (4) English language arts, in grade 10;
 - (5) social studies, in grades eight and 10;
 - (6) science, in grades five, eight, and 10; and
 - (7) any other subject and grade required by federal law.
- (b) The agency shall develop or adopt appropriate criterion-referenced assessment instruments to be administered to each student in a special education program under Subchapter A, Chapter 29, who receives modified instruction in the essential knowledge and skills identified under Section 28.002 for the assessed subject but for whom an assessment instrument adopted under Subsection (a), even with allowable modifications, would not provide an appropriate measure of student achievement, as determined by the student's admission, review, and dismissal committee. The assessment instruments required under this subsection must assess essential knowledge and skills and growth in the subjects of reading, mathematics, and writing. A student's admission, review, and dismissal committee shall determine whether any allowable modification is necessary in administering to the student an assessment instrument required under this subsection. The assessment instruments required under this subsection shall be administered on the same schedule as the assessment instruments administered under Subsection (a).
- (l) The State Board of Education shall adopt rules for the administration of the assessment instruments adopted under Subsection (a) in Spanish to students in grades three through six who are of limited English proficiency, as defined by Section 29.052, whose primary language is Spanish, and who are not otherwise exempt from the administration of an assessment instrument under Section 39.027(a)(3) or (4). Each student of limited English proficiency whose primary language is Spanish, other than a student to whom Subsection (b) applies, may be assessed using assessment instruments in Spanish under this subsection for up to three years or assessment instruments in English under Subsection (a). The language proficiency assessment committee established under Section 29.063 shall determine which students are administered assessment instruments in Spanish under this subsection.

R. Supplementary Aids and Services - Accommodations

§300.42 Supplementary aids and services. Supplementary aids and services means aids, services, and other supports that are provided in regular education classes, 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 in accordance with §§300.114 through 300.116. (Authority: 20 U.S.C. 1401(33))

§300.320 Definition of individualized education program.

- (a) (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;

S. Tape Recording

The JHW School, the parent, or the adult student may audio-record the ARD/IEP committee meeting. All participants in the meeting will be informed that such a recording is being made. If a parent or adult student notifies the ARD/IEP committee that they will record the meeting, the district should also record the meeting and put a reference to the audio-tape in the student's special education eligibility folder. The audio tape will be kept confidential and located with the eligibility folder.

TEC §29.005.

- (d) If the child's parent is unable to speak English, the JHW School 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.

T. State or District-wide Assessments

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

(b) The IEP must include a statement of any individual appropriate and allowable accommodations in the administration of assessment instruments developed in accordance with Texas Education Code (TEC), §39.023(a)-(c), or districtwide assessments of student achievement (if the district administers such optional assessments) that are necessary to measure the academic achievement and functional performance of the student on the assessments. If the ARD committee determines that the student will not participate in a general statewide or districtwide assessment of student achievement (or part of an assessment), the IEP must include a statement explaining:

- (1) why the student cannot participate in the general assessment; and
- (2) why the particular alternate assessment selected is appropriate for the student.

20 USC §1412(a)(16)(B), 1414(d)(1)(A)(i)(VI)(aa), 1414(d)(1)(A)(i)(VI)(bb), 34 CFR part 300.320(a)(6)(i), 300.320(a)(6)(ii), 300.320(a)(6)(ii)(A), 19 TAC §89.1055(b), 89.1055(b)(1), 89.1055(b)(2),

If the district administers any optional districtwide assessments of achievement, the ARD committee must provide a statement of any individualized appropriate and allowable accommodations that are necessary to measure the academic achievement and functional performance of the child on such assessments.

The JHW School will follow the TEA manual for allowable accommodations on state testing and the ARD/IEP committee will specifically detail accommodations that the student needs throughout the school year to implement the 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--**

- (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.

ARD/IEP Committee

It is important to emphasize that the instructional decisions made by the admission, review, and dismissal (ARD) committee and documented in the individualized education program (IEP) must always guide assessment decisions for students receiving special education services. For students with disabilities working below their enrolled grade level, it is the responsibility of all of us—the state as well as the district, campuses, and classroom teachers—to work with parents and other members of the community to understand and provide the support these students need to reach their academic potential. All students have the right to be exposed to as much of an on-grade-level curriculum as possible. The ARD committee must weigh the benefits of rigorous and challenging expectations given each student’s individual strengths, needs, instruction, and accommodations.

Assessments to Identify Children as English Language Learners (ELLs)

19 TAC §89.1225(d), 89.1225(f)(4)

For entry of the child into a bilingual education or English as a second language (ESL) program, if the tests approved by the commissioner of education would be inappropriate as part of the child's IEP, the ARD committee in conjunction with the language proficiency assessment committee (LPAC) must:

- Determine an appropriate assessment instrument for indicating limited English proficiency; and
- Designate the grade level and scores that should identify the child as an ELL.

Annual Assessment for English Language Learners (ELLs)

19 TAC §101.1003(a), 101.1003(b), 101.1003(c)

The local educational agency (LEA) must administer state-identified English language proficiency assessments to children with limited English proficiency who are in kindergarten through grade 12 in the areas of listening, speaking, reading, and writing. The ARD committee in conjunction with the LPAC must determine the need for allowable testing accommodations. In rare cases, the ARD committee in conjunction with the LPAC may determine that it is not appropriate for an ELL who receives special education services to participate in an English language proficiency assessment for reasons associated with the child's particular disability. If the ARD committee in conjunction with the LPAC determines that it is not appropriate for an ELL who receives special education services to participate in an English language proficiency assessment for reasons associated with the child's particular disability, the ARD committee must document the decisions and justifications in the child's IEP.

Assessment for Exit from a Bilingual or ESL Program

19 TAC §89.1225(h), 89.1225(k)

For exit from a bilingual education or an ESL program of the child with disabilities for whom the tests would be inappropriate as part of the IEP, the ARD committee in conjunction with the LPAC must determine:

- An appropriate assessment instrument for exit from a bilingual education or an ESL program; and
- The performance standard on the assessment instrument required for exit.

State Assessments

20 U.S.C. §§ 1412(a)(16)(C), 1414(d)(1)(A)(i)(VI)(bb); 34 CFR §§200.1(d), 200.1(e)(2), 200.1(f)(1)(iv), 300.320(a)(6)(i), 300.320(a)(6)(ii), 300.320(a)(6)(ii)(A), 300.320(a)(6)(ii)(B); TEC 39.023(b), TEC 39.025(a-4); 19 TAC §§89.1055(b), 101.1005, 101.1005(a), 101.1005(e), 101.29

The ARD committee must provide a statement of individualized appropriate and allowable accommodations that are necessary to measure the academic achievement and functional performance of the child on any state assessment including an end-of-course assessment.

Children receiving special education services who have the most significant cognitive disabilities and are unable to participate in the other state assessments, even with substantial accommodations and/or modifications, may be assessed with a state alternate assessment if the state's participation criteria are met.

If the ARD committee determines that the child must take an alternate assessment on a particular state assessment, the ARD committee must provide a statement of:

- Why the child cannot participate in the regular state assessment; and
- Why the particular modified or alternate assessment selected is appropriate for the child.

The LEA must inform parents of children selected to be assessed with a modified or alternate state assessment that their child's achievement will be measured based on modified or alternate academic achievement standards.

For the English language learner in conjunction with the LPAC, the ARD committee must:

- Select the appropriate assessments;
- Document the decisions and justifications in the child's IEP; and
- Determine and document any allowable testing accommodations.

For a child who will take end-of-course assessments, the ARD committee must determine whether the child is required to achieve satisfactory performance on the end-of-course assessment instruments to receive a high school diploma.

§ 300.160 Participation in assessments. *(new – effective May 7, 2007.)*

- (a) **General.** A State must ensure that all children with disabilities are included in all general State and district-wide assessment programs, including assessments described under section 1111 of the ESEA, 20 U.S.C. 6311, with appropriate accommodations and alternate assessments, if necessary, as indicated in their respective IEPs.
- (b) **Accommodation guidelines.**
- (1) A State (or, in the case of a district-wide assessment, an LEA) must develop guidelines for the provision of appropriate accommodations.
 - (2) The State's (or, in the case of a district-wide assessment, the LEA's) guidelines must—
 - (i) Identify only those accommodations for each assessment that do not invalidate the score; and
 - (ii) Instruct IEP Teams to select, for each assessment, only those accommodations that do not invalidate the score.
- (c) **Alternate assessments.**
- (1) A State (or, in the case of a district-wide assessment, an LEA) must develop and implement alternate assessments and guidelines for the participation of children with disabilities in alternate assessments for those children who cannot participate in regular assessments, even with accommodations, as indicated in their respective IEPs, as provided in paragraph (a) of this section.

- (2) For assessing the academic progress of students with disabilities under Title I of the ESEA, the alternate assessments and guidelines in paragraph (c)(1) of this section must provide for alternate assessments that—
- (i) Are aligned with the State’s challenging academic content standards and challenging student academic achievement standards;
 - (ii) If the State has adopted modified academic achievement standards permitted in 34 CFR 200.1(e), measure the achievement of children with disabilities meeting the State’s criteria under § 200.1(e)(2) against those standards; and
 - (iii) If the State has adopted alternate academic achievement standards permitted in 34 CFR 200.1(d), measure the achievement of children with the most significant cognitive disabilities against those standards.
- (d) **Explanation to IEP Teams.** A State (or in the case of a district-wide assessment, the JHW School) must provide IEP Teams with a clear explanation of the differences between assessments based on grade-level academic achievement standards and those based on modified or alternate academic achievement standards, including any effects of State or local policies on the student’s education resulting from taking an alternate assessment based on alternate or modified academic achievement standards (such as whether only satisfactory performance on a regular assessment would qualify a student for a regular high school diploma).
- (e) **Inform parents.** A State (or in the case of a district-wide assessment, the JHW School) must ensure that parents of students selected to be assessed based on alternate or modified academic achievement standards are informed that their child’s achievement will be measured based on alternate or modified academic achievement standards.
- (f) **Reports.** TEA (or, in the case of a district-wide assessment, the JHW School) must make available to the public, and report to the public with the same frequency and in the same detail as it reports on the assessment of nondisabled children, the following:
- (1) The number of children with disabilities participating in regular assessments, and the number of those children who were provided accommodations (that did not result in an invalid score) in order to participate in those assessments.
 - (2) The number of children with disabilities, if any, participating in alternate assessments based on grade level academic achievement standards.
 - (3) The number of children with disabilities, if any, participating in alternate assessments based on modified academic achievement standards.
 - (4) The number of children with disabilities, if any, participating in alternate assessments based on alternate academic achievement standards.
 - (5) Compared with the achievement of all children, including children with disabilities, the performance results of children with disabilities on regular assessments, alternate assessments based on grade-level academic achievement standards, alternate assessments based on modified academic achievement standards, and alternate assessments based on alternate academic achievement standards if—
 - (i) The number of children participating in those assessments is sufficient to yield statistically reliable information; and
 - (ii) Reporting that information will not reveal personally identifiable information about an individual student on those assessments.
- (g) **Universal design.** An SEA (or, in the case of a district-wide assessment, an LEA) must, to the extent possible, use universal design principles in developing and administering any assessments under this section. (Authority: 20 U.S.C. 1412(a)(16))

**REQUIRED EXPLANATION OF STATE /DISTRICT-WIDE TESTING
FOR THE IEP TEAM - INCLUDING PARENTS:**

In order to meet all of the requirements listed above regarding state and district-wide testing, the following questions must be addressed in the IEP meeting. If the IEP Team determines, based on analysis of current data, that the student cannot take the State or district-wide assessments, provide the following information:

- A. Specify why the child cannot participate in the regular assessment.
- B. List the particular alternate assessment selected that is appropriate for the child.
- C. Provide documentation (multiple records and multiple sources of information) to answer ALL of the following questions in the affirmative.
 - requires supports to access the general curriculum that may include assistance involving communication, response style, physical access, or daily living skills,
 - requires direct, intensive, individualized instruction in a variety of settings to accomplish the acquisition, maintenance and generalization of skills,
 - accesses and participates in the grade-level Texas Essential Knowledge and Skills (TEKS) through activities that focus on prerequisite skills,
 - demonstrates knowledge and skills routinely in class by methods other than paper and pencil tasks, and
 - demonstrates performance objectives that may include real life applications of the grade-level TEKS as appropriate to the student's abilities and needs.
- D. Explain clearly the differences between assessments based on grade-level academic achievement standards and those based on modified or alternate academic achievement standards.
- E. Explain clearly the effects on the student's education resulting from taking an alternate assessment based on alternate or modified academic achievement standards (such as whether only satisfactory performance on a regular assessment would qualify a student for a regular high school diploma).

Definitions Below:

Accountability: refers to an individual or group of individuals taking responsibility for the performance of students on achievement measures or other types of educational outcomes (e.g. dropout rates.)

Accommodation that does not invalidate the test: an adjustment, change, or adaptation made to an assessment or the process of administering an assessment to students with special needs. This term generally refers to changes that do not significantly alter what the test measures. It results from a student need and it is not intended to give the student an unfair advantage. All accommodations must be identified in the student's IEP (CEC and the Learning Network 2000-2001).

Benchmarks: are statements of what all students should know and be able to do in a content.

Content Standards: are broad descriptions of knowledge and skills students should acquire in a particular subject area.

Criterion-Referenced Test: a test that is designed to provide information on the specific knowledge or skills possessed by a student. Such tests are designed to measure the objectives of instruction, skill levels, or areas of knowledge. Their scores have meaning in terms of what the student knows and can do, rather than in their relation to the scores made by some comparison to a norm group (Tuckman, B, 1986).

Functional Tasks: skills used in everyday life or that prepare students for life after graduation. These skills include those required for personal maintenance and development, homemaking, and community life, work and career, recreational activities and travel within the community (Smith, D.D., 1998).

High Stakes Assessment: state and or district-wide tests that have important consequences for students, staff, or schools (CEC and the Learning Network 2000-2001).

Large Scale Assessments: these assessments show how students are performing against state standards or national norms, and to hold school districts accountable for student performance (CEC and the Learning Network 2000-2001).

Norm-referenced Test: a test designed to provide information on the performance of test takers relative to one another. It measures basic concepts and skills commonly taught in schools throughout the country.

These tests are not designed as precise measures of any given curriculum or single instructional program. The results provide information that compares a student's achievement with that of a representative national sample. (Tuckman, B. 1986).

***Performance-based Assessment:** a task that enables a student to demonstrate abilities to meet objectives or standards (Campbell, Melenzyer, Nettles, and Wyman, 2000).*

***Rubric:** a set of criteria and a scoring scale that is used to assess and evaluate students' work (Campbell, Melenzyer, Nettles, and Wyman, 2000).*

***Standardized Test:** a type of test that is always administered and scored in the same way. These tests have norms reflecting a larger population (usually these are age or grade based norms reflecting the performance of children throughout the country on the same tests).*

U. Texas School for the Deaf (TSD) and Texas School for the Blind and Visually Impaired (TSBVI)

TEC §30.004. Information Concerning Programs.

- (a) The JHW School shall provide each parent or other person having lawful control of a student with written information about:
 - (1) the availability of programs offered by state institutions for which the district's students may be eligible;
 - (2) the eligibility requirements and admission conditions imposed by each of those state institutions; and
 - (3) the rights of students in regard to admission to those state institutions and in regard to appeal of admission decisions.
- (b) The State Board of Education shall adopt rules prescribing the form and content of information required by Subsection (a).

TAC §89.1085. Referral for the Texas School for the Blind and Visually Impaired and the Texas School for the Deaf Services.

- (a) A student's admission, review, and dismissal (ARD) committee may place the student at the Texas School for the Blind and Visually Impaired (TSBVI) or the Texas School for the Deaf (TSD) in accordance with the provisions of 34 Code of Federal Regulations (CFR), Part 300, the Texas Education Code (TEC), including, specifically, §§30.021, 30.051, and 30.057, and the applicable rules of this subchapter.
- (b) In the event that a student is placed by his or her ARD committee at either the TSBVI or the TSD, the student's "resident school district," as defined in subsection (e) of this section, shall be responsible for assuring that a free appropriate public education (FAPE) is provided to the student at the TSBVI or the TSD, as applicable, in accordance with the Individuals with Disabilities Education Act (IDEA), 20 United States Code (USC), §§1400 et seq., 34 CFR, Part 300, state statutes, and rules of the State Board of Education (SBOE) and the commissioner of education. If representatives of the resident school district and representatives of the TSBVI or the TSD disagree, as members of a student's ARD committee, with respect to a recommendation by one or more members of the student's ARD committee that the student be evaluated for placement, initially placed, or continued to be placed at the TSBVI or TSD, as applicable, the representatives of the resident school district and the TSBVI or TSD, as applicable, may seek resolution through the mediation procedures adopted by the Texas Education Agency or through any due process hearing to which the resident school district or the TSBVI or the TSD are entitled under the IDEA, 20 USC, §§1400, et seq.
- (c) When a student's ARD committee places the student at the TSBVI or the TSD, the student's resident school district shall comply with the following requirements.

- (1) For each student, the resident school district shall list those services in the student's individualized education program (IEP) which the TSBVI or the TSD can appropriately provide.
 - (2) The district may make an on-site visit to verify that the TSBVI or the TSD can and will offer the services listed in the individual student's IEP and to ensure that the school offers an appropriate educational program for the student.
 - (3) For each student, the resident school district shall include in the student's IEP the criteria and estimated time lines for returning the student to the resident school district.
- (d) In addition to the provisions of subsections (a)-(c) of this section, and as provided in TEC, §30.057, the TSD shall provide services in accordance with TEC, §30.051, to any eligible student with a disability for whom the TSD is an appropriate placement if the student has been referred for admission by the student's parent or legal guardian, a person with legal authority to act in place of the parent or legal guardian, or the student, if the student is age 18 or older, at any time during the school year if the referring person chooses the TSD as the appropriate placement for the student rather than placement in the student's resident school district or regional program determined by the student's ARD committee. For students placed at the TSD pursuant to this subsection, the TSD shall be responsible for assuring that a FAPE is provided to the student at the TSD, in accordance with IDEA, 20 USC, §§1400, et seq., 34 CFR, Part 300, state statutes, and rules of the SBOE and the commissioner of education.
- (e) For purposes of this section and §89.1090 of this title (relating to Transportation of Students Placed in a Residential Setting, Including the Texas School for the Blind and Visually Impaired and the Texas School for the Deaf), the "resident school district" is the school district in which the student would be enrolled under TEC, §25.001, if the student were not placed at the TSBVI or the TSD.

TAC §89.1090. Transportation of Students Placed in a Residential Setting, Including the Texas School for the Blind and Visually Impaired and the Texas School for the Deaf.

See Related Services Section for Transportation

V. Transition Planning

§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) ---
 - (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**;
- (b) **Transition services.** 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, and updated annually, thereafter, the IEP must include--
- (1) Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and
 - (2) The transition services (including courses of study) needed to assist the child in reaching those goals.
 - (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) *(For §300.320 in its entirety, please see page 405)*

§300.43 Transition services.

- (a) **Transition services** means a coordinated set of activities for a child with a disability that--
- (1) Is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;
 - (2) Is based on the individual child's needs, taking into account the child's strengths, preferences and interests; and includes--
 - (i) Instruction;
 - (ii) Related services;
 - (iii) Community experiences;
 - (iv) The development of employment and other post-school adult living objectives; and
 - (v) If appropriate, acquisition of daily living skills and functional vocational evaluation.
- (b) **Transition services** for children with disabilities may be special education, if provided as specially designed instruction, or a related service, if required to assist a child with a disability to benefit from special education. (Authority: 20 U.S.C. 1401(34))

§300.321 IEP Team

- (b) **Transition services participants.**
- (1) In accordance with paragraph (a)(7) of this section, the JHW School 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, the JHW School 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, the JHW School must invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services.

§300.322 Parent Participation

- (b) **Information provided to parents.**
- (1) The notice required for the IEP meeting 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.

§300.324 (c) Failure to meet transition objectives.

- (1) **Participating agency failure.** If a participating agency, other than the public agency, fails to provide the transition services described in the IEP in accordance with §300.320(b), the public agency must reconvene the IEP Team to identify alternative strategies to meet the transition objectives for the child set out in the IEP.
- (2) **Construction.** Nothing in this part relieves any participating agency, including a State vocational rehabilitation agency, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to children with disabilities who meet the eligibility criteria of that agency.

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

(h) In accordance with TEC, §29.011 and §29.0111, not later than when a student reaches 14 years of age, the ARD committee must consider, and if appropriate, address the following issues in the IEP:

- (1) appropriate student involvement in the student's transition to life outside the public school system;
- (2) if the student is younger than 18 years of age, appropriate parental involvement in the student's transition;
- (3) if the student is at least 18 years of age, appropriate parental involvement in the student's transition, if the parent is invited to participate by the student or the school district in which the student is enrolled;
- (4) any postsecondary education options;
- (5) a functional vocational evaluation;
- (6) employment goals and objectives;
- (7) if the student is at least 18 years of age, the availability of age-appropriate instructional environments;
- (8) independent living goals and objectives; and
- (9) appropriate circumstances for referring a student or the student's parents to a governmental agency for services.

(i) In accordance with 34 CFR, §300.320(b), beginning not later than the first IEP to be in effect when the student turns 16 years of age, or younger if determined appropriate by the ARD committee, and updated annually thereafter, the IEP must include the following:

- (1) appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and
- (2) the transition services, including courses of study, needed to assist the student in reaching the postsecondary goals developed under paragraph (1) of this subsection.

Campus assessment personnel will obtain appropriate parent involvement in the development of post-secondary goals by mailing them a Parent Transition Survey (Revise) or clinical interview with parent referencing information from the Parent Transition Survey. For any student whose parent is not involved with the development of post-secondary goals, parents will be contacted by assessment personnel to discuss transition needs of the student. If the student's transition needs and post secondary goals need to be reviewed/revised due to parental input, an ARD committee meeting will be reconvened.

TEC §29.011. Transition Planning.

The commissioner shall by rule adopt procedures for compliance with federal requirements relating to transition services for students who are enrolled in special education programs under this subchapter. The procedures must specify the manner in which a student's admission, review, and dismissal committee must consider, and if appropriate, address the following issues in the student's individualized education program: *[same as above in 89.1055 (g)]*

TEC §29.0111. Transition Planning

Appropriate state transition planning under the procedure adopted under Section 29.011 must begin for a student not later than when the student reaches 14 years of age.

W. Visual Impairment

§300.324 Development, review, and revision of IEP

(a) (2) **Consideration of special factors.** The IEP Team must--

(iii) **In the case of a child who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP Team determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child;**

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

(b) For school districts providing special education services to students with visual impairments, there must be written procedures as required in the Texas Education Code (TEC), §30.002(c)(10).

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

(b) For a student from birth through two years of age with visual and/or auditory impairments, an individualized family services plan (IFSP) meeting must be held in place of an ARD committee meeting in accordance with 34 CFR, §§300.320-300.324, and the memorandum of understanding between the Texas Education Agency and the Department of Assistive and Rehabilitative Services. For students three years of age and older, school districts must develop an IEP.

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

(d) For students with visual impairments, from birth through 21 years of age, the IEP or individualized family services plan (IFSP) must also meet the requirements of TEC, §30.002(e).

TEC §30.002. Education for Children with Visual Impairments.

(a - b) TEA responsibility for a Statewide Plan

(c) The comprehensive statewide plan for the education of children with visual impairments must:

(10) require that school districts providing special education services to children with visual impairments develop procedures for assuring that staff assigned to work with the children have prompt and effective access directly to resources available through:

(A) cooperating agencies in the area;

(B) the Texas School for the Blind and Visually Impaired;

(C) the Central Media Depository for specialized instructional materials and aids made specifically for use by students with visual impairments;

(D) sheltered workshops participating in the state program of purchases of blind-made goods and services; and

(E) related sources.

(d) In developing, administering, and coordinating the statewide plan, the agency shall encourage the use of all pertinent resources, whether those resources exist in special education programs or in closely related programs operated by other public or private agencies, through encouraging the development of shared services arrangement working relationships and by assisting in the development of contractual arrangements between school districts and other organizations. The agency shall discourage interagency competition, overlap, and duplication in the development of specialized resources and the delivery of services.

- (e) Each eligible blind or visually impaired student is entitled to receive educational programs according to an individualized education program that:
 - (1) is developed in accordance with federal and state requirements for providing special education services;
 - (2) is developed by a committee composed as required by federal law;
 - (3) reflects that the student has been provided a detailed explanation of the various service resources available to the student in the community and throughout the state;
 - (4) provides a detailed description of the arrangements made to provide the student with orientation and mobility training, instruction in braille or use of large print, other training to compensate for serious visual loss, access to special media and special tools, appliances, aids, or devices commonly used by individuals with serious visual impairments; and
 - (5) sets forth the plans and arrangements made for contacts with and continuing services to the student beyond regular school hours to ensure the student learns the skills and receives the training required under Subsection (c)(4).
- (f) In the development of the individualized education program for a functionally blind student, proficiency in braille reading and writing is presumed to be essential for the student's satisfactory educational progress. Each functionally blind student is entitled to braille reading and writing instruction that is sufficient to enable the student to communicate with the same level of proficiency as other students of comparable ability who are at the same grade level. Braille instruction may be used in combination with other special education services appropriate to the student's educational needs. The assessment of each functionally blind student for the purpose of developing the student's individualized education program must include documentation of the student's strengths and weaknesses in braille skills. Each person assisting in the development of a functionally blind student's individualized education program shall receive information describing the benefits of braille instruction. Each functionally blind student's individualized education program must specify the appropriate learning medium based on the assessment report and ensure that instruction in braille will be provided by a teacher certified to teach students with visual impairments. For purposes of this subsection, the agency shall determine the criteria for a student to be classified as functionally blind.
- (g) To facilitate implementation of this section, the commissioner shall develop a system to distribute from the foundation school fund to school districts or regional education service centers a special supplemental allowance for each student with a visual impairment and for each student with a serious visual disability and another medically diagnosed disability of a significantly limiting nature who is receiving special education services through any approved program. The supplemental allowance may be spent only for special services uniquely required by the nature of the student's disabilities and may not be used in lieu of educational funds otherwise available under this code or through state or local appropriations.

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

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

II. TEACHER ACCESSIBILITY AND INPUT

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

- (a) Each school district must maintain an eligibility folder for each student receiving special education services, in addition to the student's cumulative record. The eligibility folder must include, but need not be limited to: copies of referral data; documentation of notices and consents; evaluation reports and supporting data; admission, review, and dismissal (ARD) committee reports; and the student's individualized education programs (IEPs).

(c) Each school district must ensure that each teacher who provides instruction to a student with disabilities:

- (1) has access to relevant sections of the student's current IEP;
- (2) is informed of the teacher's specific responsibilities related to implementation of the IEP, such as goals and objectives, and of needed accommodations, modifications, and supports for the student; and
- (3) has an opportunity to request assistance regarding implementation of the student's IEP.

Campus assessment personnel will notify instructional staff when student records are accessible through eSped and/or ERConnect for review by email. Campus assessment personnel will identify relevant portions of IEPs that pertain to instructional staff through the ERConnect form which instructional staff will sign acknowledging that they have been informed.

Action	Initiated By	To Whom	Timeline	Location
<i>Email notifying instructional staff that student IEP is uploaded to ERConnection and/or accessible in eSped.</i>	<i>SPED Case Manager/LSSP / DIAG</i>	<i>Instructional Staff</i>	<i>24 hours of ARD/receipt of records.</i>	
<i>Review available relevant portions of student IEP for instructional staff through the ERConnect form.</i>	<i>LSSP/DIAG</i>	<i>Instructional Staff</i>	<i>Weekly SPED Staff Meeting</i>	
<i>Instructional staff will be informed that they may request assistance regarding implementation of student's IEP.</i>	<i>SPED Instructional Coordinator</i>	<i>Instructional Staff</i>	<i>Weekly SPED Staff Meeting</i>	

(d) Each school district must develop a process to be used by a teacher who instructs a student with a disability:

- (1) to request a review of the student's IEP;
- (2) that provides for a timely district response to the teacher's request; and
- (3) that provides for notification to the student's parent or legal guardian of that response.

Instructional staff will email campus assessment personnel their request for an ARD committee meeting and provide the reason for the request. Campus assessment personnel will respond to the teacher's request within 3 days either with a date/time or for further clarification. When SPED Case Manager or campus assessment personnel schedule the meeting parent/surrogate will be contacted by phone to explain the instructor's request and a written notice will be mailed as well.

Action	Initiated By	To Whom	Timeline	Location
<i>Teacher requests a review of a student's IEP by email identifying reason for the request.</i>	<i>Instructor</i>	<i>LSSP/DIAG</i>		
<i>Campus assessment personnel respond within 72 hours with a date/time or request for further clarification.</i>	<i>LSSP/DIAG</i>	<i>Instructor</i>	<i>Within 3 days</i>	
<i>Scheduling ARD for instructor's request of IEP review. Contact parent to provide notification of teacher's request, provide information if needed, and identify mutually agreeable date/time.</i>	<i>SPED Case Manager/LSSP/DIAG</i>	<i>Parent or Surrogate</i>	<i>Within 5 days of notice of request.</i>	

§300.323 When IEPs must be in effect.

- (d) **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 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.

General Education and Special Education teachers will have access to student's IEP(s) through access to audit folders and information (i.e., IEP(s), modifications/accommodations, and behavior intervention plans) located in ERConnect.

§300.324 Development, review, and revision of IEP

- (a) (3) **Requirement with respect to regular education teacher.** A regular education teacher of a child with a disability, as a member of the IEP Team, must, to the extent appropriate, participate in the development of the IEP of the child, including the determination of--
- (i) Appropriate positive behavioral interventions and supports and other strategies for the child; and
 - (ii) Supplementary aids and services, program modifications, and support for school personnel consistent with §300.320(a)(4).
- (b) **Review and revision of IEPs.**
- (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 §300.324(a)(3) of this section, participate in the review and revision of the IEP of the child.

Opportunity for General Education Teachers to Request Assistance:

The immediate person for support to the general education teacher is the campus special education teacher. Special educators are in a collaborative role to problem solve any difficulties the special education student may be having in the general class. The ARD/IEP form designates a person responsible for coordination of monitoring the student and this is typically assigned to the special

education teacher. *Special Education teacher responsibilities to ensure participation of the general education teacher may include:*

- A. *sending a memo/email to inform the teachers of your planning period and request some time to discuss the special education students in their room,*
- B. *helping general education instructors access in ERConnect relevant sections of the student's current IEP, such as goals and objectives, accommodations, and adaptations, behavior intervention plans,*
- C. *offering conferences every 6 (or sooner if needed) weeks to discuss the current or proposed IEP of specific students... conferences may be used to discuss grading, homework; clarify student abilities and needs based on evaluation; discuss test accommodations for the teacher to use; or to suggest a behavioral strategy that may work for the student or review the behavioral intervention plan, if appropriate; etc.*

Opportunity to Provide Input to the ARD committee:

The general education teacher will have information regarding the special education teacher's conference time and should use this time or scheduled after school conferences as one means to provide input regarding the student's IEP.

Process for Submitting Requests for Further Consideration of Student's IEP - General Education Teacher:

- A. *There may be instances when the general educator does not agree with the decision of the ARD/IEP committee. There could be several reasons why this might occur, however, it is the responsibility of special educators first and foremost to support and assist the general education teacher in understanding the student's disability and IEP. When a general education teacher does not agree, the special education teacher should:*
 - 1. *make an appointment with the general education teacher to discuss the general education teacher's concern;*
 - 2. *listen carefully to each issue raised by the general education teacher, be sure he/she has a clear understanding of the student's educational competencies and needs. At times, the general education teacher with a concern is not present in the ARD/IEP committee meeting and has not seen the evaluation information and may not understand the student's strengths and weaknesses.*
 - 3. *collaboratively brainstorm possible solutions and alternatives which could be used, being careful to pay close attention to the ARD/IEP committee decisions on placement, accommodations, etc. Areas for support include pacing, methods, materials, etc.*
 - 4. *keep notes of the issues and solutions to be tried and the person responsible for trying each solution, and the timeline;*
 - 5. *set the next date and time to get together to discuss any progress toward the general education teachers concern after he/she has implemented the solutions from the meeting. The special education teacher should ways follow-up. Possible ways special education could support the general education teacher are listed above. Don't hesitate to offer specific suggestions as ways to help the teacher.*

** Progress should be noted and concerns resolved no more that two weeks from your first meeting date.*
- B. *Involvement of the Principal: If steps above do not improve the situation, the Principal or Assistant Principal should be notified (if they have not already been involved). The following steps should be followed if a solution did not occur:*
 - 1. *The special education teacher should inform the administrator of the steps taken above.*

2. *The administrator will determine any further resources to involve in resolving the situation. The campus assessment personnel or Director of Special Education may be included in problem solving.*
3. *The administrator may call a meeting with the parties involved or may offer suggestions to the general education teacher, or may determine an ARD/IEP meeting is necessary to address the issues.*
4. *At any time during the process above, an ARD/IEP committee meeting may be requested by the Principal if determined necessary.*

Process for Submitting Requests for Further Consideration of Student's IEP - Special Education Teacher:

- A. *Involvement of the Principal: If the special education teacher may submit requests for further consideration of the student's IEP to the Principal or Assistant Principal.*
- B. *The following steps should be followed if a solution did not occur:*
 1. *The special education teacher should inform the administrator of the considerations regarding the IEP.*
 2. *The administrator will determine any further resources to involve in resolving the situation. The diagnostician, coordinator, or special education director may be included in problem solving.*
 3. *The administrator may call a meeting with the parties involved or may offer suggestions to the special education teacher, or may determine an ARD/IEP meeting is necessary to address the issues.*

III. SPECIAL EDUCATION TEACHER/SERVICE PROVIDER RESPONSIBILITIES

A. Initial ARD/IEP Meeting.

The special education teacher responsibilities in the IEP process are to:

4. *complete the draft PLAAFPs and resulting IEP measurable annual goal(s). Based on appropriate evaluation (i.e., Brigance), selecting a minimum of one goal and two objectives for each subject or developmental area anticipated; (remember the general education teacher(s) to the extent appropriate, should participate in the development, review, and revision of the student's IEP),*
5. *complete the draft accommodations/modifications*
3. *copies of the accepted IEP goals and objectives will be filed in:*
 - a. *the student eligibility folder with the completed ARD/IEP forms, and*
 - b. *additional copies of the approved IEP will be distributed to the parent and as needed (i.e., general education teacher copy, etc.). Each instructor, general and special education, will have access to the IEPs in SharePoint*
 - c. *assist general education teachers who are involved in the student's instruction to maintain documentation that they are modifying and/or accommodating educational programs of students as specified in the ARD/IEP.*
4. *The special education teacher's copy is used to document progress in the same timely manner as students on your campus who are nondisabled. (ex. every 6 weeks).*

B. Annual

1. *Each student's individual educational program (IEP) will be reviewed within 12 months to determine the student's progress, the student's continued need for special education and related services, and the need for modifying the plan. The ARD/IEP committee may schedule an earlier review date if needed for review, modification, failure, etc.*
 - a. *in addition to presenting the new draft PLAAFPs and resulting IEP goals/objectives,*
 - b. *submit the original IEP with progress documentation marked on the IEP, and*
 - c. *follow #1 through #4 above.*

2. *At the Annual Review, the current IEP objectives will be reviewed and documented on the IEP prior to the development and acceptance of a new IEP.*
 - a. *There should be some objectives that have been added/deleted/revise on the new IEP.*
 - b. *If there are no changes, the ARD/IEP committee should have written justification or the lack of revision and lack of a new IEP generated.*
3. *IEP's will also be reviewed and documented at the beginning of the year and after breaks in the program for regression/recoupment information necessary to discuss the need for ESY.*
4. *Also, progress on the IEP is documented in the same timely manner as other non-disabled students and reported to parents.*

C. Brief/Revision ARD

Recommendations for changes in the individual educational program (IEP), including changes in the student's placement, will be made to the ARD/IEP committee until further guidance from the TEA.

Revisions in the student's IEP which need ARD/IEP committee action may include, but not be limited to:

1. *any lack of expected progress toward the annual goals and in the general curriculum, if appropriate,*
2. *the results of any reevaluation conducted ,*
3. *information about the student provided to, or by, the parents,*
4. *the student's anticipated needs, or*
5. *other matters including but not limited to:*
 - a. *when a student with disabilities fails ;*
 - b. *assigning a student to a classroom to receive instruction in a different curriculum area (i.e. reading comprehension, math calculation, etc.) than was designated by the last ARD/IEP committee;*
 - c. *any addition or deletion of a related service;*
 - d. *adding new objectives when all of the goals and objectives have been met;*
 - e. *any change in schedule which would change the instructional arrangement, or for high school students-the graduation plan;*
 - f. *when the teacher feels the IEP is not appropriate to the student's need.*

All disciplinary actions regarding student with disabilities will be in accordance with federal requirements and TEC Chapter 37, Subchapter A. The ARD/IEP committee will determine the instructional and related services to be provided during the time of expulsion. The student's IEP will include goals and objectives designed to assist in returning the student to school and preventing significant regression.

D. Transfer ARD

The special education teacher will be responsible for attending any temporary ARD meetings as necessary and working with the campus assessment personnel to plan the draft IEP for the temporary transfer student (if needed). At a student's Temporary Placement ARD, a Review of Existing Evaluation Data (REED) will occur for all students enrolled in the school district with an evaluation more than 3 years old. Areas identified as requiring additional information will be addressed through an evaluation at the student's Permanent Placement ARD.

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Section 4. - RELATED SERVICES

I. DEFINITIONS

TEC §29.002. Definitions. 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.

The John H. Wood, Jr. Public Charter District will follow all evaluation criteria in the FIE and Disability sections for appropriate related service assessments and reports. Also, ARD/IEP criteria will be followed for related services.

II. REGULATIONS

§300.34 Related services.

- (a) **General.** Related services means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. Related services also includes school health services, school nurse services designed to enable a child with a disability to receive a free appropriate public education as described in the IEP of the child, social work services in schools, and parent counseling and training.
- (b) **Exception;** services that apply to children with surgically implanted devices, including cochlear implants.
 - (1) Related services do not include a medical device that is surgically implanted, the optimization of device functioning (e.g., mapping), maintenance of the device, or the replacement of that device.
 - (2) Nothing in paragraph (b)(1) of this section—
 - (i) Limits the right of a child with a surgically implanted device (e.g., cochlear implant) to receive related services (as listed in paragraph (a) of this section) that are determined by the IEP Team to be necessary for the child to receive FAPE.
 - (ii) Limits the responsibility of JHW School to appropriately monitor and maintain medical devices that are needed to maintain the health and safety of the child, including breathing, nutrition, or operation of other bodily functions, while the child is transported to and from school or is at school; or
 - (iii) Prevents the routine checking of an external component of a surgically implanted device to make sure it is functioning properly, as required in §300.113(b).
- (c) **Individual related services terms defined.** The terms used in this definition are defined as follows:
 - (1) **Audiology** includes--
 - (i) Identification of children with hearing loss;

- (ii) **Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing;**
 - (iii) **Provision of habilitative activities, such as language habilitation, auditory training, speech reading (lip-reading), hearing evaluation, and speech conservation;**
 - (iv) **Creation and administration of programs for prevention of hearing loss;**
 - (v) **Counseling and guidance of children, parents, and teachers regarding hearing loss; and**
 - (vi) **Determination of children's needs for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.**
- (2) **Counseling services means services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel.**

Counseling services are provided to assist a child with a disability to benefit from special education.

- (3) **Early identification and assessment of disabilities in children means the implementation of a formal plan for identifying a disability as early as possible in a child's life.**
- (4) **Interpreting services includes—**
- (i) **The following when used with respect to children who are deaf or hard of hearing: oral transliteration services, cued language transliteration services, and sign language transliteration and interpreting services and transcription services, such as communication access real-time translation (CART), C-Print, and TypeWell; and**
 - (ii) **Special interpreting services for children who are deaf-blind.**
- (5) **Medical services means services provided by a licensed physician to determine a child's medically related disability that results in the child's need for special education and related services.**
- (6) **Occupational therapy means--**
- (i) **Services provided by a qualified occupational therapist; and**
 - (ii) **Includes--**
 - (A) **Improving, developing or restoring functions impaired or lost through illness, injury, or deprivation;**
 - (B) **Improving ability to perform tasks for independent functioning if functions are impaired or lost; and**
 - (C) **Preventing, through early intervention, initial or further impairment or loss of function.**

The occupational and physical therapy includes:

- a. *improving, developing or restoring functions impaired or lost through illness, injury, or deprivation,*
- b. *improving ability to perform tasks for independent functioning if functions are impaired or lost, and*
- c. *preventing, through early intervention, initial or further impairment or loss of function.*

The primary function is to directly assist the student to benefit from instruction. Occupational and physical therapy services will be provided when a disability adversely affects the educational performance. The therapist will aid the student to develop, increase, improve, and maintain skills that are prerequisites for the student to function within his educational environment.

Medical Requirement

In the case of physical and occupational therapy, services for students shall be prescribed by a physician for consideration by the ARD/IEP committee.

Occupational and Physical Therapy Service Levels

LEVEL I - Individual Service

The occupational therapist is the primary implementer of the related service stated in the IEP. Specific goals and objectives are written and integrated into the IEP for this service.

LEVEL II - Student Centered

The therapist assists the teacher in developing the IEP, which the classroom personnel implement. The frequency of consultation and the primary position responsible for implementing the program should be noted on the IEP. The IEP should reflect consultation that is provided by the therapist.

LEVEL III - Teacher Centered

This service will address an individual student's educational program needs (e.g., pre-vocational, vocational activities, feeding and positioning programs and motor labs). This may be a one-time consult with no specific assessments performed. No formal occupational therapy goals or objectives are written.

LEVEL IV - Classroom Centered

This service will address groups of students and their educational program needs. This often may be a one-time consult with no specific evaluations performed. No objectives or goals are written.

LEVEL V - Program Centered

This service may address staff and/or entire system needs (e.g., environmental adaptations, inservice). No occupational therapy goals or objectives are written.

Discontinuation Of Occupational and/or Physical Therapy Services Will Occur:

** upon ARD/IEP committee discussion of current evaluation and recommendation that OT/PT services are not required due to one of the following:*

- The student has accomplished the goals targeted in the IEP (Individual Educational Program);*
- The student has achieved the maximum benefit from occupational and/or physical therapy;*
- The student's physical dysfunction does not negatively affect his/her educational program;*
- The student maintains progress and no evidence of change is seen;*
- The intervention will not impact the educational success of the student.*

(7) Orientation and mobility services—

- (i) Means services provided to blind or visually impaired students by qualified personnel to enable those students to attain systematic orientation to and safe movement within their environments in school, home, and community; and**
- (ii) Includes teaching students the following, as appropriate:**
 - (A) Spatial and environmental concepts and use of information received by the senses (such as sound, temperature and vibrations) to establish, maintain, or regain orientation and line of travel (e.g., using sound at a traffic light to cross the street);**
 - (B) To use the long cane or a service animal to supplement visual travel skills or as a tool for safely negotiating the environment for students with no available travel vision;**
 - (C) To understand and use remaining vision and distance low vision aids; and**
 - (D) Other concepts, techniques, and tools.**

- (8) (i) **Parent counseling and training** means assisting parents in understanding the special needs of their child;
- (ii) Providing parents with information about child development; and
- (iii) Helping parents to acquire the necessary skills that will allow them to support the implementation of their child's IEP or IFSP.

(9) **Physical therapy** means services provided by a qualified physical therapist. (*see also Occupational Therapy(6) for Level of Services.*)

(10) **Psychological services** includes--

- (i) Administering psychological and educational tests, and other assessment procedures;
- (ii) Interpreting assessment results;
- (iii) Obtaining, integrating, and interpreting information about child behavior and conditions relating to learning;
- (iv) Consulting with other staff members in planning school programs to meet the special educational needs of children as indicated by psychological tests, interviews, direct observation, and behavioral evaluations;
- (v) Planning and managing a program of psychological services, including psychological counseling for children and parents; and
- (vi) Assisting in developing positive behavioral intervention strategies.

Prior to requesting a psychological evaluation, school personnel should be able to document previous educational efforts and strategies and the results of those efforts including participation in or consideration for other programs within JHW School. Further, an intellectual and academic evaluation must be completed.

Psychological services may be requested through the Student Intervention Team meeting or an ARD/IEP evaluation planning committee. If a psychological is requested in an ARD/IEP meeting, the diagnostician will report the request if the psychological staff is not present at the ARD meeting. (See Section 1. - Referral)

(11) **Recreation** includes--

- (i) Assessment of leisure function;
- (ii) Therapeutic recreation services;
- (iii) Recreation programs in schools and community agencies; and
- (iv) Leisure education.

(12) **Rehabilitation counseling services** means services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a student with a disability. The term also includes vocational rehabilitation services provided to a student with a disability by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended, 29 U.S.C. 701 et seq.

(13) **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.

Services are provided to eligible students with disabilities based on ARD/IEP Committee decision. These services are in addition to those routinely available to all students and may include the following:

- a. screening and referral for health needs;*
- b. consultation with physicians, parents, and staff regarding effects of medication, and emergency care training for staff and parents;*
- c. counseling students with disabilities and their families concerning health care practices and services; and*
- d. assistance with catheter, tube feeding and other school health service procedures.*

(14) Social work services in schools includes--

- (i) Preparing a social or developmental history on a child with a disability;**
- (ii) Group and individual counseling with the child and family;**
- (iii) Working in partnership with parents and others on those problems in a child's living situation (home, school, and community) that affect the child's adjustment in school;**
- (iv) Mobilizing school and community resources to enable the child to learn as effectively as possible in his or her educational program; and**
- (v) Assisting in developing positive behavioral intervention strategies.**

(15) Speech therapy is not a related service in Texas. *Speech therapy is considered instruction. See section 3. Disability Criteria*

(16) Transportation includes--

- (i) Travel to and from school and between schools;**
- (ii) Travel in and around school buildings; and**
- (iii) Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with a disability.**
(Authority: 20 U.S.C. 1401(26))

TAC §89.1090. Transportation of Students Placed in a Residential Setting, Including the Texas School for the Blind and Visually Impaired and the Texas School for the Deaf.

For each student placed in a residential setting by the student's admission, review, and dismissal (ARD) committee, including those students placed in the Texas School for the Blind and Visually Impaired and the Texas School for the Deaf, the resident school district shall be responsible for transportation at the beginning and end of the term and for regularly scheduled school holidays when students are expected to leave the residential campus. The resident school district is not responsible for transportation costs for students placed in residential settings by their parents. Transportation costs shall not exceed state approved per diem and mileage rates unless excess costs can be justified and documented. Transportation shall be arranged using the most cost efficient means. When it is necessary for the safety of the student, as determined by the ARD committee, for an adult designated by the ARD committee to accompany the student, round-trip transportation for that adult shall also be provided. The resident school district and the residential facility shall coordinate to ensure that students are transported safely, including the periods of departure and arrival.

§300.139 Location of services and transportation. (see also Section 5. Instructional Arrangements)

- (a) Services on private school premises. Services to parentally-placed private school children with disabilities may be provided on the premises of private, including religious, schools, to the extent consistent with law.**
- (b) Transportation.**
 - (1) General.**
 - (i) If necessary for the child to benefit from or participate in the services provided under this part, a parentally-placed private school child with a disability must be provided transportation--**

- (A) From the child's school or the child's home to a site other than the private school; and
 - (B) From the service site to the private school, or to the child's home, depending on the timing of the services.
- (ii) LEAs are not required to provide transportation from the child's home to the private school.
- (2) **Cost of transportation.** The cost of the transportation described in paragraph (b)(1)(i) of this section may be included in calculating whether the LEA has met the requirement of §300.133.
(Authority: 20 U.S.C. 1412(a)(10)(A)) (*§300.133 Expenditures for Parentally placed students*)

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

- (e) 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.
(*See §300.139 above*)

III. REQUEST FOR RELATED SERVICES

Any request for a related service must be made through the Student Intervention Team upon initial referral or through the planning meeting to Review Existing Evaluation Data as described in Section 2 – FIE. If the related service provider is not in attendance at the planning meeting where the Review Existing Evaluation Data is completed, every effort is made by the evaluation representative to collaborate with the related service provider. Also, the campus assessment personnel are responsible for notifying the appropriate related service provider that an assessment has been requested.

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Section 5 INSTRUCTIONAL ARRANGEMENTS

I. INSTRUCTIONAL ARRANGEMENTS AND SETTINGS

In addition to information contained in this section, please refer to the [Student Attendance Accounting Handbook on the TEA website at: http://www.tea.state.tx.us/school.finance/handbook/index.html](http://www.tea.state.tx.us/school.finance/handbook/index.html)

TAC §89.63. Instructional Arrangements and Settings.

- (a) The John H. Wood, Jr. Public Charter District will provide services with special education personnel to students with disabilities in order to meet the special needs of those students in accordance with 34 Code of Federal Regulations, (*new Fed. reg. numbers §§300.114 - 300.118*)
- (b) Subject to §89.1075(e) of this title (relating to General Program Requirements and Local District Procedures) for the purpose of determining the student's instructional arrangement/setting, the regular school day is defined as the period of time determined appropriate by the admission, review, and dismissal (ARD) committee.
- (c) Instructional arrangements/settings shall be based on the individual needs and individualized education programs (IEPs) of eligible students receiving special education services and shall include the following.
- (1) **Mainstream**. This instructional arrangement/setting is for providing special education and related services to a student in the regular classroom in accordance with the student's IEP. Qualified special education personnel must be involved in the implementation of the student's IEP through the provision of direct, indirect and/or support services to the student, and/or the student's regular classroom teacher(s) necessary to enrich the regular classroom and enable student success. The student's IEP must specify the services that will be provided by qualified special education personnel to enable the student to appropriately progress in the general education curriculum and/or appropriately advance in achieving the goals set out in the student's IEP. Examples of services provided in this instructional arrangement include, but are not limited to, direct instruction, helping teacher, team teaching, co-teaching, interpreter, education aides, curricular or instructional modifications/accommodations, special materials/equipment, positive classroom behavioral interventions and supports consultation with the student and his/her regular classroom teacher(s) regarding the student's progress in regular education classes, staff development, and reduction of ratio of students to instructional staff.
 - (2) **Homebound**. Any student who is placed in the special education homebound instructional arrangement/setting must meet the following four criteria:
 - be eligible for special education and related services as determined by an ARD committee;
 - is expected to be confined at home or hospital bedside for a minimum of four consecutive weeks;
 - for medical reasons only (unless the child is 0 – 5 years of age);
 - medical condition is documented by a physician licensed to practice in the United States. 19 TAC §89.63(c)(2)(A)

(A) Students served on a homebound or hospital bedside basis are expected to be confined for a minimum of four consecutive weeks as documented by a physician licensed to practice in the United States. Homebound or hospital bedside

instruction may, as provided by local district policy, also be provided to chronically ill students who are expected to be confined for any period of time totaling at least four weeks throughout the school year as documented by a physician licensed to practice in the United States. The student's ARD committee shall determine the amount of services to be provided to the student in this instructional arrangement/setting in accordance with federal and state laws, rules, and regulations, including the provisions specified in subsection (b) of this section.

(B) Home instruction may also be used for services to infants and toddlers (birth through age 2) and young children (ages 3-5) when determined appropriate by the child's individualized family services plan (IFSP) committee or ARD committee. This arrangement/setting also applies to school districts described in Texas Education Code, §29.014.

Homebound Notes

- a. In making eligibility and placement decisions the ARD committee must consider the physician's information. However, the physician's note/information is not the sole determining factor in the committee's decision making process.
- b. Students served in the special education homebound instructional arrangement/setting must be served by a certified special education teacher.
- c. A student cannot be expelled into the Homebound Instructional Arrangement/Setting. Please see Student Attendance Accounting Manual Section X (10-4) for detailed information regarding appropriate Instructional Arrangements/Settings and ADA eligibility when expelling students who are receiving special education and related services.
- d. A student otherwise eligible for special education services who meets the four criteria above does not need to meet the federal definition for OHI to be eligible for homebound services.

General Education Homebound (GEH)

Any general education student should be referred to the local campus GEH committee.
Student Attendance Accounting Manual - Section III (4-21)

- (3) Hospital class. This instructional arrangement/setting is for providing special education instruction in a classroom, in a hospital facility, or a residential care and treatment facility not operated by the JHW School. If the students residing in the facility are provided special education services outside the facility, they are considered to be served in the instructional arrangement in which they are placed and are not to be considered as in a hospital class.
- (4) Speech therapy. This instructional arrangement/setting is for providing speech therapy services whether in a regular education classroom or in a setting other than a regular education classroom. When the only special education or related service provided to a student is speech therapy, then this instructional arrangement may not be combined with any other instructional arrangement.
- (5) Resource room/services. This instructional arrangement/setting is for providing special education and related services to a student in a setting other than regular education for less than 50% of the regular school day.
- (6) Self-contained (mild, moderate, or severe) regular campus. This instructional arrangement/setting is for providing special education and related services to a student who is in a self-contained program for 50% or more of the regular school day on a regular school campus.
- (7) Off-home campus. This instructional arrangement/setting is for providing special education and related services to the following, including, but not limited to students at South Texas Independent School District and Windham Independent School District:

- (A) a student who is one of a group of students from more than one school district served in a single location when a free appropriate public education is not available in the respective sending district;
 - (B) a student in a community setting or environment (not operated by a school district) that prepares the student for postsecondary education/training, integrated employment, and/or independent living in coordination with the student's individual transition goals and objectives, including a student with regularly scheduled instruction or direct involvement provided by school district personnel, or a student in a facility not operated by a school district (other than a nonpublic day school) with instruction provided by school district personnel; or
 - (C) a student in a self-contained program at a separate campus operated by the school district that provides only special education and related services.
- (8) Nonpublic day school. This instructional arrangement/setting is for providing special education and related services to students through a contractual agreement with a nonpublic school for special education.
 - (9) Vocational adjustment class/program. This instructional arrangement/setting is for providing special education and related services to a student who is placed on a job (paid or unpaid unless otherwise prohibited by law) with regularly scheduled direct involvement by special education personnel in the implementation of the student's IEP. This instructional arrangement/setting shall be used in conjunction with the student's individual transition goals and only after the school district's career and technical education classes have been considered and determined inappropriate for the student.
 - (10) Residential care and treatment facility (not JHW School resident). This instructional arrangement/setting is for providing special education instruction and related services to students who reside in care and treatment facilities and whose parents do not reside within the boundaries of the school district providing educational services to the students. In order to be considered in this arrangement, the services must be provided on a JHW School campus. If the instruction is provided at the facility, rather than on a school district campus, the instructional arrangement is considered to be the hospital class arrangement/setting rather than this instructional arrangement. Students with disabilities who reside in these facilities may be included in the average daily attendance of the JHW School in the same way as all other students receiving special education.
 - (11) State Supported Living Center. This instructional arrangement/setting is for providing special education and related services to a student who resides at a state supported living center when the services are provided at the state supported living center. If services are provided on a local JHW School campus, the student is considered to be served in the residential care and treatment facility arrangement/setting.
- (d) The appropriate instructional arrangement for students from birth through the age of two with visual and/or auditory impairments shall be determined in accordance with the IFSP, current attendance guidelines, and the agreement memorandum between the Texas Education Agency (TEA) and the Department of Assistive and Rehabilitative Services (DARS), Early Childhood Intervention (ECI) Services.
 - (e) For nonpublic day school placements, the JHW School will submit information to the TEA indicating the students' identification numbers, initial dates of placement, and the names of the facilities with which the school district or shared service arrangement is contracting. The school district or shared service arrangement shall not count contract students' average daily attendance as eligible. The TEA will determine the number of contract students reported in full-time equivalents and pay state funds to the district according to the formula prescribed in law.

- (f) Other program options which may be considered for the delivery of special education and related services to a student may include the following:
- (1) contracts with other school districts; and
 - (2) other program options as approved by the TEA.

II. PRIVATE SCHOOLS: ENROLLED BY THE PARENTS

§300.129 State responsibility regarding children in private schools.

The State must have in effect policies and procedures that ensure that LEAs, and, if applicable, the SEA, meet the private school requirements in §§300.130 through 300.148. (Authority: 20 U.S.C. 1412(a)(10))

§300.130 Definition of parentally-placed private school children with disabilities.

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 schools in §300.13 or secondary schools in §300.36, other than children with disabilities covered under §§300.145 through 300.147. (Authority: 20 U.S.C. 1412(a)(10)(A))

§300.13 Elementary school. 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.

§300.36 Secondary school. 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.

[\(IMPORTANT: See TAC §89.1096. Services for Students Placed by their Parents – Section 4 IEP\).](#)

§300.131 Child find for parentally-placed private school children with disabilities.

- (a) **General.** The JHW School 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 JHW School, in accordance with paragraphs (b) through (e) of this section, and §§300.111 and 300.201.
- (b) **Child find design.** The child find process must be designed to ensure--
 - (1) The equitable participation of parentally-placed private school children; and
 - (2) An accurate count of those children.
- (c) **Activities.** In carrying out the requirements of this section, the JHW School, or, if applicable, the SEA, must undertake activities similar to the activities undertaken for the agency's public school children.
- (d) **Cost.** The cost of carrying out the child find requirements in this section, including individual evaluations, may not be considered in determining if JHW School has met its obligation under §300.133. *(Private school expenditures - below)*
- (e) **Completion period.** The child find process must be completed in a time period comparable to that for other students attending public schools in the JHW School consistent with §300.301. *(Initial Evaluations-section 2 of this document)*
- (f) **Out-of-state children.** Each LEA in which private, including religious, elementary schools and secondary schools are located must, in carrying out the child find requirements in this section, include parentally-placed private school children who reside in a State other than the State in which the private schools that they attend are located. (Authority: 20 U.S.C. 1412(a)(10)(A)(ii))

§300.132 Provision of services for parentally-placed private school children with disabilities--basic requirement.

- (a) **General.** To the extent consistent with the number and location of 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 JHW School, provision is made for the participation of those children in the program assisted or carried out under Part B of the Act by providing them with special education and related services, including direct services determined in accordance with §300.137, unless the Secretary has arranged for services to those children under the by-pass provisions in §§300.190 through 300.198.
- (b) **Services plan parentally-placed private school children with disabilities.** In accordance with paragraph (a) of this section and §§300.137 through 300.139, a services plan must be developed and implemented for each private school child with a disability who has been designated by the JHW School in which the private school is located to receive special education and related services under this part. (*Service Plan - Section 4-IEP*)
- (c) **Record keeping.** The JHW School must maintain in its records, and provide to the SEA, the following information related to parentally-placed private school children covered under §§300.130 through 300.144:
- (1) The number of children evaluated;
 - (2) The number of children determined to be children with disabilities; and
 - (3) The number of children served. (Authority: 20 U.S.C. 1412(a)(10)(A)(i))

(IMPORTANT: See TAC §89.1096. Services for Students Placed by their Parents – Section 4 IEP).

§300.133 Expenditures.

- (a) **Formula.** To meet the requirement of §300.132(a), the JHW School must spend the following on providing special education and related services (including direct services) to parentally-placed private school children with disabilities:
- (1) For children aged 3 through 21, an amount that is the same proportion of the JHW School'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 and secondary schools located in the school district served by the JHW School, is to the total number of children with disabilities in its jurisdiction aged 3 through 21.
 - (2) (i) For children aged three through five, an amount that is the same proportion of the JHW School'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 private, including religious, elementary schools located in the school district served by the JHW School, is to the total number of children with disabilities in its jurisdiction aged three through five.
(ii) 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.
 - (3) If an LEA has not expended for equitable services all of the funds described in paragraphs (a)(1) and (a)(2) of this section by the end of the fiscal year for which Congress appropriated the funds, the LEA must obligate the remaining funds for special education and related services (including direct services) to parentally-placed private school children with disabilities during a carry-over period of one additional year.
- (b) **Calculating proportionate amount.** In calculating the proportionate amount of Federal funds to be provided for parentally-placed private school children with disabilities, the JHW School, after timely and meaningful consultation with representatives of private schools under §300.134, must conduct a thorough and complete child find process to determine the number of parentally-placed children with disabilities attending private schools located in the JHW School. (*See Appendix B of the final regulations for an example of how proportionate share is calculated.*)

(c) **Annual count of the number of parentally-placed private school children with disabilities .**

(1) The John H. Wood, Jr. Public Charter District must--

- (i) After timely and meaningful consultation with representatives of parentally-placed private school children with disabilities (consistent with §300.134), determine the number of parentally-placed private school children with disabilities attending private schools located in the LEA; and
- (ii) Ensure that the count is conducted on any date between October 1 and December 1, inclusive, of each year.

(2) The child count must be used to determine the amount that the JHW School must spend on providing special education and related services to parentally-placed private school children with disabilities in the next subsequent fiscal year.

(d) **Supplement, not supplant.** State and local funds may supplement and in no case supplant the proportionate amount of Federal funds required to be expended for parentally-placed private school children with disabilities under this part. (Authority: 20 U.S.C. 1412(a)(10)(A))

§300.134 Consultation.

To ensure timely and meaningful consultation, the JHW School, or, if appropriate, an SEA, must consult with private school representatives and representatives of parents of parentally-placed private school children with disabilities during the design and development of special education and related services for the children regarding the following:

(a) **Child find.** The child find process, including--

- (1) How parentally-placed private school children suspected of having a disability can participate equitably; and
- (2) How parents, teachers, and private school officials will be informed of the process.

(b) **Proportionate share of funds.** The determination of the proportionate share of Federal funds available to serve parentally-placed private school children with disabilities under §300.133(b), including the determination of how the proportionate share of those funds was calculated.

(c) **Consultation process.** The consultation process among the JHW School, private school officials, and representatives of parents of parentally-placed private school children with disabilities, including how the process will operate throughout the school year to ensure that parentally-placed children with disabilities identified through the child find process can meaningfully participate in special education and related services.

(d) **Provision of special education and related services.** How, where, and by whom special education and related services will be provided for parentally-placed private school children with disabilities, including a discussion of--

- (1) The types of services, including direct services and alternate service delivery mechanisms; and
- (2) How special education and related services will be apportioned if funds are insufficient to serve all parentally-placed private school children; and
- (3) How and when those decisions will be made;

(e) **Written explanation by JHW School regarding services.** How, if the JHW School disagrees with the views of the private school officials on the provision of services or the types of services (whether provided directly or through a contract) the JHW School will provide to the private school officials a written explanation of the reasons why the JHW School chose not to provide services directly or through a contract.

§300.135 Written affirmation.

(a) **When timely and meaningful consultation, as required by §300.134, has occurred, the JHW School must obtain a written affirmation signed by the representatives of participating private schools.**

(b) If the representatives do not provide the affirmation within a reasonable period of time, the JHW School must forward the documentation of the consultation process to the TEA.

§300.136 Compliance.

- (a) **General. A private school official has the right to submit a complaint to the SEA that the JHW School--**
- (1) Did not engage in consultation that was meaningful and timely; or
 - (2) Did not give due consideration to the views of the private school official.
- (b) **Procedure.**
- (1) If the private school official wishes to submit a complaint, the official must provide to the SEA the basis of the noncompliance by the JHW School with the applicable private school provisions in this part; and
 - (2) The JHW School must forward the appropriate documentation to the SEA.
 - (3) (i) If the private school official is dissatisfied with the decision of the SEA, the official may submit a complaint to the Secretary by providing the information on noncompliance described in paragraph (b)(1) of this section; and
(ii) The SEA must forward the appropriate documentation to the Secretary.

§300.137 Equitable services determined.

- (a) **No individual right to special education and related services.** No private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school.
- (b) **Decisions.**
- (1) Decisions about the services that will be provided to parentally-placed private school children with disabilities under §§300.130 through 300.144 must be made in accordance with paragraph (c) of this section and §300.134(c).
 - (2) The JHW School must make the final decisions with respect to the services to be provided to eligible parentally-placed private school children with disabilities.
- (c) **Services plan for each child served under §§300.130 through 300.144.** If a child with a disability is enrolled in a religious or other private school by the child's parents and will receive special education or related services from JHW School, the JHW School must--
- (1) Initiate and conduct meetings to develop, review, and revise a services plan for the child, in accordance with §300.138(b); and
 - (2) Ensure that a representative of the religious or other private school attends each meeting. If the representative cannot attend, the JHW School shall use other methods to ensure participation by the religious or other private school, including individual or conference telephone calls.
(Authority: 20 U.S.C. 1412(a)(10)(A))

§300.138 Equitable services provided.

- (a) **General.**
- (1) The services provided to parentally-placed private school children with disabilities must be provided by personnel meeting the same standards as personnel providing services in the public schools, except that private elementary school and secondary school teachers who are providing equitable services to parentally-placed private school children with disabilities do not have to meet the highly qualified special education teacher requirement of §300.18.
 - (2) Parentally-placed private school children with disabilities may receive a different amount of services than children with disabilities in public schools.
- (b) **Services provided in accordance with a services plan.**
- (1) Each parentally-placed private school child with a disability who has been designated to receive services under §300.132 must have a services plan that describes the specific special education and related services that the JHW School will provide to the child in light of the services that the JHW School has determined, through the process described in §§300.134 and 300.137, it will make available to parentally-placed private school children with disabilities.
 - (2) The services plan must, to the extent appropriate--

- (i) Meet the requirements of §300.320, or for a child ages three through five, meet the requirements of §300.323(b) with respect to the services provided; and
- (ii) Be developed, reviewed, and revised consistent with §§300.321 through 300.324.
- (c) **Provision of equitable services.**
 - (1) The provision of services pursuant to this section and §§300.139 through 300.143 must be provided:
 - (i) By employees of JHW School; or
 - (ii) Through contract by the JHW School with an individual, association, agency, organization, or other entity.
 - (2) Special education and related services provided to parentally-placed private school children with disabilities, including materials and equipment, must be secular, neutral, and nonideological. (Authority: 20 U.S.C. 1412(a)(10)(A)(vi))

§300.139 Location of services and transportation.

- (a) **Services on private school premises.** Services to parentally-placed private school children with disabilities may be provided on the premises of private, including religious, schools, to the extent consistent with law.
- (b) **Transportation.**
 - (1) **General.**
 - (i) If necessary for the child to benefit from or participate in the services provided under this part, a parentally-placed private school child with a disability must be provided transportation--
 - (A) From the child's school or the child's home to a site other than the private school; and
 - (B) From the service site to the private school, or to the child's home, depending on the timing of the services.
 - (ii) LEAs are not required to provide transportation from the child's home to the private school.
 - (2) **Cost of transportation.** The cost of the transportation described in paragraph (b)(1)(i) of this section may be included in calculating whether the JHW School has met the requirement of §300.133. (Authority: 20 U.S.C. 1412(a)(10)(A))

§300.140 Due process complaints and State complaints.

- (a) **Due process not applicable, except for child find.**
 - (1) Except as provided in paragraph (b) of this section, the procedures in §§300.504 through 300.519 do not apply to complaints that an LEA has failed to meet the requirements of §§300.132 through 300.139, including the provision of services indicated on the child's services plan.
- (b) **Child find complaints—to be filed with the LEA in which the private school is located.**
 - (1) The procedures in §§300.504 through 300.519 apply to complaints that an LEA has failed to meet the child find requirements in §§300.131 including the requirements in §§300.300 through 300.311.
 - (2) Any due process complaint regarding the child find requirements (as described in paragraph (b)(1) of the section) must be filed with the LEA in which the private school is located and a copy must be forwarded to the SEA.
- (c) **State complaints.**
 - (1) Any complaints that an SEA or LEA has failed to meet the requirements of §§300.132 through 300.135 and §§300.137 through 300.134 must be filed under the procedures in §§300.151 through 300.153.
 - (2) A complaint filed by a private school official under §300.136(a) must be filed with the SEA in accordance with the procedures in §300.136(b). (Authority: 20 U.S.C. 1412(a)(10)(A))

§300.141 Requirement that funds not benefit a private school.

- (a) The JHW School may not use funds provided under section 611 or 619 of the Act to finance the existing level of instruction in a private school or to otherwise benefit the private school.
- (b) The JHW School must use funds provided under Part B of the Act to meet the special education and related services needs of parentally-placed private school children with disabilities, but not for meeting--
 - (1) The needs of a private school; or
 - (2) The general needs of the students enrolled in the private school. (Authority: 20 U.S.C. 1412(a)(10)(A))

§300.142 Use of personnel.

- (a) **Use of public school personnel.** The JHW School may use funds available under sections 611 and 619 of the Act to make public school personnel available in other than public facilities--
- (1) To the extent necessary to provide services under §§300.130 through 300.144 for parentally-placed private school children with disabilities; and
 - (2) If those services are not normally provided by the private school.
- (b) **Use of private school personnel.** The JHW School may use funds available under sections 611 and 619 of the Act to pay for the services of an employee of a private school to provide services under §§300.130 through 300.144 if--
- (1) The employee performs the services outside of his or her regular hours of duty; and
 - (2) The employee performs the services under public supervision and control.
- (Authority: 20 U.S.C. 1412(a)(10)(A))

§300.143 Separate classes prohibited.

The JHW School may not use funds available under section 611 or 619 of the Act for classes that are organized separately on the basis of school enrollment or religion of the children if—

- (a) The classes are at the same site; and
 - (b) The classes include students enrolled in public schools and students enrolled in private schools.
- (Authority: 20 U.S.C. 1412(a)(10)(A))

§300.144 Property, equipment, and supplies.

- (a) The JHW School must control and administer the funds used to provide special education and related services under §§300.137 through 300.139, and hold title to and administer materials, equipment, and property purchased with those funds for the uses and purposes provided in the Act.
- (b) The JHW School may place equipment and supplies in a private school for the period of time needed for the Part B program.
- (c) The JHW School must ensure that the equipment and supplies placed in a private school--
 - (1) Are used only for Part B purposes; and
 - (2) Can be removed from the private school without remodeling the private school facility.
- (d) The JHW School must remove equipment and supplies from a private school if--
 - (1) The equipment and supplies are no longer needed for Part B purposes; or
 - (2) Removal is necessary to avoid unauthorized use of the equipment and supplies for other than Part B purposes.
- (e) No funds under Part B of the Act may be used for repairs, minor remodeling, or construction of private school facilities.(Authority: 20 U.S.C. 1412(a)(10)(A)(vii))

III. PRIVATE SCHOOLS: PLACED OR REFERRED BY THE JHW School

§300.145 Applicability of §§300.145 through 300.147.

Sections 300.146 through 300.147 apply only to children with disabilities who are or have been placed in or referred to a private school or facility by a public agency as a means of providing special education and related services. (Authority: 20 U.S.C. 1412(a)(10)(B))

§300.146 Responsibility of State educational agency.

Each SEA must ensure that a child with a disability who is placed in or referred to a private school or facility by a public agency--

- (a) Is provided special education and related services--
 - (1) In conformance with an IEP that meets the requirements of §§300.320 through 300.325 (*IEP section 4 of this document*); and
 - (2) At no cost to the parents;
 - (b) Is provided an education that meets the standards that apply to education provided by the SEA and LEAs including the requirements of this part, except for §300.18 and §300.156(c) (*Personnel qualifications section 8 of this document*); and
 - (c) Has all of the rights of a child with a disability who is served by the JHW School.
- (Authority: 20 U.S.C. 1412(a)(10)(B))

§300.147 Implementation by State educational agency. In implementing §300.146, the SEA must--

- (a) Monitor compliance through procedures such as written reports, on-site visits, and parent questionnaires;
 - (b) Disseminate copies of applicable standards to each private school and facility to which the JHW School has referred or placed a child with a disability; and
 - (c) Provide an opportunity for those private schools and facilities to participate in the development and revision of State standards that apply to them.
- (Authority: 20 U.S.C. 1412(a)(10)(B))

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

- (f) School districts that contract for services from non-public day schools shall do so in accordance with 34 Code of Federal Regulations, §300.147, (*above*) and procedures developed by the TEA.

IV. PRIVATE SCHOOLS: ENROLLED BY PARENT - WHEN FAPE IS AT ISSUE

§300.148 Placement of children by parents if FAPE is at issue.

- (a) **General.** This part does not require the JHW School 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 the JHW School made FAPE available to the child and the parents elected to place the child in a private school or facility. However, the JHW School must include that child in the population whose needs are addressed consistent with §§300.131 through 300.144 (*found in this section 5 of the document*)
- (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. (*in section 7 of this document*).
- (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 JHW School, the parents did not inform the IEP Team that they were rejecting the placement proposed by the JHW School 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 JHW School 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 JHW School 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 parent 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. (Authority: 20 U.S.C. 1412(a)(10)(C))**

V. CONTRACTING FOR EDUCATIONAL PLACEMENT

A. Residential Placements

TAC §89.1115. Memorandum of Understanding Concerning Interagency Coordination of Special Education Services to Students with Disabilities in Residential Facilities. ([Section 8. Administration](#))

TEC §29.008. Contracts for Services; Residential Placement.

- (a) A school district, shared services arrangement unit, or regional education service center may contract with a public or private facility, institution, or agency inside or outside of this state for the provision of services to students with disabilities. Each contract for residential placement must be approved by the commissioner. The commissioner may approve a residential placement contract only after at least a programmatic evaluation of personnel qualifications, adequacy of physical plant and equipment, and curriculum content. The commissioner may approve either the whole or a part of a facility or program.
- (b) Except as provided by Subsection (c), costs of an approved contract for residential placement may be paid from a combination of federal, state, and local funds. The local share of the total contract cost for each student is that portion of the local tax effort that exceeds the district's local fund assignment under Section 42.252, divided by the average daily attendance in the district. If the contract involves a private facility, the state share of the total contract cost is that amount remaining after subtracting the local share. If the contract involves a public facility, the state share is that amount remaining after subtracting the local share from the portion of the contract that involves the costs of instructional and related services. For purposes of this subsection, "local tax effort" means the total amount of money generated by taxes imposed for debt service and maintenance and operation less any amounts paid into a tax increment fund under Chapter 311, Tax Code.
- (c) When a student, including one for whom the state is managing conservator, is placed primarily for care or treatment reasons in a private residential facility that operates its own private education program, none of the costs may be paid from public education funds. If a residential placement primarily for care or treatment reasons involves a private residential facility in which the education program is provided by the school district, the portion of the costs that includes appropriate education services, as determined by the school district's admission, review, and dismissal committee, shall be paid from state and federal education funds.
- (d) A district that contracts for the provision of education services rather than providing the services itself shall oversee the implementation of the student's individualized education program and shall annually reevaluate the appropriateness of the arrangement. An approved facility, institution, or agency with whom the district contracts shall periodically report to the district on the services the student has received or will receive in accordance with the contract as well as diagnostic or other evaluative information that the district requires in order to fulfill its obligations under this subchapter.

TAC §89.61. Contracting for Residential Educational Placements for Students with Disabilities.

- (a) Residential placement. The JHW School may contract for residential placement of a student when the student's admission, review, and dismissal (ARD) committee determines that a residential placement is necessary in order for the student to receive a free appropriate public education (FAPE).
- (1) The JHW School may contract for a residential placement of a student only with either public or private residential facilities which maintain current and valid licensure by the Texas Department of Aging and Disability Services, Texas Department of Family and Protective Services, or Department of State Health Services, for the particular disabling condition and age of the student. The JHW School may contract for an out-of-state residential placement in accordance with the provisions of subsection (c)(3) of this section.
 - (2) Subject to subsections (b) and (c) of this section, the district may contract with a residential facility to provide some or all of the special education services listed in the contracted student's individualized education program (IEP). If the facility provides any educational services listed in the student's IEP, the facility's education program must be approved by the commissioner of education in accordance with subsection (c) of this section.
 - (3) A school district which intends to contract for residential placement of a student with a residential facility under this section shall notify the Texas Education Agency (TEA) of its intent to contract for the residential placement through the residential application process described in subsection (b) of this section.
 - (4) The JHW School has the following responsibilities when making a residential placement.
 - (A) Before the JHW School places a student with a disability in, or refers a student to, a residential facility, the district shall initiate and conduct a meeting of the student's ARD committee to develop an IEP for the student in accordance with 34 Code of Federal Regulations, §§300.320-300.325, state statutes, and commissioner of education rules.
 - (B) For each student, the services which the school district is unable to provide and which the facility will provide shall be listed in the student's IEP.
 - (C) For each student, the ARD committee shall establish, in writing, criteria and estimated timelines for the student's return to the school district.
 - (D) The appropriateness of the facility for each student residentially placed shall be documented in the IEP. General screening by a regional education service center is not sufficient to meet the requirements of this subsection.
 - (E) The school district shall make an initial and an annual on-site visit to verify that the residential facility can, and will, provide the services listed in the student's IEP which the facility has agreed to provide to the student.
 - (F) For each student placed in a residential facility (both initial and continuing placements), the school district shall verify, during the initial residential placement ARD committee meeting and each subsequent annual ARD committee meeting, that:
 - (i) the facility meets minimum standards for health and safety;
 - (ii) residential placement is needed and is documented in the IEP; and
 - (iii) the educational program provided at the residential facility is appropriate and the placement is the least restrictive environment for the student.
 - (G) The placement of more than one student, in the same residential facility, may be considered in the same on-site visit to a facility; however, the IEP of each student must be individually reviewed and a determination of appropriateness of placement and service must be made for each student.
 - (H) When a student who is residentially placed by a school district changes his residence to another Texas school district, and the student continues in the contracted placement, the school district which negotiated the contract shall be responsible for the residential contract for the remainder of the school year.

- (b) Application approval process. Requests for approval of state and federal funding for residentially placed students shall be negotiated on an individual student basis through a residential application submitted by the school district to the TEA.
- (1) A residential application may be submitted for educational purposes only. The residential application shall not be approved if the application indicates that the:
 - (A) placement is due primarily to the student's medical problems;
 - (B) placement is due primarily to problems in the student's home;
 - (C) district does not have a plan, including timelines and criteria, for the student's return to the local school program;
 - (D) district did not attempt to implement lesser restrictive placements prior to residential placement (except in emergency situations as documented by the student's ARD committee);
 - (E) placement is not cost effective when compared with other alternative placements; and/or
 - (F) residential facility provides unfundable/unapprovable services.
 - (2) The residential placement, if approved by the TEA, shall be funded as follows:
 - (A) the education cost of residential contracts shall be funded with state funds on the same basis as nonpublic day school contract costs according to Texas Education Code, §42.151;
 - (B) related services and residential costs for residential contract students shall be funded from a combination of fund sources. After expending any other available funds, the district must expend its local tax share per average daily attendance and 25% of its Individuals with Disabilities Education Act, Part B, (IDEA-B) formula tentative entitlement (or an equivalent amount of state and/or local funds) for related services and residential costs. If this is not sufficient to cover all costs of the residential placement, the district through the residential application process may receive additional IDEA-B discretionary funds to pay the balance of the residential contract placement(s) costs; and
 - (C) funds generated by the formula for residential costs described in subsection (b)(2)(B) of this section shall not exceed the daily rate recommended by the Texas Department of Family and Protective Services for the specific level of care in which the student is placed.
- (c) Approval of the education program for facilities which provide educational services. Residential facilities which provide educational services must have their educational programs approved for contracting purposes by the commissioner of education.
- (1) If the education program of a residential facility which is not approved by the commissioner of education is being considered for a residential placement by a local school district, the school district should notify the TEA in writing of its intent to place a student at the facility. The TEA shall begin approval procedures and conduct an on-site visit to the facility within 30 calendar days after the TEA has been notified by the local school district. Approval of the education program of a residential facility may be for one, two, or three years.
 - (2) The commissioner of education shall renew approvals and issue new approvals only for those facilities which have contract students already placed or which have a pending request for residential placement from a school district. This approval does not apply to residential facilities which only provide related services or residential facilities in which the local accredited school district where the facility is located provides the educational program.
 - (3) School districts which contract for out-of-state residential placement shall do so in accordance with the rules for in-state residential placement in this section, except that the facility must be approved by the appropriate agency in the state in which the facility is located, rather than by the commissioner of education in Texas.

TEC §29.012. Residential Facilities

- (a) Except as provided by Subsection (b)(2), not later than the third day after the date a person 22 years of age or younger is placed in a residential facility, the residential facility shall:
 - (1) if the person is three years of age or older, notify the school district in which the facility is located, unless the facility is an open-enrollment charter school; or

- (2) if the person is younger than three years of age, notify a local early intervention program in the area in which the facility is located.
- (b) An agency or political subdivision that funds, licenses, certifies, contracts with, or regulates a residential facility must:
 - (1) require the facility to comply with Subsection (a) as a condition of the funding, licensing, certification, or contracting; or
 - (2) if the agency or political subdivision places a person in a residential facility, provide the notice under Subsection (a) for that person.
- (c) For purposes of enrollment in a school, a person who resides in a residential facility is considered a resident of the school district or geographical area served by the open-enrollment charter school in which the facility is located.
- (d) The Texas Education Agency, the Texas Department of Mental Health and Mental Retardation, the Texas Department of Human Services, the Texas Department of Health, the Department of Protective and Regulatory Services, the Interagency Council on Early Childhood Intervention, the Texas Commission on Alcohol and Drug Abuse, the Texas Juvenile Probation Commission, and the Texas Youth Commission by a cooperative effort shall develop and by rule adopt a memorandum of understanding. The memorandum must:
 - (1) establish the respective responsibilities of school districts and of residential facilities for the provision of a free, appropriate public education, as required by the Individuals with Disabilities Education Act (20 U.S.C. Section 1400 et seq.) and its subsequent amendments, including each requirement for children with disabilities who reside in those facilities;
 - (2) coordinate regulatory and planning functions of the parties to the memorandum;
 - (3) establish criteria for determining when a public school will provide educational services;
 - (4) provide for appropriate educational space when education services will be provided at the residential facility;
 - (5) establish measures designed to ensure the safety of students and teachers; and
 - (6) provide for binding arbitration consistent with Chapter 2009, Government Code, and Section 154.027, Civil Practice and Remedies Code.

B. Texas School for the Blind and Visually Impaired (TSBVI)

TEC §30.021. Purpose of Texas School for the Blind and Visually Impaired. (TSBVI)

- (a) The Texas School for the Blind and Visually Impaired is a state agency established to serve as a special school in the continuum of statewide alternative placements for students who are 21 years of age or younger on September 1 of any school year and who have a visual impairment and who may have one or more other disabilities. The school is intended to serve students who require specialized or intensive educational or related services related to the visual impairment. The school is not intended to serve:
 - (1) students whose needs are appropriately addressed in a home or hospital setting or in a residential treatment facility; or
 - (2) students whose primary, ongoing needs are related to a severe or profound emotional, behavioral, or cognitive deficit.
- (b) The school district in which a student resides is responsible for assuring that a free appropriate public education is provided to each district student placed in the regular school year program of the school and that all legally required meetings for the purpose of developing and reviewing the student's individualized educational program are conducted. If the school disagrees with a district's individualized education program committee recommendation that a student be evaluated for placement, initially placed, or continued to be placed at the school, the district or the school may seek resolution according to a procedure established by the commissioner or through any due process hearing to which the district or school is entitled under the Individuals with Disabilities Education Act (20 U.S.C. Section 1400 et seq.).

C. Texas School for the Deaf (TSD)

TEC §30.051. Purpose of Texas School For the Deaf (TSD)

- (a) The Texas School for the Deaf is a state agency established to provide educational services to persons who are 21 years of age or younger on September 1 of any school year and who are deaf or hard of hearing. The school shall provide:
- (1) comprehensive educational services, on a day or residential basis;
 - (2) short-term services to allow a student to better achieve educational results from services available in the community; and
 - (3) services for any student who is deaf or hard of hearing and also has an additional disability and who requires a specialized support program but does not require a residential treatment facility.

TEC §30.057. Admission to Texas School for the Deaf (TSD)

- (a) The Texas School for the Deaf shall provide services in accordance with Section 30.051 to any eligible student with a disability for whom the school is an appropriate placement if the student has been referred for admission:
- (1) by the school district in which the student resides under the student's individualized education program;
 - (2) by the student's parent or legal guardian, or a person with legal authority to act in place of the parent or legal guardian, or the student, if the student is age 18 or older, at any time during the school year, if the referring person chooses the school as the appropriate placement for the student rather than the placement in the student's local or regional program recommended under the student's individualized education program; or
 - (3) by the student's parent or legal guardian through the student's admission, review, and dismissal or individualized family service plan committee, as an initial referral to special education for students who are three years of age or younger.
- (b) The commissioner, with the advice of the school's governing board, shall adopt rules to implement this section. The rules adopted by the commissioner may address the respective responsibilities of a student's parent or legal guardian or a person with legal authority to act in place of the parent or legal guardian, or the student, if age 18 or older, the school district in which the student resides, and the school.

D. Regional Day School Program for the Deaf (RDSPD)

TEC §30.083. Statewide Plan.

- (a) The director of services shall develop and administer a comprehensive statewide plan for educational services for students who are deaf or hard of hearing, including continuing diagnosis and evaluation, counseling, and teaching. The plan shall be designed to accomplish the following objectives:
- (1) providing assistance and counseling to parents of students who are deaf or hard of hearing in regional day school programs for the deaf and admitting to the programs students who have a hearing loss that interferes with the processing of linguistic information;
 - (2) enabling students who are deaf or hard of hearing to reside with their parents or guardians and be provided an appropriate education in their home school districts or in regional day school programs for the deaf;
 - (3) enabling students who are deaf or hard of hearing who are unable to attend schools at their place of residence and whose parents or guardians live too far from facilities of regional day school programs for the deaf for daily commuting to be accommodated in foster homes or other residential school facilities provided for by the agency so that those children may attend a regional day school program for the deaf;

- (4) enrolling in the Texas School for the Deaf those students who are deaf or hard of hearing whose needs can best be met in that school and designating the Texas School for the Deaf as the statewide educational resource for students who are deaf or hard of hearing;
 - (5) encouraging students in regional day school programs for the deaf to attend general education classes on a part-time, full-time, or trial basis; and
 - (6) recognizing the need for development of language and communications abilities in students who are deaf or hard of hearing, but also calling for the use of methods of communication that will meet the needs of each individual student, with each student assessed thoroughly so as to ascertain the student's potential for communications through a variety of means, including through oral or aural means, fingerspelling, or sign language.
- (b) The director of services may establish separate programs to accommodate diverse communication methodologies. Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.

TEC §30.081 - TEC §30.086. [See Section 8 for Funding](#)

VI. INSTRUCTIONAL PROGRAMS / SERVICE DELIVERY

§300.110 Program options.

The State must ensure that each public agency takes steps to ensure that its children with disabilities have available to them the variety of educational programs and services available to nondisabled children in the area served by the agency, including art, music, industrial arts, consumer and homemaking education, and vocational education.

(Authority: 20 U.S.C. 1412(a)(2), 1413(a)(1))

A. Adapted Physical Education

§300.108 Physical education.

The TEA must ensure that public agencies in the State comply with the following:

- (a) **General.** Physical education services, specially designed if necessary, must be made available to every child with a disability receiving FAPE, unless the JHW School enrolls children without disabilities and does not provide PE to children without disabilities in the same grades.
- (b) **Regular physical education.** Each child with a disability must be afforded the opportunity to participate in the regular physical education program available to nondisabled children unless--
 - (1) The child is enrolled full time in a separate facility; or
 - (2) The child needs specially designed physical education, as prescribed in the child's IEP.
- (c) **Special physical education.** If specially designed physical education is prescribed in a child's IEP, the public agency responsible for the education of that child must provide the services directly or make arrangements for those services to be provided through other public or private programs.
- (d) **Education in separate facilities.** The public agency responsible for the education of a child with a disability who is enrolled in a separate facility must ensure that the child receives appropriate physical education services in compliance with this section.

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

Physical Education services, specially designed where necessary, will be provided as an integral part of the educational program of each student with disabilities. The ARD/IEP committee should consider three options when making decisions about the physical education needs of students with disabilities. These decisions must be based on an adapted physical education evaluation.

1. The APE evaluation will provide the ARD/IEP committee with the following information:

- a. *identification of student's problems,*
- b. *identification of areas of competencies,*
- c. *documentation of the student's need for adapted physical education.*

2. Regular Physical Education with No Modifications or Accommodations

NOTE: An adapted physical education evaluation is not necessary when the student with disabilities can participate in regular physical education with no modifications.

3. Regular Education With Modifications or Accommodations

Regular PE should be considered when modifications would make it possible for the student with disabilities to be successful in a regular physical education program. The specific modifications must be described in the student's IEP. It would be the responsibility of the special education teacher to assist the regular physical education teacher with modifications for the student and to monitor the progress of the student.

4. Adapted Physical Education

- a. *An adapted physical education program with IEP objectives should be provided when the adapted physical education evaluation determines that the student cannot be successful in a regular physical education class with modifications. When the ARD/IEP committee has made the recommendation and the arrangements are specified in the student's IEP, physical education for the students with disabilities may be provided by the following personnel:*
 1. *special education instructional or related service personnel who have the necessary skills and knowledge;*
 2. *physical education teachers;*
 3. *occupational therapist;*
 4. *physical therapist;*
 5. *occupational therapy assistant or physical therapy assistant working under supervision in accordance with the standards of their profession.*
- b. *When these services are provided by special education personnel, the JHW School must document that they have the necessary skills and knowledge.*
- c. *If specially designed physical education is prescribed in a student's IEP, the JHW School will provide the services directly or make arrangements for those services to be provided through other public or private programs.*
- d. *If JHW School enrolls a student with a disability into a facility, JHW School ensures that the student receives appropriate physical education services.*

B. Behavior Improvement Classes

The JHW School will provide specialized instructional strategies, counseling assessment (if needed), positive behavioral supports, and incorporate a behavioral level system for those students whose ARD/IEP Committee determine a more restrictive placement is appropriate due to behavioral needs.

C. Content Mastery Program Overview

The Content Mastery Center is designed to assist students to achieve to their maximum potential in the mainstream. The Content Mastery model is a problem solving model, constantly analyzing student

performance in the mainstream. The Content Mastery teacher works with the general education teacher to match the demands of the class with the skills of the student.

The Content Mastery Teacher will be proactive - obtaining lesson plans, materials, etc., ahead of time to plan a quality support system for both the general education teacher and the student. Increased stimulus variation is offered to students by utilizing as many different strategies as necessary to teach an objective.

1. *There are two underlying principles of the program that are essential to its success:*
 - a. *Students with disabilities can learn and succeed in the mainstream with appropriate accommodations and support.*
 - b. *To be successful in the mainstream, the special student may need special help in several subject areas - not just reading and/or math.*
2. *Services include but are not restricted to the following:*
 - a. *taped textbooks;*
 - b. *hi-lighted materials (textbooks, worksheets, etc.);*
 - c. *reading test to students and/or assisting teachers with test adaptation;*
 - d. *help with a packet, worksheet, written assignment, or anything involving textbooks;*
 - e. *study group for exams;*
 - f. *discussing individual student's strengths and weaknesses with regular teachers;*
 - g. *monitoring student progress and placement;*
 - h. *aiding in student organizational skills;*
 - i. *vocabulary files for mainstreamed courses;*
 - j. *supplementary materials for courses;*
 - k. *modified materials; and*
 - l. *problem solving between regular and special education teachers.*
3. *The student may not use the Content Mastery Center during the teacher's direct instruction, class discussion, group work, lab, or a film. Examples of when a student might use the Content Mastery Center:*
 - a. *when working independently on a packet, written assignment, worksheet, or questions from the textbook;*
 - b. *when the student is assigned to read a chapter in class; or*
 - c. *when students are studying for a test or a test is being given.*
4. *The time spent in the Content Mastery Center may vary from ten minutes to the entire class period, depending on what the student needs to accomplish. Recommended guidelines for general education teachers utilizing the Content Mastery Center for students placed into this setting:*
 - a. Consistently Low Grades
If a student's grades are consistently low in a subject (70's or below), then the student needs to use the Content Mastery Center on a regular basis.
 - b. Poor Student Performance
The student's performance during the lesson cycle provides the most accurate assessment of appropriate use of Content Mastery. There are two critical checkpoints in the lesson cycle: (a) check for understanding, and (b) guided practice. If a student is experiencing academic difficulty at either of these two checks, then he/she should go to Content Mastery for a reteach.
 - c. Behavior. *It is inappropriate to send a student to content mastery because of behavior problems unless so determined by ARD.*

E. Homebound Program

Please see the Student Attendance Accounting Manual for detailed information on the following:

- Homebound Services for Students with Chronic Illness/Acute Health Problems
- Chronic Illness/Acute Health Problems Policy Requirements
- Pregnancy Related Services (PRS)
- Homebound Funding and Documentation Requirement
- Transition from Homebound to the Classroom
- Transitioning Students with Chronic Illness between Homebound and the Classroom
- others

G. Speech Therapy

The speech/language pathologist utilizes a service delivery system that has a range of services from least to most restrictive. An important component of this model is the option of providing service in general classroom through collaboration with the general education teacher. (Speech/language pathologist should be strongly encouraged to continue to implement this when appropriate for students.)

*The amount of therapy time set out in the IEP establishes that these services will be provided. Therefore, it is essential that therapy **not** be canceled. Careful planning is required to allow for ARD/IEP meetings and testing time. Whenever possible, missed therapy sessions should be made up on another day.*

1. *Relative to ARD/IEP committee meetings, the speech pathologist:*
 - a. *must attend ARDs for students with a “speech impairment only”;*
 1. *copy and distribute the modification checklist to all the student’s teachers that are SI only.*
 2. *collaborate with special education teachers on the best means for distribution of students who are SI as a secondary disability.*
 - b. *may attend ARDs for students that have the SI label in addition to another disability.*

I. Vocational Adjustment Class/Program

The Vocational Adjustment Class (VAC) is a special education vocational program. This instructional arrangement is designed for students with disabilities who desire vocational training and are unable to make progress in regular vocational programs. The curriculum of the VAC program includes on-the-job training and frequent supervision at work sites in the community/on the campus.

Employment opportunities and training are based on vocational evaluation, student needs and abilities, teacher recommendations and parental preference.

Admission to the Vocational Adjustment Program is made by the Admission, Review and Dismissal (ARD/IEP) committee.

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Section 6. - DISCIPLINE SECTION

I. STUDENT CODE OF CONDUCT

§300.530 Authority of school personnel.

- (a) **Case-by-case determination.** School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the other requirements of this section, is appropriate for a child with a disability who violates a code of student conduct.

TEC §37.001. Student Code of Conduct.

- (a) The board of trustees of John H. Wood, Jr. Public Charter District shall, with the advice of its district-level committee established under Subchapter F, Chapter 11, adopt a student code of conduct for the district. The student code of conduct must be posted and prominently displayed at each school campus or made available for review at the office of the campus principal. In addition to establishing standards for student conduct, the student code of conduct must:
- (1) specify the circumstances, in accordance with this subchapter, under which a student may be removed from a classroom, campus, or disciplinary alternative education program;
 - (2) specify conditions that authorize or require a principal or other appropriate administrator to transfer a student to a disciplinary alternative education program;
 - (3) outline conditions under which a student may be suspended as provided by Section 37.005 or expelled as provided by Section 37.007;
 - (4) specify whether consideration is given to self-defense as a factor in a decision to order suspension, removal to a disciplinary alternative education program, or expulsion;
 - (5) provide guidelines for setting the length of a term of:
 - (A) a removal under Section 37.006; and
 - (B) an expulsion under Section 37.007; and
 - (6) address the notification of a student's parent or guardian of a violation of the student code of conduct committed by the student that results in suspension, removal to a disciplinary alternative education program, or expulsion.
- (b) In this section:
- (1) "Bullying" has the meaning assigned by Section 37.0832
 - (2) Harassment means threatening to cause harm or bodily injury to another student, engaging in sexually intimidating conduct, causing physical damage to the property of another student, subjecting another student to physical confinement or restraint, or maliciously taking any action that substantially harms another student's physical or emotional health or safety.
- (c) Once the student code of conduct is promulgated, any change or amendment must be approved by the board of trustees.
- (d) Each school year, JHW School shall provide parents notice of and information regarding the student code of conduct.

§37.0832 Bullying Prevention Policies and Procedures

- (a) In this section, "bullying" means, subject to Subsection (b), engaging in written or verbal expression, expression through electronic means, or physical conduct that occurs on school property, at a school-sponsored or school-related activity, or in a vehicle operated by the district and that:
- (1) has the effect or will have the effect of physically harming a student, damaging a

- student's property, or placing a student in reasonable fear or harm to the student's person or of damage to the student's property; or
- (2) is sufficiently severe, persistent, and pervasive enough that the action or threat creates an intimidating, threatening, or abusive educational environment for a student.
- (b) Conduct described in Subsection (a) is considered bullying if that conduct:
- (1) exploits an imbalance of power between the student perpetrator and the student victim through written or verbal expression or physical conduct; and
- (2) interferes with the a student's education or substantially disrupts the operation of a school.
- (c) The board of trustees of each school district shall adopt a policy, including any necessary procedures, concerning bullying that:
- (1) prohibits the bullying of a student;
- (2) prohibits retaliation against any person, including a victim, a witness, or another person, who in good faith provides information concerning an incident of bullying;
- (3) establishes a procedure for providing notice of an incident of bullying to a parent or guardian of the victim and a parent or guardian of the bully within a reasonable amount time after the incident;
- (4) establishes the actions a student should take to obtain assistance and intervention in response to bullying;
- (5) sets out the available counseling options for a student who is a victim of or a witness to bullying or who engages in bullying;
- (6) establishes a procedures for reporting an incident of bullying, investigating a reported incident of bullying, and determining whether the reported incident of bullying occurred;
- (7) prohibits the imposition of a disciplinary measure on a student who, after an investigation, is found to be a victim of bullying, on the basis of the student's use of reasonable self-defense in response to bullying; and
- (8) requires that discipline for bullying of a student with disabilities comply with applicable requirements under federal law, including the Individuals with Disabilities Education Act (20 U.S.C. Section 1400 et seq).
- (d) The policy and any necessary procedures adopted under Subsection (c) must be included:
- (1) annually, in the student and employee school district handbooks; and
- (2) in the district improvement plan under Section 11.252.
- (e) The procedure for reporting bullying established under Subsection (c) must be posted on the district's Internet website to the extent practicable.

II. CHANGE OF PLACEMENT DECISIONS – Change of Placement Analysis

The local campus administrator is responsible for maintaining records on student discipline. Students with disabilities must be monitored by the local campus for total number of removals in order to follow state and federal disciplinary requirements outlined in this section.

Change of Placement Analysis

When a principal or other appropriate administrator recommends disciplinary removal from the student's current IEP placement, conduct a Change of Placement Analysis.

(a) Count the days of disciplinary removal from the student's current educational placement.

1. Portions of a school day that a child had been suspended would be included in determining

- whether the child had been removed for more than 10 cumulative school days or subjected to a change of placement.*
2. *An in-school suspension would not be considered a part of the days of suspension as long as the child is afforded the opportunity to:

 - a. *Appropriately progress in the general curriculum,*
 - b. *Continue to receive the services specified on his or her IEP, and*
 - c. *Continue to participate with nondisabled children to the extent they would have in their current placement**
- (b) *Determine whether the disciplinary removal(s) constitute(s) a change of placement. A disciplinary change of placement occurs if:*
1. *The removal is for more than 10 consecutive school days, or*
 2. *The student is subject to a series of removals that constitute a pattern because they cumulate to more than 10 school days in a school year and because of factors such as the length of each removal, the total amount of time the student is removed and the proximity of the removals to one another.*

****Disciplinary actions pertaining to Special Education students will be monitored by the JHW School District Special Education Director and/or Special Education Coordinator. Weekly reports will be pulled from TxEIS and reviewed utilizing the previously listed criteria criteria.*

****Each campus administration also has access to the "Discipline Flowchart," for Special Education students.*

A. Less than 10 School Day Removals

- (a) *The JHW School is not required to provide services for removal of a student with a disability who has been removed from the current placement for 10 school days or less in that school year, if services are not provided to a student without disabilities who has been similarly removed.*
- (b) *The JHW School may choose to provide the IEP services to the student with disabilities during any short term removal to ISS in order to prevent counting those days of removal toward the 10 cumulative.*
- (c) *In the case of a student whose behavior impedes his or her learning or that of others, convene an ARD meeting, if appropriate, to consider completing an FBA/BIP including positive behavior interventions, strategies, and supports to address that behavior.*

B. More than 10 School Day Removals

1. Consecutive or Cumulative – Pattern

§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 §§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 JHW School 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. (Authority: 20 U.S.C. 1415(k))**

Additional (beyond 10 cumulative days in a school year) short-term removals (of 10 consecutive days or less) for separate incidents of misconduct, are permitted, to the extent removals would be applied to nondisabled students (as long as those removals do not constitute a Change of Placement described in 300.536 above).

An ARD/IEP Committee will:

- (a.) *consider special education and disciplinary records of the student with a disability prior to the final determination regarding the disciplinary action;*
- (b.) *review the student's BIP and its implementation to determine if accommodations / modifications are necessary;*
- (c.) *consult with one or more of the child's teachers determine the extent to which services are needed and the location necessary to enable the student to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the student's IEP.*
- (d.) *If the JHW School initiates disciplinary procedures applicable to all students, the special education and disciplinary records of the student with a disability are transmitted for consideration by the person or persons making the final determination regarding disciplinary action.*

2. Manifestation Determination

If a disciplinary removal constitutes a change in placement, within 10 school days of any decision to change the placement because of a violation of a code of student conduct, the JHW School must convene an ARD/IEP meeting to conduct a manifestation determination and address the two questions in §300.530(e)(1) below.

§300.530 Authority of school personnel.

(e) Manifestation determination.

- (1) **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 JHW School, the parent, and relevant members of the child's IEP Team (as determined by the parent and the JHW School) must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine--**
 - (i) **If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or**
 - (ii) **If the conduct in question was the direct result of the JHW School's failure to implement the IEP.**
- (2) **The conduct must be determined to be a manifestation of the child's disability if the JHW School, the parent, and relevant members of the child's IEP Team determine that a condition in either paragraph (e)(1)(i) or (1)(ii) of this section was met.**
 - *Previously, any tangential or attenuated relationship between the discipline infraction and the child's disability was sufficient to determine that the infraction was a "manifestation" of the child's disability. In IDEA 2004, the House Committee FAQ says to be a manifestation "it is the intention that the conduct in question was caused by, or has a direct and substantial relationship to the child's disability, and is not an attenuated association or mere correlation, such as low self-esteem, to the child's disability."*
 - *Relevant Members of the IEP Team: depending on the type of discipline infraction, when the infraction occurred and who was present, some members of the IEP Team may not be relevant to the discussion of the discipline event. Nonetheless, in each instance the relevant members should be determined in collaboration by the parents and the JHW School.*

- (3) If the JHW School, the parent and relevant members of the child's IEP Team determine the condition described in paragraph (e)(1)(ii) of this section was met, the JHW School must take immediate steps to remedy those deficiencies.
- (f) **Determination that behavior was a manifestation.** If the JHW School, the parent, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child's disability, the IEP Team must--
- (1) Either--
 - (i) Conduct a functional behavioral assessment, unless the JHW School had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the child; or
 - (ii) If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior; and
 - (2) Except as provided in paragraph (g) of this section, return the child to the placement from which the child was removed, unless the parent and the JHW School agree to a change of placement as part of the modification of the behavioral intervention plan.
- (g) **Special circumstances.** School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if the child--
- (1) 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 SEA or an LEA;
 - (2) 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 SEA or an LEA; or
 - (3) Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA.

3. FBA (Functional Behavioral Assessment) / Behavior Intervention Plan (BIP)

§300.324 Development, review, and revision of IEP

- (a) (2) Consideration of special factors. The IEP Team must--
- (i) In the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior.

§300.530 Authority of school personnel.

(d) Services.

- (1) A child with a disability who is removed from the child's current placement pursuant to paragraph (c) or (g) of this section must--
 - (i) Continue to receive educational services, as provided in §300.101(a), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and
 - (ii) Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.
- (2) for (d)(2,3,4,5) *see this section 6 FAPE for Students Removed*

The Functional Behavioral Assessment (FBA) must be completed when:

- * *removal is more than 10 school days due to any other violation of code (FBA to prevent recurrence)*
- * *removals due to drugs, weapons or serious bodily injury*
- * *if behavior is a manifestation(unless FBA/BIP is already in place / then review, revise as needed)*
- * *a previously identified Special Education student transfers into JHW School. During the 30 days prior to permanent placement, consent will be obtained and a FBA will be performed assessing behavioral needs of the student in their current educational placement.*

Ensure the relevant members (including the general education teacher) participate in providing information for the FBA and develop the BIP:

- 1. target the specific behavior that is impeding learning by clearly defining and describing the observable behavior(s).*
- 2. obtain information from a variety of sources including but not limited to: discussions, interviews, records, and direct observation. Also use any standardized instruments if available. Determine duration, frequency, and intensity of any patterns of behavior.*
- 3. identify and describe any antecedents - events that logically serve as the stimulus for the behavior.*
- 4. identify and describe any consequences - this is the action that is following and causes the student to maintain specific behavior - determine effectiveness of each.*
- 5. determine the purpose of the student's behavior - usually to get something, avoid or escape something, or to control the antecedent event.*
- 6. describe the relationship of the behavior to the event and provide possible variables that can be changed in the setting or the situation.*
- 7. develop the behavioral intervention plan and accommodations (BIP). Teach alternatives to the behavior and include positive reinforcement along with consequences.*
- 8. consistently implement, allow enough time for the behavioral intervention plan and accommodations to work, and then review as needed.*

C. Placement made by ARD/IEP Committee

TEC §37.004. Placement of Students with Disabilities

- (a) The placement of a student with a disability who receives special education services may be made only by a duly constituted admission, review, and dismissal committee.
- (b) Any disciplinary action regarding a student with a disability who receives special education services that would constitute a change in placement under federal law may be taken only after the student's admission, review, and dismissal committee conducts a manifestation determination review under 20 U.S.C. Section 1415(k)(4) and its subsequent amendments. Any disciplinary action regarding the student shall be determined in accordance with federal law and regulations, including laws or regulations requiring the provision of:
 - (1) functional behavioral assessments;
 - (2) positive behavioral interventions, strategies, and supports;
 - (3) behavioral intervention plans; and
 - (4) the manifestation determination review.
- (c) A student with a disability who receives special education services may not be placed in alternative education programs solely for educational purposes.
- (d) A teacher in an alternative education program under Section 37.008 who has a special education assignment must hold an appropriate certificate or permit for that assignment.

III. REMOVALS OF STUDENTS WITH DISABILITIES

A. Teacher Removal

TEC §37.002. Removal by Teacher *Notwithstanding any other provision, Section 37.002 and its provisions, wherever referenced, are not applicable to an open-enrollment charter school unless the governing body of the school so determines.*

- (a) A teacher may send a student to the principal's office to maintain effective discipline in the classroom. The principal shall respond by employing appropriate discipline management techniques consistent with the student code of conduct adopted under Section 37.001.
- (b) A teacher may remove from class a student:
 - (1) who has been documented by the teacher to repeatedly interfere with the teacher's ability to communicate effectively with the students in the class or with the ability of the student's classmates to learn; or
 - (2) whose behavior the teacher determines is so unruly, disruptive, or abusive that it seriously interferes with the teacher's ability to communicate effectively with the students in the class or with the ability of the student's classmates to learn.
- (c) If a teacher removes a student from class under Subsection (b), the principal may place the student into another appropriate classroom, into in-school suspension, or into a disciplinary alternative education program as provided by Section 37.008. The principal may not return the student to that teacher's class without the teacher's consent unless the committee established under Section 37.003 determines that such placement is the best or only alternative available. The terms of the removal may prohibit the student from attending or participating in school-sponsored or school-related activity.
- (d) A teacher shall remove from class and send to the principal for placement in a disciplinary alternative education program or for expulsion, as appropriate, a student who engages in conduct described under Section 37.006 or 37.007. The student may not be returned to that teacher's class without the teacher's consent unless the committee established under Section 37.003 determines that such placement is the best or only alternative available.

TEC §37.003. Placement Review Committee

- (a) Each school shall establish a three-member committee to determine placement of a student when a teacher refuses the return of a student to the teacher's class and make recommendations to the district regarding readmission of expelled students. Members shall be appointed as follows:
 - (1) the campus faculty shall choose two teachers to serve as members and one teacher to serve as an alternate member; and
 - (2) the principal shall choose one member from the professional staff of a campus.
- (b) The teacher refusing to readmit the student may not serve on the committee.
- (c) The committee's placement determination regarding a student with a disability who receives special education services under Subchapter A, Chapter 29, is subject to the requirements of the Individuals with Disabilities Education Act (20 U.S.C. Section 1400 et seq.) and federal regulations, state statutes, and agency requirements necessary to carry out federal law or regulations or state law relating to special education.

B. ISS – In School Suspension

- (a) The local campus administrator is responsible for maintaining records on student discipline. Students with disabilities must be monitored by the local campus for total number of removals in order to follow state and federal disciplinary requirements outlined in this section.*
- (b) Follow section II. Change of Placement found beginning on page 601.*

C. Suspension

TEC §37.005. Suspension.

- (a) The principal or other appropriate administrator may suspend a student who engages in conduct identified in the student code of conduct adopted under Section 37.001 as conduct for which a student may be suspended.
- (b) A suspension under this section may not exceed three school days.

TEC §33.081. Extracurricular Activities

- (e) Suspension of a student with a disability that significantly interferes with the student's ability to meet regular academic standards must be based on the student's failure to meet the requirements of the student's individualized education program. The determination of whether a disability significantly interferes with a student's ability to meet regular academic standards must be made by the student's admission, review, and dismissal committee. For purposes of this subsection, "student with a disability" means a student who is eligible for a district's special education program under Section 29.003(b).
- (f) A student suspended under this section may practice or rehearse with other students for an extracurricular activity but may not participate in a competition or other public performance.
- (g) An appeal to the commissioner is not a contested case under Chapter 2001, Government Code, if the issues presented relate to a student's eligibility to participate in extracurricular activities, including issues related to the student's grades or the JHW School's grading policy as applied to the student's eligibility. The commissioner may delegate the matter for decision to a person the commissioner designates. The decision of the commissioner or the commissioner's designee in a matter governed by this subsection may not be appealed except on the grounds that the decision is arbitrary or capricious. Evidence may not be introduced on appeal other than the record of the evidence before the commissioner.

§300.170 Suspension and expulsion rates.

- (a) **General.** The SEA must examine data, including data disaggregated by race and ethnicity, to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities--
 - (1) Among LEAs in the State; or
 - (2) Compared to the rates for nondisabled children within those agencies.
- (b) **Review and revision of policies.** If the discrepancies described in paragraph (a) of this section are occurring, the SEA must reviews and, if appropriate, revises (or requires the affected State agency or LEA to revise) its policies, procedures, and practices relating to the development and implementation of IEPs, the use of positive behavioral interventions and supports, and procedural safeguards, to ensure that these policies, procedures, and practices comply with the Act. (Authority: 20 U.S.C. 1412(a)(22))

D. IAES - (Interim Alternative Educational Setting) Removals for Drugs, Weapons, Serious Bodily Injury

45 School Day Rule *{administrator may take action regardless of the Manifestation Determination if behavior is a result of 3 specific situations listed below §300.530 (g)}*

§300.530 Authority of school personnel.

- (g) **Special circumstances.** School personnel may remove a student to an interim alternative educational setting for **not more than 45 school days** without regard to whether the behavior is determined to be a manifestation of the child's disability, if the child--
- (1) 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 SEA or an LEA;
 - (2) 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 SEA or an LEA; or
 - (3) Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA.
- (h) **Notification.** On the date on which the decision is made to make a removal that constitutes a change of placement of a child with a disability because of a violation of a code of student conduct, the JHW School must notify the parents of that decision, and provide the parents the procedural safeguards notice described in §300.504.
- (i) **Definitions.** For purposes of this section, the following definitions apply:
- (1) **Controlled substance** means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).
 - (2) **Illegal drug** means a controlled substance; but does not include a controlled 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 that Act or under any other provision of Federal law.
 - (3) **Serious bodily injury** has the meaning given the term "serious bodily injury" under paragraph (3) of subsection (h) of section 1365 of title 18, United States Code.
 - (4) **Weapon** has the meaning given the term "dangerous weapon" under paragraph (2) of the first subsection (g) of section 930 of title 18, United States Code. (Authority: 20 U.S.C. 1415(k)(1) and (7))

§300.531 Determination of setting.

The child's IEP Team determines the interim alternative educational setting for services under §300.530(c), (d)(5) and (g) (*found on page 617-618*). (Authority: 20 U.S.C. 1415(k)(2))

DAEP (Disciplinary Alternative Education Programs)

TEC §37.008. Disciplinary Alternative Education Programs (DAEP)

- (a) The JHW School shall provide a disciplinary alternative education program that:
- (1) is provided in a setting other than a student's regular classroom;
 - (2) is located on or off of a regular school campus;
 - (3) provides for the students who are assigned to the disciplinary alternative education program to be separated from students who are not assigned to the program;
 - (4) focuses on English language arts, mathematics, science, history, and self-discipline;
 - (5) provides for students' educational and behavioral needs;
 - (6) provides supervision and counseling;
 - (7) requires that to teach in an off-campus disciplinary alternative education program, each teacher meet all certification requirements established under Subchapter B, Chapter 21; and
 - (8) notwithstanding Subdivision (7), requires that to teach in a disciplinary alternative education program of any kind, each teacher employed by a school district during the 2003-2004 school year or an earlier school year meet, not later than the beginning of the 2005-2006 school year, all certification requirements established under Subchapter B, Chapter 21.
- (b) A disciplinary alternative education program may provide for a student's transfer to:
- (1) a different campus;
 - (2) a school-community guidance center; or
 - (3) a community-based alternative school.

- (c) An off-campus disciplinary alternative education program is not subject to a requirement imposed by this title, other than a limitation on liability, a reporting requirement, or a requirement imposed by this chapter or by Chapter 39.
- (d) A school district may provide a disciplinary alternative education program jointly with one or more other districts.
- (e) The JHW School shall cooperate with government agencies and community organizations that provide services in the district to students placed in a disciplinary alternative education program.
- (f) A student removed to a disciplinary alternative education program is counted in computing the average daily attendance of students in the district for the student's time in actual attendance in the program.
- (g) The JHW School shall allocate to a disciplinary alternative education program the same expenditure per student attending the disciplinary alternative education program, including federal, state, and local funds, that would be allocated to the student's school if the student were attending the student's regularly assigned education program, including a special education program.
- (h) The JHW School may not place a student, other than a student suspended as provided under Section 37.005 or expelled as provided under Section 37.007, in an unsupervised setting as a result of conduct for which a student may be placed in a disciplinary alternative education program.
- (i) On request of a school district, a regional education service center may provide to the district information on developing a disciplinary alternative education program that takes into consideration the district's size, wealth, and existing facilities in determining the program best suited to the district.
- (j) If a student placed in a disciplinary alternative education program enrolls in another school district before the expiration of the period of placement, the board of trustees of the district requiring the placement shall provide to the district in which the student enrolls, at the same time other records of the student are provided, a copy of the placement order. The district in which the student enrolls may continue the disciplinary alternative education program placement under the terms of the order or may allow the student to attend regular classes without completing the period of placement. A district may take any action permitted by this subsection if:
 - (1) the student was placed in a disciplinary alternative education program by an open-enrollment charter school under Section 12.131 and the charter school provides to the district a copy of the placement order; or
 - (2) the student was placed in a disciplinary alternative education program by a school district in another state and:
 - (A) the out-of-state district provides to the district a copy of the placement order; and
 - (B) the grounds for the placement by the out-of-state district are grounds for placement in the district in which the student is enrolling.
- (j-1) If a student was placed in a disciplinary alternative education program by a school district in another state for a period that exceeds one year and a school district in this state in which the student enrolls continues the placement under Subsection (j), the district shall reduce the period of the placement so that the aggregate period does not exceed one year unless, after a review, the district determines that:
 - (1) the student is a threat to the safety of other students or to district employees; or
 - (2) extended placement is in the best interest of the student.
- (k) A program of educational and support services may be provided to a student and the student's parents when the offense involves drugs or alcohol as specified under Section 37.006 or 37.007. A disciplinary alternative education program that provides chemical dependency treatment services must be licensed under Chapter 464, Health and Safety Code.
- (l) The JHW School is required to provide in the district's disciplinary alternative education program a course necessary to fulfill a student's high school graduation requirements only as provided by this subsection. The JHW School shall offer a student removed to a disciplinary alternative education program an opportunity to complete coursework before the beginning of the next school year. The JHW School may provide the student an opportunity to complete coursework through any method

available, including a correspondence course, distance learning, or summer school. The district may not charge the student for a course provided under this subsection.

(l-1) A school district shall provide the parents of a student removed to a disciplinary alternative education program with written notice of the district's obligation under Subsection (1) to provide the student with an opportunity to complete coursework required for graduation. The notice must:

- (1) include the information regarding methods available for completing the coursework; and
- (2) state that the methods are available at no cost to the student.

(m) The commissioner shall adopt rules necessary to evaluate annually the performance of each district's disciplinary alternative education program established under this subchapter. The evaluation required by this section shall be based on indicators defined by the commissioner, but must include student performance on assessment instruments required under Sections 39.023(a) and (c). Academically, the mission of disciplinary alternative education programs shall be to enable students to perform at grade level.

(m-1) The commissioner shall develop a process for evaluating a school district disciplinary alternative education program electronically. The commissioner shall also develop a system and standards for review of the evaluation or use systems already available at the agency. The system must be designed to identify districts that are at high risk of having inaccurate disciplinary alternative education program data or of failing to comply with disciplinary alternative education program requirements. The commissioner shall notify the board of trustees of a district of any objection the commissioner has to the district's disciplinary alternative education program data or of a violation of a law or rule revealed by the data, including any violation of disciplinary alternative education program requirements, or of any recommendation by the commissioner concerning the data. If the data reflect that a penal law has been violated, the commissioner shall notify the county attorney, district attorney, or criminal district attorney, as appropriate, and the attorney general. The commissioner is entitled to access to all district records the commissioner considers necessary or appropriate for the review, analysis, or approval of disciplinary alternative education program data.

TEC §37.006. Removal for Certain Conduct

(a) A student shall be removed from class and placed in a disciplinary alternative education program as provided by Section 37.008 if the student:

- (1) engages in conduct involving a public school that contains the elements of the offense of false alarm or report under Section 42.06, Penal Code, or terroristic threat under Section 22.07, Penal Code; or
- (2) commits the following on or within 300 feet of school property, as measured from any point on the school's real property boundary line, or while attending a school-sponsored or school-related activity on or off of school property:
 - (A) engages in conduct punishable as a felony;
 - (B) engages in conduct that contains the elements of the offense of assault under Section 22.01(a)(1), Penal Code;
 - (C) sells, gives, or delivers to another person or possesses or uses or is under the influence of:
 - (i) marihuana or a controlled substance, as defined by Chapter 481, Health and Safety Code, or by 21 U.S.C. Section 801 et seq.; or
 - (ii) a dangerous drug, as defined by Chapter 483, Health and Safety Code;
 - (D) sells, gives, or delivers to another person an alcoholic beverage, as defined by Section 1.04, Alcoholic Beverage Code, commits a serious act or offense while under the influence of alcohol, or possesses, uses, or is under the influence of an alcoholic beverage;
 - (E) engages in conduct that contains the elements of an offense relating to an abusable volatile chemical under Sections 485.031 through 485.034, Health and Safety Code; or

- (F) engages in conduct that contains the elements of the offense of public lewdness under Section 21.07, Penal Code, or indecent exposure under Section 21.08, Penal Code.
- (b) Except as provided by Section 37.007(d), a student shall be removed from class and placed in a disciplinary alternative education program under Section 37.008 if the student engages in conduct on or off of school property that contains the elements of the offense of retaliation under Section 36.06, Penal Code, against any school employee.
- (c) In addition to Subsections (a) and (b), a student shall be removed from class and placed in a disciplinary alternative education program under Section 37.008 based on conduct occurring off campus and while the student is not in attendance at a school-sponsored or school-related activity if:
- (1) the student receives deferred prosecution under Section 53.03, Family Code, for conduct defined as:
 - (A) a felony offense in Title 5, Penal Code; or
 - (B) the felony offense of aggravated robbery under Section 29.03, Penal Code;
 - (2) a court or jury finds that the student has engaged in delinquent conduct under Section 54.03, Family Code, for conduct defined as
 - (A) a felony offense in Title 5, Penal Code; or
 - (B) the felony offense of aggravated robbery under Section 29.03, Penal Code; or
 - (3) the superintendent or the superintendent's designee has a reasonable belief that the student has engaged in a conduct defined as
 - (A) a felony offense in Title 5, Penal Code.
 - (B) the felony offense of aggravated robbery under Section 29.03, Penal Code; or
- (d) In addition to Subsections (a), (b), and (c), a student may be removed from class and placed in a disciplinary alternative education program under Section 37.008 based on conduct occurring off campus and while the student is not in attendance at a school-sponsored or school-related activity if:
- (1) the superintendent or the superintendent's designee has a reasonable belief that the student has engaged in conduct defined as a felony offense other than aggravated robbery under Section 29.03, Penal Code, or those offenses defined in Title 5, Penal Code; and
 - (2) the continued presence of the student in the regular classroom threatens the safety of other students or teachers or will be detrimental to the educational process.
- (e) In determining whether there is a reasonable belief that a student has engaged in conduct defined as a felony offense by the Penal Code, the superintendent or the superintendent's designee may consider all available information, including the information furnished under Article 15.27, Code of Criminal Procedure.
- (f) Subject to Section 37.007(e), a student who is younger than 10 years of age shall be removed from class and placed in a disciplinary alternative education program under Section 37.008 if the student engages in conduct described by Section 37.007. An elementary school student may not be placed in a disciplinary alternative education program with any other student who is not an elementary school student.
- (g) The terms of a placement under this section must prohibit the student from attending or participating in a school-sponsored or school-related activity.
- (h) On receipt of notice under Article 15.27(g), Code of Criminal Procedure, the superintendent or the superintendent's designee shall review the student's placement in the disciplinary alternative education program. The student may not be returned to the regular classroom pending the review. The superintendent or the superintendent's designee shall schedule a review of the student's placement with the student's parent or guardian not later than the third class day after the superintendent or superintendent's designee receives notice from the office or official designated by the court. After reviewing the notice and receiving information from the student's parent or guardian, the superintendent or the superintendent's designee may continue the student's placement in the

disciplinary alternative education program if there is reason to believe that the presence of the student in the regular classroom threatens the safety of other students or teachers.

- (i) The student or the student's parent or guardian may appeal the superintendent's decision under Subsection (h) to the board of trustees. The student may not be returned to the regular classroom pending the appeal. The board shall, at the next scheduled meeting, review the notice provided under Article 15.27(g), Code of Criminal Procedure, and receive information from the student, the student's parent or guardian, and the superintendent or superintendent's designee and confirm or reverse the decision under Subsection (h). The board shall make a record of the proceedings. If the board confirms the decision of the superintendent or superintendent's designee, the board shall inform the student and the student's parent or guardian of the right to appeal to the commissioner under Subsection (j).
- (j) Notwithstanding Section 7.057(e), the decision of the board of trustees under Subsection (i) may be appealed to the commissioner as provided by Sections 7.057(b), (c), (d), and (f). The student may not be returned to the regular classroom pending the appeal.
- (k) Subsections (h), (i), and (j) do not apply to placements made in accordance with Subsection (a).
- (l) Notwithstanding any other provision of this code, other than Section 37.007(e)(2), a student who is younger than six years of age may not be removed from class and placed in a disciplinary alternative education program.
- (m) Removal to a disciplinary alternative education program under Subsection (a) is not required if the student is expelled under Section 37.007 for the same conduct for which removal would be required.
- (n) A principal or other appropriate administrator may but is not required to remove a student to a disciplinary alternative education program for off-campus conduct for which removal is required under this section if the principal or other appropriate administrator does not have knowledge of the conduct before the first anniversary of the date the conduct occurred.

TEC § 37.0081. Placement of Certain Students in Disciplinary Alternative Education Programs

- (a) Notwithstanding any other provision of this subchapter, the board of trustees of the JHW School, or the board's designee, after an opportunity for a hearing may elect to place a student in a disciplinary alternative education program under Section 37.008 if:
 - (1) the student:
 - (A) has received deferred prosecution under Section 53.03, Family Code, for conduct defined as a felony offense in Title 5, Penal Code; or
 - (i) a felony offense in Title 5, Penal Code, or
 - (ii) the felony offense of aggravated robbery under Section 29.03, Penal Code;
 - (B) has been found by a court or jury to have engaged in delinquent conduct under Section 54.03, Family Code, for conduct defined as a felony offense in Title 5, Penal Code; and
 - (i) a felony offense in Title 5, Penal Code, or
 - (ii) the felony offense of aggravated robbery under Section 29.03, Penal Code;
 - (C) is charged with engaging in conduct defined as a felony offense in Title 5, Penal Code,
 - (i) a felony offense in Title 5, Penal Code, or
 - (ii) the felony offense of aggravated robbery under Section 29.03, Penal Code;
 - (D) has been referred to a juvenile court allegedly engaging in delinquent conduct under Section 54.03, Family code. For conduct defined as
 - (i) a felony offense in Title 5, Penal Code, or
 - (ii) the felony offense of aggravated robbery under Section 29.03, Penal Code;
 - (E) has received probation or deferred adjudication for a felony offense under Title 5, Penal Code; or the felony offense of aggravated robbery under Section 29.03, Penal Code;
 - (F) has been convicted of a felony offense under Title 5, Penal Code; or the felony offense of aggravated robbery under Section 29.03, Penal Code; or
 - (G) has been arrested for or charged with a felony offense under Title 5, Penal Code, or the offense of aggravated robbery under Section 29.03, Penal Code; and

- (2) the board or the board's designee determines that the student's presence in the regular classroom:
 - (A) threatens the safety of other students or teachers;
 - (B) will be detrimental to the educational process; or
 - (C) is not in the best interests of the district's students.
- (b) Any decision of the board of trustees or the board's designee under this section is final and may not be appealed.
- (c) The board of trustees or the board's designee may order placement in accordance with this section regardless of:
 - (1) the date on which the student's conduct occurred;
 - (2) the location at which the conduct occurred;
 - (3) whether the conduct occurred while the student was enrolled in the district; or
 - (4) whether the student has successfully completed any court disposition requirements imposed in connection with the conduct.
- (d) Notwithstanding Section 37.009(c) or any other provision of this subchapter, the board of trustees or the board's designee may order placement in accordance with this section for any period considered necessary by the board or the board's designee in connection with the determination made under Subsection (a)(2). A student placed in a disciplinary alternative education program in accordance with this section is entitled to the periodic review prescribed by Section 37.009(e).

JJAEP (Juvenile Justice Alternative Education Programs)

TAC §89.1052. Discretionary Placements in Juvenile Justice Alternative Education Programs (JJAEP).

- (a) This section applies only to the expulsion of a student with a disability under:
 - (1) Texas Education Code (TEC), §37.007(b), (c), or (f); or
 - (2) TEC, §37.007(d), as a result of conduct that contains the elements of any offense listed in TEC, §37.007(b)(2)(C), against any employee or volunteer in retaliation for or as a result of the person's employment or association with a school district.
- (b) In a county with a JJAEP, a local school district shall invite the administrator of the JJAEP or the administrator's designee to an admission, review, and dismissal (ARD) committee meeting convened to discuss the expulsion of a student with a disability under one of the provisions listed in subsection (a) of this section, relating to offenses for which a school district may expel a student. The reasonable notice of the ARD committee meeting must be provided consistent with 34 Code of Federal Regulations (CFR), §300.322 and §300.503, and §89.1015 of this title (relating to Time Line for All Notices). A copy of the student's current individualized education program (IEP) must be provided to the JJAEP administrator or designee with the notice. If the JJAEP representative is unable to attend the ARD committee meeting, the representative must be given the opportunity to participate in the meeting through alternative means including conference telephone calls. The JJAEP representative may participate in the meeting to the extent that the meeting relates to the student's placement in the JJAEP and implementation of the student's current IEP in the JJAEP.
- (c) For a student with a disability who was expelled under one of the provisions listed in subsection (a) of this section, an ARD committee meeting must be convened to reconsider placement of the student in the JJAEP, if the JJAEP administrator or designee provides written notice to the school district of specific concerns that the student's educational or behavioral needs cannot be met in the JJAEP. The reasonable notice of the ARD committee meeting must be provided consistent with 34 CFR, §300.322 and §300.503, and §89.1015 of this title (relating to Time Line for All Notices). If the JJAEP representative is unable to attend the ARD committee meeting, the representative must be given the opportunity to participate in the meeting through alternative means including conference telephone calls. The JJAEP representative may participate in the meeting to the extent that the meeting relates to the student's continued placement in the JJAEP.

TEC §37.011. Juvenile Justice Alternative Education Program

- (a) The juvenile board of a county with a population greater than 125,000 shall develop a juvenile justice alternative education program, subject to the approval of the Texas Juvenile Probation Commission. The juvenile board of a county with a population of 125,000 or less may develop a juvenile justice alternative education program. For the purposes of this subchapter, only a disciplinary alternative education program operated under the authority of a juvenile board of a county is considered a juvenile justice alternative education program. A juvenile justice alternative education program in a county with a population of 125,000 or less:
- (1) is not required to be approved by the Texas Juvenile Probation Commission; and
 - (2) is not subject to Subsection (c), (d), (f), or (g).
- (a-2) For purposes of this section and Section 37.010(a), a county with a population greater than 125,000 is considered to be a county with a population of 125,000, or less if the county;
- (1) has a population of 180,000 or less;
 - (2) is adjacent to two counties, each of which has a population of more than 1.7 million, and;
 - (3) has seven or more school districts located wholly within the county's boundaries.
- (a-3) For purposes of this section and Section 37.010(a), a county with a population greater than 125,000 is considered to be a county with a population of 125,000, or less if the county;
- (1) has a population of more than 200,000 and less than 200,000;
 - (2) has five or more school districts locally wholly within the county's boundaries; and
 - (3) has located in the county a juvenile justice alternative education program that, on May 1, 2011, served fewer than 15 students.
- (a-4) A school district located in a county considered to be a county with a population of 125,000 or less under Subsection (a-3) shall provide educational services to a student who is expelled from school under this chapter. The district is entitled to count the student in the district's average daily attendance for purposes of receipt of state funds under the Foundation School Program . An educational placement under this section may include:
- (1) the district's disciplinary alternative education program; or
 - (2) a contracted placement with:
 - (A) another school district;
 - (B) an open-enrollment charter school;
 - (C) an institution of higher learning;
 - (D) an adult literacy council; or
 - (E) community organization that can provide an educational program that allows the student to complete the credits required for high school graduation.
- (a-4) For purposes of this Subsection (a-4), and educational placement other than a school district's disciplinary alternative education program is subject to the educational and certification requirements applicable to an open-enrollment charter school under Subsection D, Chapter 12.
- (b) If a student admitted into the public schools of a school district under Section 25.001(b) is expelled from school for conduct for which expulsion is required under Section 37.007(a), (d), or (e), the juvenile court, the juvenile board, or the juvenile board's designee, as appropriate, shall:
- (1) if the student is placed on probation under Section 54.04, Family Code, order the student to attend the juvenile justice alternative education program in the county in which the student resides from the date of disposition as a condition of probation, unless the child is placed in a post-adjudication treatment facility;
 - (2) if the student is placed on deferred prosecution under Section 53.03, Family Code, by the court, prosecutor, or probation department, require the student to immediately attend the juvenile justice

- alternative education program in the county in which the student resides for a period not to exceed six months as a condition of the deferred prosecution;
- (3) in determining the conditions of the deferred prosecution or court-ordered probation, consider the length of the school district's expulsion order for the student; and
 - (4) provide timely educational services to the student in the juvenile justice alternative education program in the county in which the student resides, regardless of the student's age or whether the juvenile court has jurisdiction over the student.
- (b-1) Subsection (b)(4) does not require that educational services be provided to a student who is not entitled to admission into the public schools of a school district under Section 25.001(b).
- (c) A juvenile justice alternative education program shall adopt a student code of conduct in accordance with Section 37.001.
 - (d) A juvenile justice alternative education program must focus on English language arts, mathematics, science, social studies, and self-discipline. Each school district shall consider course credit earned by a student while in a juvenile justice alternative education program as credit earned in a district school. Each program shall administer assessment instruments under Subchapter B, Chapter 39, and shall offer a high school equivalency program. The juvenile board or the board's designee, with the parent or guardian of each student, shall regularly review the student's academic progress. In the case of a high school student, the board or the board's designee, with the student's parent or guardian, shall review the student's progress towards meeting high school graduation requirements and shall establish a specific graduation plan for the student. The program is not required to provide a course necessary to fulfill a student's high school graduation requirements other than a course specified by this subsection.
 - (e) A juvenile justice alternative education program may be provided in a facility owned by a school district. A school district may provide personnel and services for a juvenile justice alternative education program under a contract with the juvenile board.
 - (f) A juvenile justice alternative education program must operate at least seven hours per day and 180 days per year, except that a program may apply to the Texas Juvenile Probation Commission for a waiver of the 180-day requirement. The commission may not grant a waiver to a program under this subsection for a number of days that exceeds the highest number of instructional days waived by the commissioner during the same school year for a school district served by the program.
 - (g) A juvenile justice alternative education program shall be subject to a written operating policy developed by the local juvenile justice board and submitted to the Texas Juvenile Probation Commission for review and comment. A juvenile justice alternative education program is not subject to a requirement imposed by this title, other than a reporting requirement or a requirement imposed by this chapter or by Chapter 39.
 - (h) Academically, the mission of juvenile justice alternative education programs shall be to enable students to perform at grade level. For purposes of accountability under Chapter 39, a student enrolled in a juvenile justice alternative education program is reported as if the student were enrolled at the student's assigned campus in the student's regularly assigned education program, including a special education program. Annually the Texas Juvenile Probation Commission, with the agreement of the commissioner, shall develop and implement a system of accountability consistent with Chapter 39, where appropriate, to assure that students make progress toward grade level while attending a juvenile justice alternative education program. The Texas Juvenile Probation Commission shall adopt rules for the distribution of funds appropriated under this section to juvenile boards in counties required to establish juvenile justice alternative education programs. Except as determined by the commissioner, a student served by a juvenile justice alternative education program on the basis of an expulsion required under Section 37.007(a), (d), or (e) is not eligible for Foundation School Program funding under Chapter 42 or 31 if the juvenile justice alternative education program receives funding from the Texas Juvenile Probation Commission under this subchapter.
 - (i) A student transferred to a juvenile justice alternative education program must participate in the program for the full period ordered by the juvenile court unless the student's school district agrees to

accept the student before the date ordered by the juvenile court. The juvenile court may not order a period of transfer under this section that exceeds the term of any probation ordered by the juvenile court.

- (j) In relation to the development and operation of a juvenile justice alternative education program, a juvenile board and a county and a commissioners court are immune from liability to the same extent as a school district, and the juvenile board's or county's professional employees and volunteers are immune from liability to the same extent as a school district's professional employees and volunteers.
- (k) Each school district in a county with a population greater than 125,000 and the county juvenile board shall annually enter into a joint memorandum of understanding that:
 - (1) outlines the responsibilities of the juvenile board concerning the establishment and operation of a juvenile justice alternative education program under this section;
 - (2) defines the amount and conditions on payments from the school district to the juvenile board for students of the school district served in the juvenile justice alternative education program whose placement was not made on the basis of an expulsion required under Section 37.007(a), (d), or (e);
 - (3) establishes that a student may be placed in the juvenile justice alternative education program if the student engages in serious misbehavior, as defined by Section 37.007(c);
 - (4) identifies and requires a timely placement and specifies a term of placement for expelled students for whom the school district has received a notice under Section 52.041(d), Family Code;
 - (5) establishes services for the transitioning of expelled students to the school district prior to the completion of the student's placement in the juvenile justice alternative education program;
 - (6) establishes a plan that provides transportation services for students placed in the juvenile justice alternative education program;
 - (7) establishes the circumstances and conditions under which a juvenile may be allowed to remain in the juvenile justice alternative education program setting once the juvenile is no longer under juvenile court jurisdiction; and
 - (8) establishes a plan to address special education services required by law.
- (l) The school district shall be responsible for providing an immediate educational program to students who engage in behavior resulting in expulsion under Section 37.007(b) and (f) but who are not eligible for admission into the juvenile justice alternative education program in accordance with the memorandum of understanding required under this section. The school district may provide the program or the school district may contract with a county juvenile board, a private provider, or one or more other school districts to provide the program. The memorandum of understanding shall address the circumstances under which such students who continue to engage in serious misbehavior, as defined by Section 37.007(c), shall be admitted into the juvenile justice alternative education program.
- (m) Each school district in a county with a population greater than 125,000 and the county juvenile board shall adopt a joint memorandum of understanding as required by this section not later than September 1 of each school year.
- (n) If a student who is ordered to attend a juvenile justice alternative education program moves from one county to another, the juvenile court may request the juvenile justice alternative education program in the county to which the student moves to provide educational services to the student in accordance with the local memorandum of understanding between the school district and juvenile board in the receiving county.
- (o) In relation to the development and operation of a juvenile justice alternative education program, a juvenile board and a county and a commissioners court are immune from liability to the same extent as a school district, and the juvenile board's or county's employees and volunteers are immune from liability to the same extent as a school district's employees and volunteers.
- (p) If a district elects to contract with the juvenile board for placement in the juvenile justice alternative education program of students expelled under Section 37.007(b), (c), and (f) and the juvenile board and district are unable to reach an agreement in the memorandum of understanding, either party may

request that the issues of dispute be referred to a binding arbitration process that uses a qualified alternative dispute resolution arbitrator in which each party will pay its pro rata share of the arbitration costs. Each party must submit its final proposal to the arbitrator. If the parties cannot agree on an arbitrator, the juvenile board shall select an arbitrator, the school districts shall select an arbitrator, and those two arbitrators shall select an arbitrator who will decide the issues in dispute. An arbitration decision issued under this subsection is enforceable in a court in the county in which the juvenile justice alternative education program is located. Any decision by an arbitrator concerning the amount of the funding for a student who is expelled and attending a juvenile justice alternative education program must provide an amount sufficient based on operation of the juvenile justice alternative education program in accordance with this chapter. In determining the amount to be paid by a school district for an expelled student enrolled in a juvenile justice alternative education program, the arbitrator shall consider the relevant factors, including evidence of:

- (1) the actual average total per student expenditure in the district's alternative education setting;
 - (2) the expected per student cost in the juvenile justice alternative education program as described and agreed on in the memorandum of understanding and in compliance with this chapter; and
 - (3) the costs necessary to achieve the accountability goals under this chapter.
- (q) In accordance with rules adopted by the board of trustees for the Teacher Retirement System of Texas, a certified educator employed by a juvenile board in a juvenile justice alternative education program shall be eligible for membership and participation in the system to the same extent that an employee of a public school district is eligible. The juvenile board shall make any contribution that otherwise would be the responsibility of the school district if the person were employed by the school district, and the state shall make any contribution to the same extent as if the person were employed by a school district.

E. Expulsion

TEC §37.007. Expulsion for Serious Offenses

- (a) A student shall be expelled from a school if the student, on school property or while attending a school-sponsored or school-related activity on or off of school property:
- (1) uses, exhibits, or possesses:
 - (A) a firearm as defined by Section 46.01(3), Penal Code;
 - (B) an illegal knife as defined by Section 46.01(6), Penal Code, or by local policy;
 - (C) a club as defined by Section 46.01(1), Penal Code; or
 - (D) a weapon listed as a prohibited weapon under Section 46.05, Penal Code;
 - (2) engages in conduct that contains the elements of the offense of:
 - (A) aggravated assault under Section 22.02, Penal Code, sexual assault under Section 22.011, Penal Code, or aggravated sexual assault under Section 22.021, Penal Code;
 - (B) arson under Section 28.02, Penal Code;
 - (C) murder under Section 19.02, Penal Code, capital murder under Section 19.03, Penal Code, or criminal attempt, under Section 15.01, Penal Code, to commit murder or capital murder;
 - (D) indecency with a child under Section 21.11, Penal Code;
 - (E) aggravated kidnapping under Section 20.04, Penal Code;
 - (F) aggravated robbery under Section 29.03, Penal Code;
 - (G) manslaughter under Section 19.04, Penal Code; or
 - (H) criminally negligent homicide under Section 19.05, Penal Code; or
 - (3) engages in conduct specified by Section 37.006(a)(2)(C) or (D), if the conduct is punishable as a felony.

Text of subsec. (b) as amended by Acts 2003, 78th Leg., ch. 1055, Sec. 10

- (b) A student may be expelled if the student:

- (1) engages in conduct involving a public school that contains the elements of the offense of false alarm or report under Section 42.06, Penal Code, or terroristic threat under Section 22.07, Penal Code;
- (2) while on or within 300 feet of school property, as measured from any point on the school's real property boundary line, or while attending a school-sponsored or school-related activity on or off of school property:
 - (A) sells, gives, or delivers to another person or possesses, uses, or is under the influence of any amount of:
 - (i) marijuana or a controlled substance, as defined by Chapter 481, Health and Safety Code, or by 21 U.S.C. Section 801 et seq.;
 - (ii) a dangerous drug, as defined by Chapter 483, Health and Safety Code; or
 - (iii) an alcoholic beverage, as defined by Section 1.04, Alcoholic Beverage Code;
 - (B) engages in conduct that contains the elements of an offense relating to an abusable volatile chemical under Sections 485.031 through 485.034, Health and Safety Code;
 - (C) engages in conduct that contains the elements of an offense under Section 22.01(a)(1), Penal Code, against a school district employee or a volunteer as defined by Section 22.053; or
 - (D) engages in conduct that contains the elements of the offense of deadly conduct under Section 22.05, Penal Code; or
- (3) subject to Subsection (d), while within 300 feet of school property, as measured from any point on the school's real property boundary line:
 - (A) engages in conduct specified by Subsection (a); or
 - (B) possesses a firearm, as defined by 18 U.S.C. Section 921.
- (4) engages in conduct that contains the element of any offense listed in Subsection (a)(2)(A) or (C) or the offense of aggravated robbery under Section 29.03, Penal Code against another student, Without regard to whether the conduct occurs on or off school property or while attending a School-sponsored or school-related activity on or off school property; or
- (5) engages in conduct that contains elements of the offense of breach of computer security under Section 33.02, Penal Code, if:
 - (A) the conduct involves accessing a computer, computer network, or computer system owned By or operated on behalf of a school district, and
 - (B) the student knowingly
 - (i) alters, damages, or deletes school district property or information; or
 - (ii) commits a breach of any other computer, computer network, or computer system.
- (c) A student may be expelled if the student, while placed in a disciplinary alternative education program, engages in documented serious misbehavior while on the program campus despite documented behavioral interventions. For purposes of this subsection, "Serious misbehavior" means:
 - (1) deliberate violent behavior that poses a direct threat to health or safety of others;
 - (2) extortion, meaning the gaining of money or other property by force or threat;
 - (3) conduct that constitutes coercion, as defined by Section 1.07, Penal Code; or
 - (4) conduct that constitutes the offense of:
 - (A) public lewdness under Section 21.07, Penal Code;
 - (B) indecent exposure under Section 21.08, Penal Code;
 - (C) criminal mischief under Section 37.152; or
 - (D) personal hazing under Section 37.152; or
 - (E) harassment under Section 42.07(a)(1), Penal Code, of a student or district employee
- (d) A student shall be expelled if the student engages in conduct that contains the elements of any offense listed in Subsection (a), and may be expelled if the student engages in conduct that contains the elements of any offense listed in Subsection (b)(2)(C), against any employee or volunteer in retaliation for or as a result of the person's employment or association with JHW School, without regard to whether the conduct occurs on or off of school property or while attending a school-sponsored or school-related activity on or off of school property.

- (e) In accordance with 20 U.S.C. Section 7151, a local educational agency, including JHW School, home-rule school district, or open-enrollment charter school, shall expel a student who brings a firearm, as defined by 18 U.S.C. Section 921, to school. The student must be expelled from the student's regular campus for a period of at least one year, except that:
 - (1) the superintendent or other chief administrative officer of the JHW School or of the other local educational agency, as defined by 20 U. S.C. Section 7801, may modify the length of the expulsion in the case of an individual student;
 - (2) the district or other local educational agency shall provide educational services to an expelled student in a disciplinary alternative education program as provided by Section 37.008 if the student is younger than 10 years of age on the date of expulsion; and
 - (3) the district or other local educational agency may provide educational services to an expelled student who is 10 years of age or older in a disciplinary alternative education program as provided in Section 37.008.
- (f) A student who engages in conduct that contains the elements of the offense of criminal mischief under Section 28.03, Penal Code, may be expelled at the district's discretion if the conduct is punishable as a felony under that section. The student shall be referred to the authorized officer of the juvenile court regardless of whether the student is expelled.
- (g) The JHW School shall inform each teacher who has regular contact with a student through a classroom assignment of the conduct of a student who has engaged in any violation listed in this section. A teacher shall keep the information received in this subsection confidential. The State Board for Educator Certification may revoke or suspend the certification of a teacher who intentionally violates this subsection.
- (h) Subject to Subsection (e), notwithstanding any other provision of this section, a student who is younger than 10 years of age may not be expelled for engaging in conduct described by this section.
- (i) A student who engages in conduct described by Subsection (a) may be expelled from school by the district in which the student attends school if the student engages in that conduct:
 - (1) on school property of another district in this state; or
 - (2) while attending a school-sponsored or school-related activity of a school in another district in this state.

F. Emergency Placement

TEC §37.019. Emergency Placement of Expulsion

- (a) This subchapter does not prevent the principal or the principal's designee from ordering the immediate placement of a student in a disciplinary alternative education program if the principal or the principal's designee reasonably believes the student's behavior is so unruly, disruptive, or abusive that it seriously interferes with a teacher's ability to communicate effectively with the students in a class, with the ability of the student's classmates to learn, or with the operation of school or a school-sponsored activity.
- (b) This subchapter does not prevent the principal or the principal's designee from ordering the immediate expulsion of a student if the principal or the principal's designee reasonably believes that action is necessary to protect persons or property from imminent harm.
- (c) At the time of an emergency placement or expulsion, the student shall be given oral notice of the reason for the action. The reason must be a reason for which placement in a disciplinary alternative education program or expulsion may be made on a nonemergency basis. Within a reasonable time after the emergency placement or expulsion, but not later than the 10th day after the date of the placement or expulsion, the student shall be accorded the appropriate due process as required under Section 37.009. If the student subject to the emergency placement or expulsion is a student with disabilities who receives special education services, the emergency placement or expulsion is subject

to federal law and regulations and must be consistent with the consequences that would apply under this subchapter to a student without a disability.

- (d) A principal or principal's designee is not liable in civil damages for an emergency placement under this section. Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995. Amended by Acts 2001, 77th Leg., ch. 767, Sec. 7, eff. June 13, 2001; Acts 2003, 78th Leg., ch. 1055, Sec. 20, eff. June 20, 2003.

IV. FREE APPROPRIATE PUBLIC EDUCATION (FAPE) FOR STUDENTS **REMOVED**

§300.530 Authority of school personnel.

- (a) Case-by-case determination. School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the requirements of this section, is appropriate for a child with a disability who violates a code of student conduct.
- (b) General.
- (1) School personnel under this section may remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 consecutive school days (to the extent those alternatives are applied to children without disabilities), and for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement under §300.536).
 - (2) After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, during any subsequent days of removal the public agency must provide services to the extent required under paragraph (d) of this section.
- (c) Additional authority. For disciplinary changes in placement that would exceed 10 consecutive school days, if the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability pursuant to paragraph (e) of this section, school personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities, except as provided in paragraph (d) of this section.
- (d) Services.
- (1) A child with a disability who is removed from the child's current placement pursuant to paragraph (c) or (g) of this section must--
 - (i) Continue to receive educational services, as provided in §300.101(a), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and
 - (ii) Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.
 - (2) The services required by paragraph (d)(1), (d)(3), (d)(4), and (d)(5), of this section may be provided in an interim alternative educational setting.
 - (3) A public agency is only required to provide services during periods of removal to a child with a disability who has been removed from his or her current placement for 10 school days or less in that school year, if it provides services to a child without disabilities who has been similarly removed.
 - (4) After a child with a disability has been removed from the child's current placement for 10 school days in the same school year, if the current removal is for not more than 10 consecutive school days and is not a change of placement under §300.536, school personnel, in consultation with at least one of the child's teachers, determine the extent to which services are needed as provided in §300.101(a), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP.
 - (5) If the removal is a change of placement under §300.536, the child's IEP Team determines appropriate services under paragraph (d)(1) of this section-

- (e) Manifestation determination.
- (1) 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 JHW School, the parent, and relevant members of the child's IEP Team (as determined by the parent and the JHW School) must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine--
 - (i) The conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or
 - (ii) The conduct in question was the direct result of the JHW School's failure to implement the IEP.
 - (2) The conduct must be determined to be a manifestation of the child's disability if the JHW School, the parent, and relevant members of the child's IEP Team determine that a condition in either paragraph (e)(1)(i) or (1)(ii) of this section was met.
 - (3) If the JHW School, the parent and relevant members of the child's IEP Team determine the condition described in paragraph (e)(1)(ii) of this section was met, the JHW School must take immediate steps to remedy those deficiencies.
- (f) Determination that behavior was a manifestation. If the JHW School, the parent, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child's disability, the IEP Team must--
- (1) Either--
 - (i) Conduct a functional behavioral assessment, unless the JHW School had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the child; or
 - (ii) If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior; and
 - (2) Except as provided in paragraph (g) of this section, return the child to the placement from which the child was removed, unless the parent and the JHW School agree to a change of placement as part of the modification of the behavioral intervention plan.
- (g) Special circumstances. School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if the child--
- (1) 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 SEA or an LEA;
 - (2) 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 SEA or an LEA; or
 - (3) Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA.
- (h) Notification. On the date on which the decision is made to make a removal that constitutes a change of placement of a child with a disability because of a violation of a code of student conduct, the JHW School must notify the parents of that decision, and provide the parents the procedural safeguards notice described in §300.504.
- (i) Definitions. For purposes of this section, the following definitions apply:
- (1) Controlled substance means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).
 - (2) Illegal drug means a controlled substance; but does not include a controlled 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 that Act or under any other provision of Federal law.
 - (3) Serious bodily injury has the meaning given the term "serious bodily injury" under paragraph (3) of subsection (h) of section 1365 of title 18, United States Code.
 - (4) Weapon has the meaning given the term "dangerous weapon" under paragraph (2) of the first subsection (g) of section 930 of title 18, United States Code. (Authority: 20 U.S.C. 1415(k)(1) and (7))

V. CONFINEMENT, RESTRAINT, TIME-OUT

A. Use of Confinement, Restraint, Seclusion, and Time-Out

TEC §37.0021. Use of Confinement, Restraint, Seclusion, and Time-out

- (a) It is the policy of this state to treat with dignity and respect all students, including students with disabilities who receive special education services under Subchapter A, Chapter 29. A student with a disability who receives special education services under Subchapter A, Chapter 29, may not be confined in a locked box, locked closet, or other specially designed locked space as either a discipline management practice or a behavior management technique.
- (b) In this section:
- (1) "Restraint" means the use of physical force or a mechanical device to significantly restrict the free movement of all or a portion of a student's body.
 - (2) "Seclusion" means a behavior management technique in which a student is confined in a locked box, locked closet, or locked room that:
 - (A) is designed solely to seclude a person; and
 - (B) contains less than 50 square feet of space.
 - (3) "Time-out" means a behavior management technique in which, to provide a student with an opportunity to regain self-control, the student is separated from other students for a limited period in a setting:
 - (A) that is not locked; and
 - (B) from which the exit is not physically blocked by furniture, a closed door held shut from the outside, or another inanimate object.
- (c) A JHW School employee or volunteer or an independent contractor of a district may not place a student in seclusion. This subsection does not apply to the use of seclusion in a court-ordered placement, other than a placement in an educational program of JHW School, or in a placement or facility to which the following law, rules, or regulations apply:
- (1) the Children's Health Act of 2000, Pub. L. No. 106-310, any subsequent amendments to that Act, any regulations adopted under that Act, or any subsequent amendments to those regulations;
 - (2) 40 T.A.C. Sections 720.1001-720.1013; or
 - (3) 25 T.A.C. Section 412.308(e).
- (d) The commissioner by rule shall adopt procedures for the use of restraint and time-out by a JHW School employee or volunteer or an independent contractor of a district in the case of a student with a disability receiving special education services under Subchapter A, Chapter 29. A procedure adopted under this subsection must:
- (1) be consistent with:
 - (A) professionally accepted practices and standards of student discipline and techniques for behavior management; and
 - (B) relevant health and safety standards; and
 - (2) identify any discipline management practice or behavior management technique that requires a district employee or volunteer or an independent contractor of a district to be trained before using that practice or technique.
- (e) In the case of a conflict between a rule adopted under Subsection (d) and a rule adopted under Subchapter A, Chapter 29, the rule adopted under Subsection (d) controls.
- (f) For purposes of this subsection, "weapon" includes any weapon described under Section 37.007(a)(1). This section does not prevent a student's locked, unattended **confinement in an emergency** situation while awaiting the arrival of law enforcement personnel if:
- (1) the student possesses a weapon; and
 - (2) the confinement is necessary to prevent the student from causing bodily harm to the student or another person.

- (g) This section and any rules or procedures adopted under this section **do not apply** to:
 - (1) a peace officer while performing law enforcement duties; except as provided by Subsection (1):
 - (2) juvenile probation, detention, or corrections personnel; or
 - (3) an educational services provider with whom a student is placed by a judicial authority, unless the services are provided in an educational program of the JHW School.
- (h) This section and any rules or procedures adopted under this section apply to peace officer only if the peace officer:
 - (1) is employed or commissioned by a school district; or
 - (2) provides, as a school resource officer, a regular police presence on a school district or campus under a memorandum of understanding between the district and a local law enforcement agency.
- (i) A school district shall report electronically to the agency, in accordance with standards provided by the commissioner rule, information relating to the use of restraint by a peace officer performing law enforcement duties on school property or during a school-sponsored or school-related activity. A report submitted under this subsection must be consistent with the requirements adopted by the commissioner rule for reporting the use of restraint involving students with disabilities.

B. Procedures for Use of Restraint and Time-out

TAC §89.1053. Procedures for Use of Restraint and Time-Out.

(a) Requirement to implement. In addition to the requirements of 34 Code of Federal Regulations (CFR), §300.324(a)(2)(i), school districts and charter schools must implement the provisions of this section regarding the use of restraint and time-out. In accordance with the provisions of Texas Education Code (TEC), §37.0021 (Use of Confinement, Restraint, Seclusion, and Time-Out), it is the policy of the state to treat with dignity and respect all students, including students with disabilities who receive special education services under TEC, Chapter 29, Subchapter A.

(b) Definitions.

- (1) Emergency means a situation in which a student's behavior poses a threat of:
 - (A) imminent, serious physical harm to the student or others; or
 - (B) imminent, serious property destruction.
- (2) Restraint means the use of physical force or a mechanical device to significantly restrict the free movement of all or a portion of the student's body.
- (3) Time-out means a behavior management technique in which, to provide a student with an opportunity to regain self-control, the student is separated from other students for a limited period in a setting:
 - (A) that is not locked; and
 - (B) from which the exit is not physically blocked by furniture, a closed door held shut from the outside, or another inanimate object.
- (c) Use of restraint. A school employee, volunteer, or independent contractor may use restraint only in an emergency as defined in subsection (b) of this section and with the following limitations.

(c) Use of restraint. A school employee, volunteer, or independent contractor may use restraint only in an emergency as defined in subsection (b) of this section and with the following limitations.

- (1) Restraint must be limited to the use of such reasonable force as is necessary to address the emergency.
- (2) Restraint must be discontinued at the point at which the emergency no longer exists.
- (3) Restraint must be implemented in such a way as to protect the health and safety of the student and others.
- (4) Restraint must not deprive the student of basic human necessities.

(d) Training on use of restraint. Training for school employees, volunteers, or independent contractors must be provided according to the following requirements.

- (1) A core team of personnel on each campus must be trained in the use of restraint, and the team must include a campus administrator or designee and any general or special education personnel likely to use restraint.
- (2) Personnel called upon to use restraint in an emergency and who have not received prior training must receive training within 30 school days following the use of restraint.
- (3) Training on use of restraint must include prevention and de-escalation techniques and provide alternatives to the use of restraint.
- (4) All trained personnel must receive instruction in current professionally accepted practices and standards regarding behavior management and the use of restraint.

(e) Documentation and notification on use of restraint. In a case in which restraint is used, school employees, volunteers, or independent contractors must implement the following documentation requirements.

- (1) On the day restraint is utilized, the campus administrator or designee must be notified verbally or in writing regarding the use of restraint.
- (2) On the day restraint is utilized, a good faith effort must be made to verbally notify the parent(s) regarding the use of restraint.
- (3) Written notification of the use of restraint must be placed in the mail or otherwise provided to the parent within one school day of the use of restraint.
- (4) Written documentation regarding the use of restraint must be placed in the student's special education eligibility folder in a timely manner so the information is available to the admission, review, and dismissal (ARD) committee when it considers the impact of the student's behavior on the student's learning and/or the creation or revision of a behavioral intervention plan (BIP).
- (5) Written notification to the parent(s) and documentation to the student's special education eligibility folder must include the following:
 - (A) name of the student;
 - (B) name of the staff member(s) administering the restraint;
 - (C) date of the restraint and the time the restraint began and ended;
 - (D) location of the restraint;
 - (E) nature of the restraint;
 - (F) a description of the activity in which the student was engaged immediately preceding the use of restraint;
 - (G) the behavior that prompted the restraint;
 - (H) the efforts made to de-escalate the situation and alternatives to restraint that were attempted; and
 - (I) information documenting parent contact and notification.

(f) Clarification regarding restraint. The provisions adopted under this section do not apply to the use of physical force or a mechanical device that does not significantly restrict the free movement of all or a portion of the student's body. Restraint that involves significant restriction as referenced in subsection (b)(2) of this section does not include:

- (1) physical contact or appropriately prescribed adaptive equipment to promote normative body positioning and/or physical functioning;
- (2) limited physical contact with a student to promote safety (e.g., holding a student's hand), prevent a potentially harmful action (e.g., running into the street), teach a skill, redirect attention, provide guidance to a location, or provide comfort;
- (3) limited physical contact or appropriately prescribed adaptive equipment to prevent a student from engaging in ongoing, repetitive self-injurious behaviors, with the expectation that instruction will be reflected in the individualized education program (IEP) as required by 34 CFR, §300.324(a)(2)(i) to promote student learning and reduce and/or prevent the need for ongoing intervention; or
- (4) seat belts and other safety equipment used to secure students during transportation.

(g) Use of time-out. A school employee, volunteer, or independent contractor may use time-out in accordance with subsection (b)(3) of this section with the following limitations.

- (1) Physical force or threat of physical force must not be used to place a student in time-out.
- (2) Time-out may only be used in conjunction with an array of positive behavior intervention strategies and techniques and must be included in the student's IEP and/or BIP if it is utilized on a recurrent basis to increase or decrease a targeted behavior.
- (3) Use of time-out must not be implemented in a fashion that precludes the ability of the student to be involved in and progress in the general curriculum and advance appropriately toward attaining the annual goals specified in the student's IEP.

(h) Training on use of time-out. Training for school employees, volunteers, or independent contractors must be provided according to the following requirements.

- (1) General or special education personnel who implement time-out based on established in a student's IEP and/or BIP must be trained in the use of time-out.
- (2) Newly-identified personnel called upon to implement time-out based on requirements established in a student's IEP and/or BIP must receive training in the use of time-out within 30 school days of being assigned the responsibility for implementing time-out.
- (3) Training on the use of time-out must be provided as part of a program which addresses a full continuum of positive behavioral intervention strategies, and must address the impact of time-out on the ability of the student to be involved in and progress in the general curriculum and advance appropriately toward attaining the annual goals specified in the student's IEP.
- (4) All trained personnel must receive instruction in current professionally accepted practices and standards regarding behavior management and the use of time-out.

(i) Documentation on use of time-out. Necessary documentation or data collection regarding the use of time-out, if any, must be addressed in the IEP or BIP. The ARD committee must use any

collected data to judge the effectiveness of the intervention and provide a basis for making determinations regarding its continued use.

(j) Student safety. Any behavior management technique and/or discipline management practice must be implemented in such a way as to protect the health and safety of the student and others. No discipline management practice may be calculated to inflict injury, cause harm, demean, or deprive the student of basic human necessities.

(k) Data reporting. With the exception of actions covered by subsection (f) of this section, data regarding the use of restraint must be electronically reported to the Texas Education Agency (TEA) in accordance with reporting standards specified by the TEA.

(l) Peace officers. The provisions adopted under this section apply to a peace officer only if the peace officer is employed or commissioned by the school district or provides, as a school resource officer, a regular police presence on a school district campus under a memorandum of understanding between the school district and a local law enforcement agency, except that the data reporting requirements in subsection (k) of this section apply to the use of restraint by any peace officer performing law enforcement duties on school property or during a school-sponsored or school-related activity.

(m) The provisions adopted under this section do not apply to:

- (1) juvenile probation, detention, or corrections personnel; or
- (2) an educational services provider with whom a student is placed by a judicial authority, unless the services are provided in an educational program of a school district.

C. Time-out Guidelines

The staff of JHW School will be trained and all rules above will be followed. The guidelines below are for the use of time-out. Time-out is outlined below as either Non-exclusionary, which is the least restrictive, or Exclusionary time-out which results from more serious behaviors. Exclusionary time-out should be used when Non-exclusionary attempts are not successful.

1. Non-exclusionary time-out:

- *Planned Ignoring: This is the simplest form of Non-exclusionary time-out. Planned ignoring involves the systematic removal of social reinforcement (attention) by the teacher for a specific amount of time. When the student misbehaves, the teacher breaks eye contact, turns away, and stops all social interaction with the student. Planned ignoring assumes that the teacher's social attention is reinforcing. If it is not, then this will not work to decrease the behavior. If planned ignoring is the appropriate response, the teacher should prepare initially for an increase in the behavior before the behavior will decrease.*
- *Head down on desk: This has been used by teachers for a long time. The student is simply told to put his head down on his desk for a short period of time. (timer may be used)*
- *Observation time-out: The student is removed from his/her desk for misbehaving and is usually placed in a desk away from the main classroom activities for a short period of time. The student is allowed/required to observe the classroom discussion/activities, but is not allowed to actively participate in them. (use of timer recommended – 5 minutes and may reset once)*

- *Non-observation time-out (instructional isolation): This is basically the same as observation time-out, except the student is not allowed to observe the classroom activities. Usually, the student is placed in a particular part of the classroom that does not provide for viewing other students. (use of timer recommended – 10 minutes and may reset once)*
2. *Exclusionary time-out: The student is removed from the classroom and placed in a separate environment for cooling down and instructional activities to resume. Clearly, this is more restrictive and other types of time-out should be attempted first.*
- *Isolated instruction: This is extended time-out from the classroom. The student is required to complete class work in an isolated area in the classroom, another classroom, or the office.*
 - *In-school Suspension: This program is designed to supervise and assist students who have problems related to their general education setting. Reference the campus Student Code of Conduct for complete guidelines.*

VI. DUE PROCESS REQUIREMENTS

A. Procedural Safeguards

All procedural safeguards, including required notice and consents, will be followed throughout the process of disciplinary action for students with disabilities.

B. Conference, Hearing, Review

TEC §37.009. Conference, Hearing, Review

- (a) Not later than the third class day after the day on which a student is removed from class by the teacher under Section 37.002(b) or (d) or by the school principal or other appropriate administrator under Section 37.001(a)(2) or 37.006, the principal or other appropriate administrator shall schedule a conference among the principal or other appropriate administrator, a parent or guardian of the student, the teacher removing the student from class, if any, and the student. At the conference, the student is entitled to written or oral notice of the reasons for the removal, an explanation of the basis for the removal, and an opportunity to respond to the reasons for the removal. The student may not be returned to the regular classroom pending the conference. Following the conference, and whether or not each requested person is in attendance after valid attempts to require the person's attendance, the principal shall order the placement of the student for a period consistent with the student code of conduct. If JHW School policy allows a student to appeal to the board of trustees or the board's designee a decision of the principal or other appropriate administrator, other than an expulsion under Section 37.007, the decision of the board or the board's designee is final and may not be appealed. If the period of the placement is inconsistent with the guidelines included in the student code of conduct under Section 37.001(a)(5), the order must give notice of the inconsistency. The period of the placement may not exceed one year unless, after a review, the district determines that:
- (1) the student is a threat to the safety of other students or to district employees; or
 - (2) extended placement is in the best interest of the student.
- (b) If a student's placement in a disciplinary alternative education program is to extend beyond 60 days or the end of the next grading period, whichever is earlier, a student's parent or guardian is entitled to notice of and an opportunity to participate in a proceeding before the board of trustees of the JHW School or the board's designee, as provided by policy of the board of trustees of the district. Any decision of the board or the board's designee under this subsection is final and may not be appealed.
- (c) Before it may place a student in a disciplinary alternative education program for a period that extends beyond the end of the school year, the board or the board's designee must determine that:

- (1) the student's presence in the regular classroom program or at the student's regular campus presents a danger of physical harm to the student or to another individual; or
 - (2) the student has engaged in serious or persistent misbehavior that violates the district's student code of conduct.
- (d) The board or the board's designee shall set a term for a student's placement in a disciplinary alternative education program. If the period of the placement is inconsistent with the guidelines included in the student code of conduct under Section 37.001(a)(5), the order must give notice of the inconsistency. The period of the placement may not exceed one year unless, after a review, the district determines that:
- (1) the student is a threat to the safety of other students or to district employees; or
 - (2) extended placement is in the best interest of the student.
- (e) A student placed in a disciplinary alternative education program shall be provided a review of the student's status, including a review of the student's academic status, by the board's designee at intervals not to exceed 120 days. In the case of a high school student, the board's designee, with the student's parent or guardian, shall review the student's progress towards meeting high school graduation requirements and shall establish a specific graduation plan for the student. The district is not required under this subsection to provide a course in the district's disciplinary alternative education program except as required by Section 37.008(1). At the review, the student or the student's parent or guardian must be given the opportunity to present arguments for the student's return to the regular classroom or campus. The student may not be returned to the classroom of the teacher who removed the student without that teacher's consent. The teacher may not be coerced to consent.
- (f) Before a student may be expelled under Section 37.007, the board or the board's designee must provide the student a hearing at which the student is afforded appropriate due process as required by the federal constitution and which the student's parent or guardian is invited, in writing, to attend. At the hearing, the student is entitled to be represented by the student's parent or guardian or another adult who can provide guidance to the student and who is not an employee of the JHW School. If the JHW School makes a good-faith effort to inform the student and the student's parent or guardian of the time and place of the hearing, the district may hold the hearing regardless of whether the student, the student's parent or guardian, or another adult representing the student attends. If the decision to expel a student is made by the board's designee, the decision may be appealed to the board. The decision of the board may be appealed by trial de novo to a district court of the county in which the JHW School's central administrative office is located.
- (g) The board or the board's designee shall deliver to the student and the student's parent or guardian a copy of the order placing the student in a disciplinary alternative education program under Section 37.001, 37.002, or 37.006 or expelling the student under Section 37.007.
- (h) If the period of an expulsion is inconsistent with the guidelines included in the student code of conduct under Section 37.001 (a)(5), the order must give notice of the inconsistency. The period of an expulsion may not exceed one year unless, after a review, the district determines that:
- (1) the student is a threat to the safety of other students or to district employees; or
 - (2) extended placement is in the best interest of the student. After the JHW School notifies the parents or guardians of a student that the student has been expelled, the parent or guardian shall provide adequate supervision of the student during the period of expulsion.
- (i) If a student withdraws from the district before an order for placement in a disciplinary alternative education program or expulsion is entered under this section, the principal or board, as appropriate, may complete the proceedings and enter an order. If the student subsequently enrolls in the district during the same or subsequent school year, the district may enforce the order at that time except for any period of the placement or expulsion that has been served by the student on enrollment in another district that honored the order. If the principal or board fails to enter an order after the student withdraws, the next district in which the student enrolls may complete the proceedings and enter an order.

- (j) If, during the term of a placement or expulsion ordered under this section, a student engages in additional conduct for which placement in a disciplinary alternative education program or expulsion is required or permitted, additional proceedings may be conducted under this section regarding that conduct and the principal or board, as appropriate, may enter an additional order as a result of those proceedings. Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995. Amended by Acts 1997, 75th Leg., ch. 1015, Sec. 7, eff. June 19, 1997; Acts 2003, 78th Leg., ch. 1055, Sec. 13, eff. June 20, 2003.

C. Stay Put

- (a) *Previously during appeals, a child with a disability remained in the original placement, “stay-put”. The new IDEA eliminates the “stay-put” requirement in the case of discipline. The “stay-put” rule still applies to the non-disciplinary dispute. Now during the time that an appeal is pending, the child will remain in the interim alternative educational setting (IAES) until the appeal is resolved or until the expiration of the suspension, whichever occurs first.(see D. and E. below)*
- (b) *As described below in §300.532, the hearing officer is required to make a decision within 30 school days from the date the hearing is requested. Therefore, if the student is assigned to an IAES for 45 school days, the hearing officer’s decision will come first.*
- (c) *The IEP Team will pick the appropriate IAES. The timeframe for expiration of the IAES is determined by school personnel applying the “relevant disciplinary procedures applicable to children without disabilities” referred to in the Student Code of Conduct.*

D. Appeal

§300.532 Appeal.

- (a) **General.** The parent of a child with a disability who disagrees with any decision regarding placement under §§300.530 and 300.531, or the manifestation determination under §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 §300.507 and §300.508(a) and (b).
- (b) **Authority of hearing officer.**
- (1) A hearing officer under §300.511 hears, and makes a determination regarding, an appeal requested under paragraph (a) of this section.
 - (2) In making the determination under paragraph (b)(1) of this section, the hearing officer may—
 - (i) Return the child with a disability to the placement from which the child was removed if the hearing officer determines that the removal was a violation of §300.530 or that the child’s behavior was a manifestation of the child’s disability; or
 - (ii) Order a change of placement of the child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.
 - (3) The procedures under paragraphs (a) and (b)(1) and (2) of this section may be repeated, if the JHW School believes that returning the child to the original placement is substantially likely to result in injury to the child or to others.
- (c) **Expedited due process hearing.**
- (1) Whenever a hearing is requested under paragraph (a) of this section, the parents or the JHW School involved in the dispute must have an opportunity for an impartial due process hearing consistent with the requirements of §§300.507 and 300.508(a) through (c) and §§300.510 through 300.514, except as provided in paragraph (c)(2) through ~~(5)~~ (4) of this section.
 - (2) The SEA or JHW School is responsible for arranging the expedited due process hearing, which must occur within 20 school days of the date the complaint requesting the hearing is filed. The hearing officer must make a determination within 10 school days after the hearing.
 - (3) Unless the parents and the JHW School agree in writing to waive the resolution meeting described in paragraph (c)(3)(i) of this section, or agree to use the mediation process described in §300.506—

- (i) A resolution meeting must occur within seven days of receiving notice, and
- (ii) The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of receipt of the due process complaint.
- (4) A State may establish different State-imposed procedural rules for expedited due process hearings conducted under this section than it has established for other due process hearings, but, except for the timelines as modified in paragraph (c)(3) of this section, the State must ensure that the requirements in §§300.510 through 300.514 are met.
- (5) The decisions on expedited due process hearings are appealable consistent with §300.514. (Authority: 20 U.S.C. 1415(k)(3) and (4)(B), 1415(f)(1)(A))

E. Placement During Appeals

§300.533 Placement during appeals.

When an appeal under §300.532 has been requested by either the parent or the JHW School, the child must remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period specified in §300.530 (c) or (g), whichever occurs first, unless the parent and the SEA or JHW School agree otherwise. (Authority: 20 U.S.C. 1415(k)(4)(A))

F. Resolution Meeting Prior to Due Process

§300.510 Resolution process.

(a) Resolution meeting.

- (1) Within 15 days of receiving notice of the parents' due process complaint, and prior to the initiation of a due process hearing under §300.511, the JHW School must convene a meeting with the parents and the relevant member or members of the IEP Team who have specific knowledge of the facts identified in the due process complaint that--
 - (i) Includes a representative of the public agency who has decision-making authority on behalf of that agency; and
 - (ii) May not include an attorney of the JHW School unless the parent is accompanied by an attorney.
- (2) The purpose of the meeting is for the parents of the child to discuss their due process complaint, and the facts that form the basis of the due process complaint, so that the JHW School has the opportunity to resolve the dispute that is the basis for the due process complaint.
- (3) The meeting described in paragraph (a)(1) and (2) of this section need not be held if--
 - (i) The parent and the JHW School agree in writing to waive the meeting; or
 - (ii) The parent and the JHW School agree to use the mediation process described in §300.506.
- (4) The parent and the JHW School determine the relevant members of the IEP Team to attend the meeting.

(b) Resolution period.

- (1) If the JHW School has not resolved the due process complaint to the satisfaction of the parents within 30 days of the receipt of the due process complaint, the due process hearing must occur.
- (2) Except as provided in paragraph (c) of this section, the timeline for issuing a final decision under §300.515 begins at the expiration of this 30-day period.
- (3) Except where the parties have jointly agreed to waive the resolution process or to use mediation, notwithstanding paragraphs (b)(1) and (2) of this section, the failure of a parent filing a due process complaint to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until the meeting is held.
- (4) If the JHW School is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made (and documented using the procedures in §300.322(d)), the JHW School may, at the conclusion of the 30-day period, request that a hearing officer dismiss the parent's due process complaint.
- (5) If the JHW School fails to hold the resolution meeting specified in paragraph (a) of this section within 15 days of receiving notice of a parent's due process complaint or fails to participate in the resolution meeting, the parent may seek the intervention of a hearing officer to begin the due process hearing timeline.

- (c) **Adjustments to 30-day resolution period.** The 45-day timeline for the due process hearing in §300.515(a) starts the day after one of the following events:
- (1) Both parties agree in writing to waive the resolution meeting;
 - (2) After either the mediation or resolution meeting starts but before the end of the 30-day resolution period, the parties agree in writing that no agreement is possible;
 - (3) If both parties agree in writing to continue the mediation at the end of the 30-day resolution period, but later, the parent or JHW School withdraws from the mediation process.
- (d) **Written settlement agreement.** If a resolution to the dispute is reached at the meeting described in paragraphs (a)(1) and (2) of this section, the parties must execute a legally binding agreement that is--
- (1) Signed by both the parent and a representative of the agency who has the authority to bind the agency; and
 - (2) Enforceable in any State court of competent jurisdiction or in a district court of the United States, or by the SEA, if the State has other mechanisms or procedures that permit parties to seek enforcement of resolution agreements, pursuant to §300.537.
- (e) **Agreement review period.** If the parties execute an agreement pursuant to paragraph (c) of this section, a party may void the agreement within 3 business days of the agreement's execution.
(Authority: 20 U.S.C. 1415(f)(1)(B))

This process allows an opportunity for the school to resolve the parent's complaint. This can take up to 30 days and the timelines for a due process hearing begin to run only after those first 30 days. Also, there is an "expedited hearing" in the case of a disciplinary appeal.

G. Notice of Disciplinary Actions (Student Moves to another District)

TEC §37.021. Notice of Disciplinary Action

Text of section as added by Acts 2003, 78th Leg., ch. 631, Sec. 1

- (a) In this section:
- (1) "Disciplinary action" means a suspension, expulsion, placement in an alternative education program, or other limitation in enrollment eligibility of a student by a district or school.
 - (2) "District or school" includes an independent school district, a home-rule school district, a campus or campus program charter holder, or an open-enrollment charter school.
- (b) If a district or school takes disciplinary action against a student and the student subsequently enrolls in another district or school before the expiration of the period of disciplinary action, the governing body of the district or school taking the disciplinary action shall provide to the district or school in which the student enrolls, at the same time other records of the student are provided, a copy of the order of disciplinary action.
- (c) Subject to Section 37.007(e), the district or school in which the student enrolls may continue the disciplinary action under the terms of the order or may allow the student to attend regular classes without completing the period of disciplinary action.

Added by Acts 2003, 78th Leg., ch. 631, Sec. 1, eff. June 20, 2003.

For text of section as added by Acts 2003, 78th Leg., ch. 1055, Sec. 22, see Sec. 37.021, post.

H. Protection for Students not Yet Eligible for Special Education

§300.534 Protections for children not yet eligible for special education and related services.

- (a) **General.** A child who has not been determined to be eligible for special education and related services under this part and who has engaged in behavior that violated a code of student conduct, may assert any of the protections provided for in this part if the JHW School had knowledge (as determined in accordance with paragraph (b) of this section) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.
- (b) **Basis of knowledge.** The JHW School must be deemed to have knowledge that a child is a child with a disability if before the behavior that precipitated the disciplinary action occurred—

- (1) The parent of the child expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child, that the child is in need of special education and related services;
 - (2) The parent of the child requested an evaluation of the child pursuant to §§300.300 through 300.311; or
 - (3) The teacher of the child, or other personnel of the JHW School, expressed specific concerns about a pattern of behavior demonstrated by the child directly to the director of special education of the JHW School or to other supervisory personnel of the agency.
- (c) **Exception.** A public agency would not be deemed to have knowledge under paragraph (b) of this section if—
- (1) The parent of the child—
 - (i) Has not allowed an evaluation of the child pursuant to §§300.300 through 300.311; or
 - (ii) Has refused services under this part; or
 - (2) The child has been evaluated in accordance with §§300.300 through 300.311 and determined to not be a child with a disability under this part.
- (d) **Conditions that apply if no basis of knowledge.**
- (1) If a JHW School does not have knowledge that a child is a child with a disability (in accordance with paragraphs (b) and (c) of this section) prior to taking disciplinary measures against the child, the child may be subjected to the disciplinary measures applied to children without disabilities who engaged in comparable behaviors consistent with paragraph (d)(2) of this section.
 - (2)
 - (i) 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 §300.530, the evaluation must be conducted in an expedited manner.
 - (ii) Until the evaluation is completed, the child remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.
 - (iii) If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the agency must provide special education and related services in accordance with this part, including the requirements of §§300.530 through 300.536 and section 612(a)(1)(A) of the Act. (Authority: 20 U.S.C. 1415(k)(5))

I. Noncustodial Parent

TEC §37.0091. Notice to Noncustodial Parent.

- (a) A noncustodial parent may request in writing that the JHW School or school, for the remainder of the school year in which the request is received, provide that parent with a copy of any written notification relating to student misconduct under Section 37.006 or 37.007 that is generally provided by the JHW School or school to a student's parent or guardian.
 - (b) The JHW School or school may not unreasonably deny a request authorized by Subsection (a).
 - (c) Notwithstanding any other provision of this section, the JHW School or school shall comply with any applicable court order of which the JHW School or school has knowledge.
- Added by Acts 2003, 78th Leg., ch. 1055, Sec. 14, eff. June 20, 2003.

VII. LAW ENFORCEMENT

§300.535 Referral to and action by law enforcement and judicial authorities.

- (a) **Rule of construction.** Nothing in this part prohibits an agency from reporting a crime committed by a child with a disability to appropriate authorities or prevents State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.

(b) Transmittal of records.

- (1) An agency reporting a crime committed by a child with a disability must ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom the agency reports the crime.**
- (2) An agency reporting a crime under this section may transmit copies of the child's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act. (Authority: 20 U.S.C. 1415(k)(6))**

TEC §37.015. Reports to Local Law Enforcement; Liability

- (a) The principal of a public or private primary or secondary school, or a person designated by the principal under Subsection (d), shall notify any school district police department and the police department of the municipality in which the school is located or, if the school is not in a municipality, the sheriff of the county in which the school is located if the principal has reasonable grounds to believe that any of the following activities occur in school, on school property, or at a school-sponsored or school-related activity on or off school property, whether or not the activity is investigated by school security officers:
 - (1) conduct that may constitute an offense listed under Section 508.149, Government Code;
 - (2) deadly conduct under Section 22.05, Penal Code;
 - (3) a terroristic threat under Section 22.07, Penal Code;
 - (4) the use, sale, or possession of a controlled substance, drug paraphernalia, or marihuana under Chapter 481, Health and Safety Code;
 - (5) the possession of any of the weapons or devices listed under Sections 46.01(1)-(14) or Section 46.01(16), Penal Code;
 - (6) conduct that may constitute a criminal offense under Section 71.02, Penal Code; or
 - (7) conduct that may constitute a criminal offense for which a student may be expelled under Section 37.007(a), (d), or (e).
- (b) A person who makes a notification under this section shall include the name and address of each student the person believes may have participated in the activity.
- (c) A notification is not required under Subsection (a) if the person reasonably believes that the activity does not constitute a criminal offense.
- (d) The principal of a public or private primary or secondary school may designate a school employee who is under the supervision of the principal to make the reports required by this section.
- (e) The person who makes the notification required under Subsection (a) shall also notify each instructional or support employee of the school who has regular contact with a student whose conduct is the subject of the notice.
- (f) A person is not liable in civil damages for reporting in good faith as required by this section.

TEC §37.016. Report of Drug Offenses; Liability

A teacher, school administrator, or school employee is not liable in civil damages for reporting to a school administrator or governmental authority, in the exercise of professional judgment within the scope of the teacher's, administrator's, or employee's duties, a student whom the teacher suspects of using, passing, or selling, on school property:

- (1) marihuana or a controlled substance, as defined by Chapter 481, Health and Safety Code;
- (2) a dangerous drug, as defined by Chapter 483, Health and Safety Code;
- (3) an abusable glue or aerosol paint, as defined by Chapter 485, Health and Safety Code, or a volatile chemical, as listed in Chapter 484, Health and Safety Code, if the substance is used or sold for the purpose of inhaling its fumes or vapors; or
- (4) an alcoholic beverage, as defined by Section 1.04, Alcoholic Beverage Code.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.

VIII. DISCIPLINARY RECORDS

§300.229 Disciplinary information.

- (a) The State may require that a public agency include in the records of a child with a disability a statement of any current or previous disciplinary action that has been taken against the child and transmit the statement to the same extent that the disciplinary information is included in, and transmitted with, the student records of nondisabled children.
- (b) The statement may include a description of any behavior engaged in by the child that required disciplinary action, a description of the disciplinary action taken, and any other information that is relevant to the safety of the child and other individuals involved with the child.
- (c) If the State adopts such a policy, and the child transfers from one school to another, the transmission of any of the child's records must include both the child's current IEP and any statement of current or previous disciplinary action that has been taken against the child. (Authority: 20 U.S.C. 1413(i))

§300.535 Referral to and action by law enforcement and judicial authorities.

(b) Transmittal of records.

- (1) An agency reporting a crime committed by a child with a disability must ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom the agency reports the crime.
- (2) An agency reporting a crime under this section may transmit copies of the child's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act. (Authority: 20 U.S.C. 1415(k)(6))

IX. STUDENT DISCIPLINE CHART

Please refer to the most current Student Discipline Chart© developed by The Texas School Administrators' [Legal Digest](#). [If you have any questions please contact the Director of Special Education.](#)

DISCLAIMER

The JHW School will follow local district Board Policy regarding required laws for discipline of students with disabilities. These Operating Guidelines do not include all of the numerous regulations regarding student discipline, however, they do include the specific requirements pertaining to special education students with disabilities.

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Section 7 - PROCEDURAL SAFEGUARDS SECTION

I. PROCEDURAL SAFEGUARDS NOTICE

§300.504 Procedural safeguards notice.

- (a) **General.** A copy of the procedural safeguards available to the parents of a child with a disability must be given to the parents only 1 time a school year, except that a copy also must be given to the parents--
- (1) Upon initial referral or parent request for evaluation;
 - (2) Upon receipt of the first State complaint under §§300.151 through 300.153 or a due process complaint under §300.507 in a school year; and
 - (3) In accordance with the discipline procedures in 300.530(h); and
 - (4) Upon request by a parent.
- The JHW School will provide the procedural safeguards to each parent of a child with a disability 1 time per year at the annual ARD. A copy will also be given as addressed in (a) (1-3) above. The current copy of the TEA publication "A Guide to the Admission, Review and Dismissal Process" will also be provided prior to the first ARD committee meeting or upon a parent's request.*
- (b) **Internet Web site.** The JHW School may place a current copy of the procedural safeguards notice on its Internet Web site if a Web site exists.
- (c) **Contents.** The procedural safeguards notice must include a full explanation of all of the procedural safeguards available under §300.148, §§300.151 through 300.153, §300.300, §§300.502 through 300.503, §§300.505 through .518, §300.520, §§300.530 through 300.536, and §§300.610 through 300.625 relating to--
- (1) Independent educational evaluations;
 - (2) Prior written notice;
 - (3) Parental consent;
 - (4) Access to education records;
 - (5) Opportunity to present and resolve complaints through the due process complaint or State complaint procedures, including--
 - (i) The time period in which to file a complaint;
 - (ii) The opportunity for the agency to resolve the complaint; and
 - (iii) The difference between the due process complaint and the State complaint procedures, including the jurisdiction of each procedure, what issues may be raised, filing and decisional timelines, and relevant procedures;
 - (6) The availability of mediation;
 - (7) The child's placement during the pendency of any due process complaint;
 - (8) Procedures for students who are subject to placement in an interim alternative educational setting;
 - (9) Requirements for unilateral placement by parents of children in private schools at public expense;
 - (10) Hearings on due process complaints, including requirements for disclosure of evaluation results and recommendations;
 - (11) State-level appeals (if applicable in that State);
 - (12) Civil actions, including the time period in which to file those actions; and
 - (13) Attorneys' fees.
- (d) **Notice in understandable language.** The notice required under paragraph (a) of this section must meet the requirements of §300.503(c). (*found in Section II below*) (Authority: 20 U.S.C. 1415(d)(1) and (2))

§300.29 Native language.

- (a) **Native language**, when used with respect to an individual who is limited English proficient, means the following:
- (1) The language normally used by that individual, or, in the case of a child, the language normally used by the parents of the child, except as provided in paragraph (a)(2) of this section.
 - (2) In all direct contact with a child (including evaluation of the child), the language normally used by the child in the home or learning environment.
- (b) For an individual with deafness or blindness, or for an individual with no written language, the mode of communication is that normally used by the individual (such as sign language, Braille, or oral communication). (Authority: 20 U.S.C. 1401(20))

II. PRIOR WRITTEN NOTICE

§300.503 Prior notice by the John H. Wood, Jr. Public Charter District; content of notice.

- (a) **Notice.** Written notice that meets the requirements of paragraph (b) of this section must be given to the parents of a child with a disability a reasonable time before the JHW School--
- (1) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or
 - (2) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.
- (b) **Content of notice.** The notice required under paragraph (a) of this section must include--
- (1) A description of the action proposed or refused by the agency;
 - (2) An explanation of why the agency proposes or refuses to take the action;
 - (3) A description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;
 - (4) A statement that the parents of a child with a disability have protection under the procedural safeguards of this part and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained;
 - (5) Sources for parents to contact to obtain assistance in understanding the provisions of this part;
 - (6) A description of other options that the IEP Team considered and the reasons why those options were rejected; and
 - (7) A description of other factors that are relevant to the agency's proposal or refusal.

The regulation §300.503 is required for all Notices including:

- *Notice of Evaluation,*
- *Notice of ARD / IEP Meeting, and*
- *Notice of Proposal or Refusal.*

All Prior Written Notice forms will contain the required information listed above. All areas will be addressed when completing the appropriate Notice form.

- (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 JHW School 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.
(Authority: 20 U.S.C. 1415(b)(3) and (4), 1415(c)(1), 1414(b)(1))

§300.505 Electronic mail.

A parent of a child with a disability may elect to receive notices required by §§300.503 (*Prior Written Notice*), 300.504 (*Proc. Safeguards/Notice*), and 300.508 (*Due Process complaints*) by an electronic mail communication, if the JHW School makes that option available. (Authority: 20 U.S.C. 1415(n))

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

- (a) The JHW School 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), §§300.300, 300.322, and 300.503.

- (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. The JHW School 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 JHW School 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.

Timeline for Notice (Mutually Agreeable Time)

TAC §89.1015. Time Line for All Notices.

"Reasonable time" required for the written notice to parents under 34 Code of Federal Regulations (CFR), §300.503, is defined as at least five school days, unless the parents agree otherwise.

§300.322 Parent Participation.

- (a) **JHW School responsibility—general. The John H. Wood, Jr. Public Charter District must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP Team 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.**

Attempts

*In accordance with State and Federal requirements, the JHW School will attempt to notify parents early of ARD/IEP meetings and arrange a mutually agreeable time and location. After the first Notice of ARD Meeting is provided, if the parent does not respond, the JHW School will document and send a second Notice of ARD. If the parent responded by requesting to participate by telephone, but was unable to be reached at the time of the meeting, another Notice of ARD must be sent. After 3 documented attempts and no response, the JHW School may go forward with the ARD Meeting as scheduled. The first attempt **MUST** be in written form, the second and the third may be a follow-up phone call. All dates of scheduling attempts and personnel initials must be documented on the Notice form and in the deliberations of the ARD meeting.*

Purpose, Time, Location, Attendance - (Notice)

§300.322 Parent Participation.

- (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), and §300.321(f) (relating to the participation of the Part C service coordinator or other representatives of the Part C system at the initial IEP Team meeting for a child previously served under Part C of the Act).**
 - (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 an IEP Team meeting, the JHW School 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 the JHW School is unable to convince the parents that they should attend. In this**

case, the JHW School must keep a record of its attempts to arrange a mutually agreed on time and place such as:

- (1) Detailed records of telephone calls made or attempted and the results of those calls;
 - (2) Copies of correspondence sent to the parents and any responses received; and
 - (3) Detailed records of visits made to the parent's home or place of employment and the results of those visits.
- (e) Use of interpreters or other action, as appropriate. The JHW School must take whatever action is necessary to ensure that the parent understands the proceedings of the IEP Team meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English.
- (f) Parent copy of child's IEP. The JHW School 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))

§300.321 IEP Team Attendance.

- (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))

III. CONSENT

§300.9 Consent. Consent means that--

- (a) The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication;
- (b) The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and
- (c) (1) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at anytime.
(2) If a parent revokes consent, that 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).
(Authority: 20 U.S.C. 1414(a)(1)(D))

§300.300 Parental consent.

(a) **Parental consent for initial evaluation.**

- (1) (i) The public agency proposing to conduct an initial evaluation to determine if a child qualifies as a child with a disability under §300.8 must after providing notice consistent with §§300.503 and 300.504, obtain informed consent from the parent of the child before conducting the evaluation.
(ii) Parental consent for initial evaluation must not be construed as consent for initial provision of special education and related services.
(iii) The JHW School must make reasonable efforts to obtain the informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability.
- (2) For initial evaluations only, if the child is a ward of the State and is not residing with the child's parent, the JHW School is not required to obtain informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability if--
 - (i) Despite reasonable efforts to do so, the JHW School cannot discover the whereabouts of the parent of the child;
 - (ii) The rights of the parents of the child have been terminated in accordance with State law; or
 - (iii) The rights of the parent to make educational decisions have been subrogated by a judge in accordance with State law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child.
- (3) (i) If the parent of a child enrolled in public school or seeking to be enrolled in public school **does not provide consent** for initial evaluation under paragraph (a)(1) of this section, or the **parent fails to respond** to a request to provide consent, the JHW School may, but is not required to, pursue the initial evaluation of the child by utilizing the procedural safeguards in subpart E of this part (including the mediation procedures under §300.506 or the due process procedures

under §§300.507 through 300.516), if appropriate, except to the extent inconsistent with State law relating to such parental consent.

- (ii) The JHW School does not violate its obligation under §§300.111 and 300.301 through §§300.311 if it declines to pursue the evaluation.

(b) Parental consent for services.

- (1) A public agency (JHW School) that is responsible for making FAPE available to a child with a disability must seek to obtain informed consent from the parent of the child before the initial provision of special education and related services to the child.
- (2) The JHW School must make reasonable efforts to obtain informed consent from the parent for the initial provision of special education and related services to the child.
- (3) If the parent of a child fails to respond or refuses to consent to services under paragraph (b)(1) of this section, the JHW School may not use the procedures in Subpart E of this part (including the mediation procedures under §300.506 or the due process procedures under §§300.507 through 300.516) in order to obtain agreement or a ruling that the services may be provided to the child.
- (4) If the parent of the child refuses to consent to the initial provision of special education and related services, or the parent fails to respond to a request to provide consent for the initial provision of special education and related services, the JHW School--
 - (i) Will not be considered to be in violation of the requirement to make available FAPE to the child for the failure to provide the child with the special education and related services for which the JHW School requests consent; and
 - (ii) Is not required to convene an IEP Team meeting or develop an IEP under §§300.320 and 300.324 for the child for the special education and related services for which the JHW School requests such consent.

If the JHW School campus staff are aware that the parent does not intend on giving consent for services, contact the Director of Special Education to assure appropriate documentation is planned and also to determine if mediation should be offered. If campus staff are aware and the parent refuses in the ARD/IEP meeting, contact the Director of Special Education after the ARD/IEP meeting to assure all efforts are exhausted.

(c) Parental consent for reevaluations.

- (1) Subject to paragraph (c)(2) of this section, the JHW School
 - (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 JHW School 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 JHW School 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 JHW School can demonstrate that--
 - (i) It made reasonable efforts to obtain such consent; and
 - (ii) The child's parent has failed to respond.

(d) Other consent requirements.

- (1) Parental consent is not required before -
 - (i) Reviewing existing data as part of an evaluation or a reevaluation; or
 - (ii) Administering a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of parents of all children.
- (2) In addition to the parental consent requirements described in paragraph (a) of this section, a State may require parental consent for other services and activities under this part if it ensures that each public agency in the State establishes and implements effective procedures to ensure that a parent's refusal to consent does not result in a failure to provide the child with FAPE.
- (3) The JHW School may not use a parent's refusal to consent to one service or activity under paragraphs (a) and (d)(2) of this section to deny the parent or child any other service, benefit, or activity of the public agency, except as required by this part.
- (4) (i) If a parent of a child who is home schooled or placed in a private school by the parents at their own expense does not provide consent for the initial evaluation or the reevaluation, or the parent

fails to respond to a request to provide consent, the JHW School may not use the consent override procedures (described in paragraphs (a)(3) and (c)(1) of the section); and
(ii) The JHW School is not required to consider the child as eligible for services under §§300.132 through 300.144.

(5) To meet the reasonable efforts requirement in paragraphs (a)(1)(iii), (a)(2)(i), (b)(2), and (c)(2)(i) of this section, the JHW School must document its attempts to obtain parental consent using the procedures in §300.322(d). (Authority: 20 U.S.C. 1414(a)(1)(D) and 1414(c))

For Consent to Release Records, the JHW School may release records without parent consent based upon Family Educational Rights and Privacy Act (34 CFR § 99.31) to:

- *School officials with legitimate educational interest;*
- *Other schools to which a student is transferring;*

§300.154. Methods of ensuring services.

(d) Children with disabilities who are covered by public benefits or insurance.

(1) The JHW School may use the Medicaid or other public benefits or insurance programs in which a child participates to provide or pay for services required under this part, as permitted under the public benefits or insurance program, except as provided in paragraph (d)(2) of this section.

(2) With regard to services required to provide FAPE to an eligible child under this part, the JHW School--

(i), (ii), and (iii) are in section 8- Administration

(iv) (A) Prior to accessing a child's or parent's public benefits or insurance for the first time, and annually thereafter, the LEA must provide written notice to the child's parents in language understandable to the general public and in his or her native language or other mode of communication, that includes a statement:

-The personally identifiable information that maybe disclosed (e.g., records, or information about services that may be provided to the child;

-The purpose of the disclosure (e.g., billing for services under IDEA Part B);

-That the parent understands and agrees that the LEA may access the parent's or child's Public benefits or insurance to pay for service under IDEA Part B.

and

(B) Notify parents that the parents' refusal to allow access to their public benefits or insurance does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents.

TEC §29.0041. Information and Consent for Certain Psychological Examinations or Tests

(a) On request of a child's parent, before obtaining the parent's consent under 20 U.S.C. Section 1414 for the administration of any psychological examination or test to the child that is included as part of the evaluation of the child's need for special education, the JHW School will provide to the child's parent:

(1) the name and type of the examination or test; and

(2) an explanation of how the examination or test will be used to develop an appropriate individualized education program for the child.

(b) If the JHW School determines that an additional examination or test is required for the evaluation of a child's need for special education after obtaining consent from the child's parent under Subsection (a), the JHW School shall provide the information described by Subsections (a)(1) and (2) to the child's parent regarding the additional examination or test and shall obtain additional consent for the examination or test.

(c) The time required for the JHW School to provide information and seek consent under Subsection (b) may not be counted toward the 60 calendar days for completion of an evaluation under Section 29.004. If a parent does not give consent under Subsection (b) within 20 calendar days after the date the JHW School provided to the parent the information required by that subsection, the parent's consent is considered denied.

Consent for Individual Family Support Plan (IFSP) – §300.323(b)(2)(ii)

§300.323 When IEPs must be in effect.

(b) IEP or IFSP for children aged three through five.

- (1) In the case of a child with a disability aged three through five (or, at the discretion of the SEA, a two-year-old child with a disability who will turn age three during the school year), the IEP Team must consider an IFSP that contains the IFSP content (including the natural environments statement) described in section 636(d) of the Act and its implementing regulations (including an educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills for children with IFSPs under this section who are at least three years of age), and that is developed in accordance with the IEP procedures under this part. The IFSP may serve as the IEP of the child, if using the IFSP as the IEP is--
 - (i) Consistent with State policy; and
 - (ii) Agreed to by the agency and the child's parents.
- (2) In implementing the requirements of paragraph (b)(1) of this section, the JHW School must--
 - (i) Provide to the child's parents a detailed explanation of the differences between an IFSP and an IEP; and
 - (ii) If the parents choose an IFSP, obtain written informed consent from the parents.

Transfer of Records from other District

Generally, schools must have written permission from the parent or eligible student in order to release any information from a student's education record. However, FERPA allows schools to disclose those records, without consent, to the following parties or under the following conditions:

(34 CFR § 99.31):

- School officials with legitimate educational interest;
- Other schools to which a student is transferring;
- Specified officials for audit or evaluation purposes;
- Appropriate parties in connection with financial aid to a student;
- Organizations conducting certain studies for or on behalf of the school;
- Accrediting organizations;
- To comply with a judicial order or lawfully issued subpoena;
- Appropriate officials in cases of health and safety emergencies; and
- State and local authorities, within a juvenile justice system, pursuant to specific State law.

Parental Consent to Release records will be obtained in all other instances not listed above.

§300.323 When IEPs must be in effect.

- (e) If a child with a disability (who had an IEP that was in effect in a previous public agency in the same State) transfers to a new public agency in the same State, and enrolls in a new school within the same school year, the new public agency (in consultation with the parents) must provide FAPE to the child (including services comparable to those described in the child's IEP from the previous public agency), until the new public agency either--
 - (1) Adopts the child's IEP from the previous public agency; or
 - (2) Develops, adopts, and implements a new IEP that meets the applicable requirements in §§300.320 through 300.324.

IV. PARENT PARTICIPATION IN MEETINGS *(also in section 4-ARD/IEP)*

§300.30 Parent.

(a) Parent means--

- (1) A biological or adoptive parent of a child;
- (2) A foster parent, unless State law, regulations or contractual obligations with a State or local entity prohibit a foster parent from acting as a parent;

- (3) 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);
 - (4) 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
 - (5) A surrogate parent who has been appointed in accordance with §300.519 or section 639(a)(5) of the Act.
- (b) (1) Except as provided in paragraph (b)(2) of this section, the biological or adoptive parent, when attempting to act as the parent under this part and when more than one party is qualified under paragraph (a) of this section to act as a parent, must be presumed to be the parent for purposes of this section unless the biological or adoptive parent does not have legal authority to make educational decisions for the child.
 - (2) If a judicial decree or order identifies a specific person or persons under paragraph (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" for purposes of this section, except that a public agency that provides education or care for the child may not act as the parent. (Authority: 20 U.S.C. 1401(23))

§300.45 Ward of the State.

- (a) **General.** Subject to paragraph (b) of this section, ward of the State means a child who, as determined by the State where the child resides, is--
 - (1) A foster child;
 - (2) A ward of the State; or
 - (3) In the custody of a public child welfare agency.
- (b) **Exception.** Ward of the State does not include a foster child who has a foster parent who meets the definition of a parent in §300.30. (Authority: 20 U.S.C. 1401(36))

§300.322 Parent Participation.

- (a) **Public agency responsibility—general.** The John H. Wood, Jr. Public Charter District must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP Team 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), and §300.321(f) (relating to the participation of the Part C service coordinator or other representatives of the Part C system at the initial IEP Team meeting for a child previously served under Part C of the Act).
 - (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 an IEP Team meeting, the JHW School 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 the JHW School is unable to convince the parents that they should attend. In this case, the JHW School must keep a record of its attempts to arrange a mutually agreed on time and place such as:
- (1) Detailed records of telephone calls made or attempted and the results of those calls;
 - (2) Copies of correspondence sent to the parents and any responses received; and
 - (3) Detailed records of visits made to the parent's home or place of employment and the results of those visits.
- (e) Use of interpreters or other action, as appropriate. The JHW School must take whatever action is necessary to ensure that the parent understands the proceedings of the IEP Team meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English.
- (f) **Parent copy of child's IEP.** The JHW School 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.

- (a) **Opportunity to examine records.** The parents of the child with a disability must be afforded, in accordance with the procedures of §§300.613 through 300.621, an opportunity to inspect and review all education records with respect to--
- (1) The identification, evaluation, and educational placement of the child; and
 - (2) The provision of FAPE to the child.
- (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) The JHW School 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 JHW School personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision. A meeting also does not include preparatory activities that JHW School 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) The JHW School 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, the JHW School 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, the JHW School 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 the JHW School is unable to obtain the parent's participation in the decision. In this case, the JHW School must have a record of its attempt to ensure their involvement.
- (Authority: 20 U.S.C. 1414(e), 1415(b)(1))

Attempts

In accordance with State and Federal requirements, the JHW School will attempt to notify parents early of ARD/IEP meetings and arrange a mutually agreeable time and location. After the first Notice of ARD Meeting is provided, if the parent does not respond, the JHW School will document and send a second Notice of ARD. If the parent responded by requesting to participate by telephone, but was unable to be reached at the time of the meeting, another Notice of ARD must be sent. After 3 documented attempts and no response, the JHW School may go forward with the ARD Meeting as scheduled. The first attempt

***MUST** be in written form, the second and the third may be a follow-up phone call. All dates of scheduling attempts and personnel initials must be documented on the Notice form and in the deliberations of the ARD meeting.*

Mandatory Medications

§300.174 Prohibition on mandatory medication.

- (a) **General.** The SEA must **prohibit State and JHW School personnel from requiring parents to obtain a prescription for substances identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)) for a child as a condition of attending school, receiving an evaluation under §§300.300 through 300.311, or receiving services under this part.**
- (b) **Rule of construction.** Nothing in paragraph (a) of this section shall be construed to create a Federal prohibition against teachers and other school personnel consulting or sharing classroom-based observations with parents or guardians regarding a student's academic and functional performance, or behavior in the classroom or school, or regarding the need for evaluation for special education or related services under §300.111 (related to child find). (Authority: 20 U.S.C. 1412(a)(25))

TAC §89.1049. Parental Rights Regarding Adult Students. [See ARD/IEP Section 4](#)

TEC §29.017. Transfer of Parental Rights at Age of Majority [See ARD/IEP Section 4](#)

V. CONFIDENTIALITY OF STUDENT INFORMATION

§300.610 Confidentiality.

The Secretary takes appropriate action, in accordance with section 444 of GEPA, to ensure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained by the Secretary and by SEAs and LEAs pursuant to Part B of the Act, and consistent with §§300.611 through 300.627. (Authority: 20 U.S.C. 1417(c))

§300.611 Definitions.

As used in §§300.611 through 300.625--

- (a) **Destruction** means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.
- (b) **Education records** means the type of records covered under the definition of "education records" in 34 CFR part 99 (the regulations implementing the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g (FERPA)).
- (c) **Participating agency** means any agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained, under Part B of the Act. (Authority: 20 U.S.C. 1221e-3, 1412(a)(8), 1417(c))

§300.32 Personally identifiable. **Personally identifiable** means information that contains--

- (a) The name of the child, the child's parent, or other family member;
- (b) The address of the child;
- (c) A personal identifier, such as the child's social security number or student number; or
- (d) A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

(Authority: 20 U.S.C. 1415(a))

§300.612 Notice to parents.

- (a) The SEA must give notice that is adequate to fully inform parents about the requirements of §300.123, including--
 - (1) A description of the extent that the notice is given in the native languages of the various population groups in the State;

- (2) A description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the State intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information;
 - (3) A summary of the policies and procedures that participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information; and
 - (4) A description of all of the rights of parents and children regarding this information, including the rights under FERPA and implementing regulations in 34 CFR part 99.
- (b) Before any major identification, location, or evaluation activity, the notice must be published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the State of the activity. (Authority: 20 U.S.C. 1412(a)(8); 1417(c))

§300.613 Access rights.

- (a) Each participating agency must permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency under this part. The agency must comply with a request without unnecessary delay and before any Admission, Review, and Dismissal (ARD) committee meeting, or any hearing pursuant to §300.507 or §§300.530 through 300.532, or resolution session pursuant to §300.510, and in no case more than 45 days after the request has been made.
- (b) The right to inspect and review education records under this section includes--
 - (1) The right to a response from the participating agency to reasonable requests for explanations and interpretations of the records;
 - (2) The right to request that the agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and
 - (3) The right to have a representative of the parent inspect and review the records.
- (c) An agency may presume that the parent has authority to inspect and review records relating to the parent's child unless the agency has been advised that the parent does not have the authority under applicable State law governing such matters as guardianship, separation, and divorce. (Authority: 20 U.S.C. 1412(a)(8); 1417(c))

§300.614 Record of access.

Each participating agency must keep a record of parties obtaining access to education records collected, maintained, or used under Part B of the Act (except access by parents and authorized employees of the participating agency), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records. (Authority: 20 U.S.C. 1412(a)(8); 1417(c))

1. *JHW School will maintain a record, kept with the eligibility file of each student, that indicates all individuals, agencies or organizations that have requested or obtained access to a student's educational records collected, maintained or used under IDEA-Part B (except access by parents and authorized employees of the JHW School).*

The records shall include:

- a. *at least the name of the person or agency that made the request,*
 - b. *the date access was given, and*
 - c. *the purpose for which the person or agency is authorized to use the records.*
**If parts of the student eligibility folder are maintained in classrooms, access records are required if the folder contains information such as an ARD/IEP report, modification sheet(s), or any assessment reports.*
2. *The record of access will be maintained as long as JHW School maintains the student's education record. The record of access shall be available only to parents, school officials responsible for custody of the records, and those state and federal officials authorized to audit the operation of the system.*
 3. *Access Procedures: The cumulative record and special education legal folder shall be made available to the parent. Records may be reviewed during regular school hours upon request to the appropriate record custodian. The record custodian or designee shall be present to explain the*

record and to answer questions. The confidential nature of the student's records shall be maintained at all times, and the records shall be restricted to use only in the offices of the Superintendent, a principal, a counselor, or Special Education as designated by the appropriate record custodian. The original copy of the record or any document contained in the cumulative record shall not be removed from the school or the Special Education office.

§300.615 Records on more than one child.

If any education 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. (Authority: 20 U.S.C. 1412(a)(8); 1417(c))

§300.616 List of types and locations of information.

Each participating agency must provide parents on request a list of the types and locations of education records collected, maintained, or used by the JHW School. (Authority: 20 U.S.C. 1412(a)(8); 1417(c))

§300.617 Fees.

- (a) Each participating agency may charge a fee for copies of records that are made for parents under this part if the fee does not effectively prevent the parents from exercising their right to inspect and review those records.
- (b) A participating agency may not charge a fee to search for or to retrieve information under this part. (Authority: 20 U.S.C. 1412(a)(8); 1417(c))

No fee may be charged to search for or to retrieve the education record of a student. A fee of \$0.10 (10¢) per page may be charged for copies of education records that are made for the parents or students under this procedure, provided that the fee does not effectively prevent them from exercising their right to inspect and review those records. A waiver of fee should be requested in writing. No fee will be charged to search for or to retrieve information.

§300.618 Amendment of records at parent's request.

- (a) A parent who believes that information in the education records collected, maintained, or used under this part is inaccurate or misleading or violates the privacy or other rights of the child may request the participating agency that maintains the information to amend the information.
- (b) The agency must decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request.
- (c) If the agency decides to refuse to amend the information in accordance with the request, it must inform the parent of the refusal and advise the parent of the right to a hearing under §300.619. (Authority: 20 U.S.C. 1412(a)(8); 1417(c))

§300.619 Opportunity for a hearing.

The agency must, on request, provide an opportunity for a hearing to challenge information in education records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child. (Authority: 20 U.S.C. 1412(a)(8); 1417(c))

§300.620 Result of hearing.

- (a) If, as a result of the hearing, the agency decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of the child, it must amend the information accordingly and so inform the parent in writing.
- (b) If, as a result of the hearing, the agency decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it must inform the parent of the parent's right to place in the records the JHW School maintains on the child a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency.
- (c) Any explanation placed in the records of the child under this section must--
 - (1) Be maintained by the agency as part of the records of the child as long as the record or contested portion is maintained by the agency; and

- (2) If the records of the child or the contested portion is disclosed by the agency to any party, the explanation must also be disclosed to the party.
(Authority: 20 U.S.C. 1412(a)(8); 1417(c))

§300.621 Hearing procedures.

A hearing held under §300.619 must be conducted according to the procedures under 34 CFR 99.22. (FERPA) (Authority: 20 U.S.C. 1412(a)(8); 1417(c))

§300.622 Consent.

- (a) Parental consent must be obtained before personally identifiable information is disclosed to parties other than officials of participating agencies collecting or using the information under this part, subject to paragraph (b)(1) of this section unless the information is contained in education records, and the disclosure is authorized without parental consent under 34 CFR part 99.
- (b)(1) Except as provided in paragraphs (b)(2) and (b)(3) of this section, parental consent is not required before personally identifiable information is released to officials of participating agencies for purposes of meeting a requirement of this part.
- (2) Parental consent, or the consent of an eligible child who has reached the age of majority under State law, must be obtained before personally identifiable information is released to officials of participating agencies providing or paying the transition services in accordance with 300.321(b)(3).
- (3) If a child is enrolled, or is going to enroll in a private school that is not located in the LEA of the parent's residence, parental consent must be obtained before any personally identifiable information about the child is released between officials in the LEA where the private school is located and officials in the LEA of the parent's residence.

§300.535 Referral to and action by law enforcement and judicial authorities.

- (a) **Rule of construction.** Nothing in this part prohibits an agency from reporting a crime committed by a child with a disability to appropriate authorities or prevents State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.
- (b) **Transmittal of records.**
- (1) An agency reporting a crime committed by a child with a disability must ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom the agency reports the crime.
- (2) An agency reporting a crime under this section may transmit copies of the child's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act. (Authority: 20 U.S.C. 1415(k)(6))

§300.623 Safeguards.

- (a) Each participating agency must protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.
- (b) **One official at each participating agency** must assume responsibility for ensuring the confidentiality of any personally identifiable information.
Custodian of Records: Unless otherwise specified in board policy, the principal is custodian of all records for currently enrolled students at the assigned school. The superintendent is the custodian of records for students who have withdrawn or graduated. The Director of Special Education is custodian of all special education records.
- (c) All persons collecting or using personally identifiable information must receive training or instruction regarding the State's policies and procedures under §300.123 and 34 CFR part 99.
The Special Education Instructional Coordinator will annually train all new and returning campus staff on personally identifiable information. As new staff are employed throughout the school year, the training will be provided. The special education director is responsible for training all central office special education staff. Documentation of the date and persons attending training will be maintained by the Director of Special Education.

- (d) Each participating agency must maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information. (Authority: 20 U.S.C. 1412(a)(8); 1417(c))
Each local campus will have a listing of all personnel trained in confidentiality of student records and those who have access to the student records.

§300.624 Destruction of information.

- (a) The JHW School must inform parents when personally identifiable information collected, maintained, or used under this part is no longer needed to provide educational services to the child.
- (b) The information must be destroyed at the request of the parents. However, a permanent record of a student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.
(Authority: 20 U.S.C. 1412(a)(8); 1417(c))

VI. SURROGATE / FOSTER PARENT

§300.45 Ward of the State.

- (a) **General.** Subject to paragraph (b) of this section, **ward of the State** means a child who, as determined by the State where the child resides, is--
- (1) A foster child;
 - (2) A ward of the State; or
 - (3) In the custody of a public child welfare agency.
- (b) **Exception.** Ward of the State does not include a foster child who has a foster parent who meets the definition of a **parent** in §300.30.
(Authority: 20 U.S.C. 1401(36))

§300.519 Surrogate parents.

- (a) **General.** The John H. Wood, Jr. Public Charter District must ensure that the rights of a child are protected when--
- (1) No parent (as defined in §300.30) can be identified;
 - (2) The JHW School, after reasonable efforts, cannot locate a parent;
 - (3) The child is a ward of the State under the laws of that State; or
 - (4) The child is an unaccompanied homeless youth as defined in section 725(6) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(6)).

Upon enrollment of a student into the district, the Special Education Case Manager or campus Assessment Personnel will discern the need for a surrogate parent using the "SPED Surrogate Determination Form." Special Education Case Managers and campus Assessment Personnel may also reference "Establishing Need for Surrogate-Flowchart."

- (b) **Duties of public agency.** The duties of the JHW School under paragraph (a) of this section include the assignment of an individual to act as a surrogate for the parents. This must include a method--
- (1) For determining whether a child needs a surrogate parent; and
 - (2) For assigning a surrogate parent to the child.
- (c) **Wards of the State.** In the case of a child who is a ward of the State, the surrogate parent alternatively may be appointed by the judge overseeing the child's case, provided that the surrogate meets the requirements in paragraphs (d)(2)(i) and (e) of this section.
- (d) **Criteria for selection of surrogate parents.**
- (1) The JHW School may select a surrogate parent in any way permitted under State law.
 - (2) The JHW School must ensure that a person selected as a surrogate parent--
 - (i) Is not an employee of the SEA, the JHW School, 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.

Surrogate parent training will include utilization of the "Determination of Conflict of Interest," "Designation of Surrogate Parent," Surrogate Parent Letter of Agreement," "Surrogate Parent Background Check," "Surrogate Parent Release," forms to assure that the individual meets criteria for serving as a surrogate parent.

- (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 he or she is paid by the agency to serve as a surrogate parent.
A mileage agreement may be established with the surrogate parent reimbursing current mileage as specified by Texas Mileage Guide. Alternately, the surrogate parent may choose to donate the mileage to JHW School and claim the mileage on their tax return.
- (f) **Unaccompanied homeless youth.** In the case of a child 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 surrogates without regard to paragraph (d)(2)(i) of this section, until a surrogate can be appointed that meets all of the requirements of paragraph (d) of this section.
- (g) **Surrogate parent responsibilities.** The surrogate parent may represent the child in all matters relating to-
 (1) The identification, evaluation, and educational placement of the child; and
 (2) The provision of FAPE to the child.
- (h) **SEA responsibility.** The SEA must make reasonable efforts to ensure the assignment of a surrogate parent not more than 30 days after JHW School determines that the child needs a surrogate.
 (Authority: 20 U.S.C. 1415(b)(2))

Requirements of Surrogate

TEC Sec. 29.001. Statewide Plan

The agency shall also develop and implement a statewide plan with programmatic content that includes procedures designed to:

- (10) ensure that an individual assigned to act as a surrogate parent for a child with a disability, as provided by 20 U.S.C. Section 1415(b) and its subsequent amendments, is required to:
- (A) complete a training program that complies with minimum standards established by agency rule;
 - (B) visit the child and the child's school;
 - (C) consult with persons involved in the child's education, including teachers, caseworkers, court-appointed volunteers, guardians ad litem, attorneys ad litem, foster parents, and caretakers;
 - (D) review the child's educational records;
 - (E) attend meetings of the child's admission, review, and dismissal committee;
 - (F) exercise independent judgment in pursuing the child's interests; and
 - (G) exercise the child's due process rights under applicable state and federal law.
- (11) ensure that each district develops a process to be used by a teacher who instructs a student with a disability in a regular classroom setting:
- (A) to request a review of the student's individualized education program;
 - (B) that provides for a timely district response to the teacher's request; and
 - (C) that provides for notification to the student's parent or legal guardian of that response

Campus Assessment Personnel are responsible for monitoring and documenting that the surrogate parent is fulfilling assigned duties and responsibilities through the "Surrogate Parent Campus Visitation Log." The Special Education Instructional Coordinator is responsible for auditing surrogate parent campus data on a monthly basis.

TAC §89.1047. Procedures for Surrogate and Foster Parents.

- (a) An individual assigned to act as a surrogate parent for a student with a disability, in accordance with 34 Code of Federal Regulations (CFR), §300.519, relating to surrogate parents, must comply with the requirements specified in Texas Education Code (TEC), §29.001(10).

- (1) Pursuant to TEC, §29.001(10)(A), an individual assigned to act as a surrogate parent must complete a training program in which the individual is provided with an explanation of the provisions of federal and state laws, rules, and regulations relating to:
 - (A) the identification of a student with a disability;
 - (B) the collection of evaluation and re-evaluation data relating to a student with a disability;
 - (C) the admission, review, and dismissal (ARD) committee process;
 - (D) the development of an individualized education program (IEP), including the consideration of transition services for a student who is at least 16 years of age;
 - (E) the determination of least restrictive environment;
 - (F) the implementation of an IEP;
 - (G) the procedural rights and safeguards available under 34 CFR, §§300.148, 300.151-300.153, 300.229, 300.300, 300.500-300.520, 300.530-300.537, and 300.610-300.627, relating to the issues described in 34 CFR, §300.504(c); and
 - (H) the sources that the surrogate parent may contact to obtain assistance in understanding the provisions of federal and state laws, rules, and regulations relating to students with disabilities.
- (2) The training program described in subsection (a)(1) of this section must be provided in the native language or other mode of communication used by the individual who is to serve as a surrogate parent.

Surrogate parent training will include Designation of Surrogate Parent form, Determination of Conflict of Interest statement, Surrogate Parent Letter of Agreement, Volunteer Release Form, Surrogate Parent Background Check Form, Surrogate Parent Release, "How to Serve as a Surrogate Parent" PowerPoint, Guide to the Admission, Review, and Dismissal Process, Notice of Procedural Safeguards and information pertaining to Special Education Related Services.

- (3) The individual assigned to act as a surrogate parent must complete the training program described in subsection (a)(1) of this section within 90 calendar days after the date of initial assignment as a surrogate parent. Once an individual has completed a training program conducted or provided by or through the Texas Department of Family and Protective Services (TDFPS), a school district, an education service center, or any entity that receives federal funds to provide Individuals with Disabilities Education Act (IDEA) training to parents, the individual shall not be required by any school district to complete additional training in order to continue serving as the student's surrogate parent or to serve as the surrogate parent for other students with disabilities. School districts may provide ongoing or additional training to surrogate parents and/or parents; however, a district cannot deny an individual who has received the training as described in subsection (a)(1) of this section from serving as a surrogate parent on the grounds that the individual has not been trained.
 - (4) The JHW School should provide or arrange for the provision of the training program described in subsection (a)(1) of this section prior to assigning an individual to act as a surrogate parent but no later than 90 calendar days after assignment.
- (b) A foster parent may act as a parent of a child with a disability, in accordance with 34 CFR, §300.30, relating to the definition of parent, if he/she complies with the requirements of TEC, §29.015(b), relating to foster parents, including the completion of the training program described in subsection (a)(1) of this section.
- (1) The foster parent must complete the training program described in subsection (a)(1) of this section within 90 calendar days after the date of initial assignment as the parent. Once a foster parent has completed a training program conducted or provided by the TDFPS, a school district, an education service center, or any entity that receives federal funds to provide IDEA training to parents, the foster parent shall not be required by any school district to complete additional training in order to continue serving as his/her child's surrogate parent or parent or to serve as the

surrogate parent or parent for other students with disabilities. School districts may provide ongoing or additional training to foster parents and/or parents; however, a district cannot deny an individual who has received the training as described in subsection (a)(1) of this section from serving as the parent on the grounds that the individual has not been trained.

- (2) The JHW School should provide or arrange for the provision of the training program described in subsection (a)(1) of this section prior to assigning a foster parent to act as a parent but no later than 90 calendar days after assignment.
- (c) The JHW School has developed and implemented procedures for conducting an analysis of whether a foster parent or potential surrogate parent has an interest that conflicts with the interests of his/her child. A foster parent in a home which is verified by the TDFPS or a child-placing agency shall not be deemed to have a financial conflict of interest by virtue of serving as the foster parent in that home. These homes include, but are not limited to, basic, habilitative, primary medical, or therapeutic foster or foster group homes. In addition, issues concerning quality of care of the child do not constitute a conflict of interest. Concerns regarding quality of care of the child should be communicated, and may be statutorily required to be reported, to TDFPS.
- (d) If the JHW School **denies a foster parent** the right to serve as a surrogate parent or parent, the JHW School must provide the foster parent with written notice of such denial within seven calendar days after the date on which the decision is made. The written notice shall:
 - (1) specify the reason(s) the foster parent is being denied the right to serve as the surrogate parent or parent (the notice must specifically explain the interests of the foster parent that conflict with the interests of his/her child); and
 - (2) inform the foster parent of his/her right to file a complaint with the Texas Education Agency in accordance with 34 CFR, §§300.151-300.153, relating to complaint procedures.

TEC §29.015. Foster Parents.

- (a) The JHW School shall give preferential consideration to a foster parent of a child with a disability when assigning a surrogate parent for the child.
- (b) A foster parent may act as a parent of a child with a disability, as authorized under 20 U.S.C. Section 1415(b) and its subsequent amendments, if:
 - (1) the Department of Protective and Regulatory Services (*TDFPS*) is appointed as the temporary or permanent managing conservator of the child;
 - (2) the child has been placed with the foster parent for at least **60 days**;
 - (3) the foster parent agrees to:
 - (A) participate in making educational decisions on the child's behalf; and
 - (B) complete a training program for surrogate parents that complies with minimum standards established by agency rule; and
 - (4) the foster parent has no interest that conflicts with the child's interests.
- (c) A foster parent who is denied the right to act as a surrogate parent or a parent under this section by the district may file a complaint with the agency in accordance with federal law and regulations.

Staff Training: Method to determine whether a child needs a surrogate parent.

Annually, the local campus principal, SPED Case Managers, and Assessment Personnel are trained on the situations in §300.519 in which a student would need a surrogate or the foster parent require training. The Special Education Instructional Coordinator will maintain the list and schedule training.

Surrogate Parent Assignment Guidelines

Procedures for requesting a surrogate parent are as follows:

- a. Principal or other assigned staff person notifies the Special Education Instructional Coordinator of need and of potential surrogate parents if they are aware of any potential volunteers.
- b. The Special Education Instructional Coordinator or campus assessment personnel schedules and conducts the training using application form to document assurances below.

- c. The Special Education Instructional Coordinator notifies campus Administration and assessment personnel of completed training and the names of new surrogate parents.
- d. The Special Education Case manager or campus assessment personnel notifies/contacts the student's assigned surrogate parent when appropriate.

Assurances

Assurances must be made by the individual selected to serve as a surrogate parent. These assurances are reviewed at the training and documented on the "Determination of Conflict of Interest" statement signed by the potential surrogate parent.

*A foster parent in a home which is verified by the TDFPS or a child-placing agency shall not be deemed to have a financial conflict of interest by virtue of serving as the foster parent in that home. These homes include, but are not limited to, basic, habilitative, primary medical, or therapeutic foster or foster group homes. In addition, issues concerning quality of care of the child do not constitute a conflict of interest. Concerns regarding quality of care of the child should be communicated, and may be statutorily required to be reported, to TDFPS.

Documentation of Training for Volunteer as Surrogate Parent:

- (a.) The individual assigned to act as a surrogate parent must complete the training program within 90 calendar days after the effective date of initial assignment as a surrogate parent.
- (b.) Once the individual has completed a training program conducted or provided by or through the Texas Department of Family and Protective Services (TDFPS), a school district, an education service center, or any entity that receives federal funds to provide IDEA training to parents, the individual shall not be required by any school to complete the additional training in order to continue serving as the student's surrogate parent or to serve as the surrogate parent for other students with disabilities.
- (c.) The JHW School may provide additional training to surrogates parents and/or parents; however, JHW School cannot deny an individual who has received the training from serving as a surrogate parent on the grounds that the individual has not been trained.
- (d.) Prior to assigning an individual to act as a surrogate parent, training should be provided.
- (e.) Individuals already serving as surrogate parents identified as not receiving previous training will receive training within 90 calendar days of identification.
- (f.) The JHW School will keep records of those individuals who have received training and each person trained by our JHW School will be given a certificate to take should they move to another school and need evidence of training.

Documentation of Training for Assignment of Foster Parents as Surrogate Parents

- (a.) A foster parent may act as parent of a child with a disability, in accordance with §300.20 relating to the definition of parent, if he/she complies with the requirements of TEC §29.015(b), relating to foster parents, including the completion of the training programs described in this section.
- (b.) The foster parent must complete the training within 90 calendar days after the date of initial assignment as the surrogate parent, whichever comes later.
- (c.) Once the individual has completed a training program conducted or provided by or through the Texas Department of Family and Protective Services (TDFPS), a school district, an education service center, or any entity that receives federal funds to provide IDEA training to parents, the individual will not be required by any school to complete the additional training in order to continue serving as the student's surrogate parent or to serve as the surrogate parent for other students with disabilities.
- (d.) The JHW School may provide additional training to surrogates parents and/or parents; however, JHW School cannot deny an individual who has received the training from serving as a surrogate parent on the grounds that the individual has not been trained.
- (e.) Prior to assigning a foster parent to act as a surrogate parent, training should be provided.

- (f.) Individuals already serving as surrogate parents identified as not receiving previous training will receive training within 90 calendar days of identification if there is no evidence training was previously provided by (TDFPS).
- (g.) The JHW School will keep records of those individuals who have received training and each person trained by our JHW School will be given a certificate to take should they move to another school and need evidence of training.
- (h.) If the foster parent does not meet the criteria to serve as parent, the JHW School will appoint a surrogate parent. The JHW School will give preferential consideration to a foster parent of a student with a disability when assigning a surrogate parent for the child.
- (i.) If the foster parent is denied serving as the surrogate parent, the JHW School will follow TAC §89.1047(d) to notify the foster parent of their right to file a complaint with TEA.

Surrogate Training Completed

When the applicant successfully completes the Surrogate Parent Training, a copy of those individuals trained as Surrogate Parents will be filed in the office of the Director of Special Education.

VII. INDEPENDENT EDUCATIONAL EVALUATION (IEE)

§300.502 Independent educational evaluation.

(a) General.

- (1) The parents of a child with a disability have the right under this part to obtain an independent educational evaluation of the child, subject to paragraphs (b) through (e) of this section.
- (2) The JHW School must provide to parents, upon request for an independent educational evaluation, information about where an independent educational evaluation may be obtained, and the agency criteria applicable for independent educational evaluations as set forth in paragraph (e) of this section.

Information on where an IEE may be obtained will be provided to parents on request. A list of individuals who can provide an IEE is available from the Special Education Office. The district criteria (State/Federal requirements) applicable for all evaluations (FIE Section 2 and 3 of this document) must also be followed for the IEE. See Evaluator Requirements found below.

(3) For the purposes of this subpart--

- (i) **Independent educational evaluation** means an evaluation conducted by a qualified examiner who is not employed by the JHW School responsible for the education of the child in question; and
- (ii) **Public expense** means that the JHW School either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent, consistent with §300.103.

(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 JHW School, 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 John H. Wood, Jr. Public Charter District 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.

If the parent requests an IEE from any staff member or campus Principal, the parent will be provided the name and phone number of the Director of Special Education and asked to notify that administrator immediately so that proper steps may be taken to address their request for an IEE. The

Director of Special Education, in consultation with appropriate JHW School staff, will determine whether to pay for the IEE or file for a due process hearing.

- (3) If the JHW School files a due process complaint notice to request a hearing and the final decision is that the JHW School's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.
- (4) If a parent requests an independent educational evaluation, the JHW School may ask for the parent's reason why he or she objects to the public evaluation. However, the JHW School may not require the parent to provide an explanation and may not unreasonably delay either providing the independent educational evaluation at public expense or filing a due process complaint to request a due process hearing to defend the public evaluation.
- (5) A parent is entitled to only one independent educational evaluation at public expense each time the public agency conducts an evaluation with which the parent disagrees.

If the parent requests an IEE during an ARD/IEP meeting, the minutes will document that the parent was asked to provide reasons why they object to the JHW School evaluation. If the parent does not provide any specific reason, that also will be documented in the minutes. The campus assessment personnel will notify Director of Special Education, so that the parent(s) can be contacted.

- (c) **Parent-initiated evaluations.** If the parent obtains an independent educational evaluation at private expense or shares with the JHW School an evaluation obtained at private expense, the results of the evaluation--
 - (1) Must be considered by the JHW School, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the child; and
 - (2) May be presented by any party as evidence at a hearing on a due process complaint under subpart E of this part regarding that child.
- (d) **Requests for evaluations by hearing officers.** If a hearing officer requests an independent educational evaluation as part of a hearing on a due process complaint, the cost of the evaluation must be at public expense.
- (e) **Agency criteria.**
 - (1) If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the JHW School uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation.
 - (2) Except for the criteria described in paragraph (e)(1) of this section, the JHW School may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense. (Authority: 20 U.S.C. 1415(b)(1) and (d)(2)(A))

Evaluator Criteria

The evaluator conducting the IEE must meet TEA criteria and possess comparable credentials to the examiner that conducted the evaluation that is in dispute.

Evaluators must possess current licensure/certification to conduct the evaluation and must provide copies of his or her licensure or certification with the evaluation, if not previously provided.

Evaluators must comply with all requirements specified in state and federal law, including those outlined in the professional board responsible for providing the license or certification.

Evaluators must meet the examiner qualifications for the tests administered as outlined by the test producer.

The evaluator will have access to the student's cumulative folder and Special Education folders in gathering information about the student.

The evaluator will have the ability to interview teachers and observe the student in the educational setting.

Prior to conducting the assessment, the evaluator agrees to submit to a national criminal history review and to provide all information necessary to secure the national criminal history review, including fingerprints and photographs, or other information required by Texas Education Code § 22.0834 concerning Contractor or Contractor's Subcontractors. The evaluator agrees to conduct a thorough evaluation in the area(s) performed by the LEA with which the parent disagrees.

Copies of the protocols must be provided to the district.

The evaluator will provide an original written evaluation report with an original signature within 30 calendar days from the date the contract is initiated with the evaluator. The report must be received 10 days prior to the ARD committee meeting in which it will be reviewed.

The report must comply with all federal and state requirements, including addressing the presence or absence of a disability condition as defined under the Individuals with Disabilities Education Act (IDEA) and the Texas Education Code (TEC).

The parents of a child with a disability have the right to obtain an independent educational evaluation (IEE) of the child at public expense if the parent disagrees with an evaluation obtained by the local educational agency (LEA).

- IEE means an evaluation conducted by a qualified examiner who is not employed by the LEA which is responsible for the education of the child.
- Public expense means that the evaluation is otherwise provided at no cost to the parent.

If an IEE is at public expense, the criteria that the LEA uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an IEE, including:

- The location of the evaluation; and
- The qualification of the examiner

Except for the LEA criteria, the LEA may not impose conditions or timelines related to obtaining an IEE at public expense. A parent is limited to only one IEE at public expense each time the LEA conducts an evaluation with which the parent disagrees.

Steps to Follow for Parent to Request an IEE at Public Expense:

1. Parent should request an ARD meeting to discuss evaluation concerns and allow for possible resolution during the ARD.
2. Make request to the ARD Committee for action.
3. Request IEE as soon as possible but no later than six months following the JHW School evaluation in question.
4. Specify areas of disagreement with JHW School's evaluation and list assessment questions to be addressed by IEE.
5. Provide name of evaluator (if parent has identified one) to allow JHW School to:
 - a. check certification/license of evaluator and

- b. contract directly with the evaluator.
6. Review all Evaluator Requirements listed above.
7. If the parent requests an IEE from any staff member or campus Principal outside of an ARD meeting, the parent will be provided the name and phone number of the Director of Special Education and asked to notify that administrator immediately so that proper steps may be taken to address their request for an IEE. The Director of Special Education, in consultation with appropriate district staff, will determine whether to pay for the IEE or file for a due process hearing.

LEA Criteria:

If the LEA has not conducted an evaluation, the parent does not have the right to an IEE at public expense. A parent is limited to only one IEE at public expense each time the LEA conducts an evaluation with which the parent disagrees. The LEA criteria for an IEE are listed below.

Location-

The evaluator conducting an IEE of a child with a disability at public expense must be located within a 100 mile radius of the LEA. This will allow the evaluator access to the LEA for observations of the student and access to the student's cumulative and Special Education eligibility folders.

Cost-

Parents are free to select whomever they choose to perform the IEE, as long as the examiner meets the LEA's criteria.

The LEA will pay a fee for an IEE that allows a parent to choose from among qualified professionals in the area.

The LEA will not pay unreasonable excessive fees. An unreasonably excessive fee is one which is 20% above the prevailing fees in the area as established by the Medicaid/Medicare Service Provider Manual for the specific test being considered.

Parents will be offered the opportunity to demonstrate to their child's ARD committee that unique circumstances which justify an IEE that does not meet the LEA criteria outlined in this document.

When evaluators have a sliding scale fee based on parent income, the LEA will pay the amount charged to the parent if the evaluator meets the LEA criteria or the LEA has approved the IEE does not meet the LEA criteria.

In the event a parent pursues an IEE independently or pursues an IEE provider that is not on the LEA independent evaluator list, the LEA will determine if the evaluator meets the LEA criteria prior to authorizing payment or reimbursement. If payment will be authorized, an original billing form and an original written report with original signatures must be submitted to the LEA prior to payment.

The LEA will deny payment for an IEE conducted by an evaluator who does not meet LEA criteria. The LEA will deny payment for an IEE that does not meet Texas Education Agency criteria for the specific disability identified.

Travel costs for evaluators will not exceed LEA rates for travel as established by state guidelines.

A contract for an IEE between an evaluator and the LEA will not exceed one year. All terms will become void after the expiration date of one year.

Reimbursement or Payment

Reimbursement/payment will be made directly to evaluator upon receipt of IEE which meets all of the JHW School's assessment criteria. Parents obtaining an IEE without following these procedures will risk non-payment. Whenever an IEE is at public expense, the criteria under which the IEE is obtained, must be the same as the criteria which the school uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's rights to an IEE.

Parents Seeking Reimbursement For A Unilaterally Obtained IEE

- The JHW School will not consider a parent request for payment for a unilaterally parent-initiated IEE unless the request is made within a reasonable time after receipt of the results of the evaluation. A reasonable time is defined as 90 calendar days.
- The request will be presented to the ARD Committee for action.
- The JHW School can request a due process hearing to prove its own evaluation is appropriate. This can occur before an IEE is conducted or, after the parent has obtained one and is seeking reimbursement.
- The JHW School will deny payment of an IEE conducted by an evaluator who does not meet minimum qualifications.
- The JHW School will deny payment of an IEE which does not meet minimum Texas Education Agency criteria for the specific disability identified.
- The JHW School will deny payment of an IEE which does not meet all state and federal requirements.

Consideration of Parent Initiated IEE

The results of a parent-initiated IEE obtained at private expense will be considered by the ARD committee in any decision made with respect to the provision of a free appropriate public education to the student (if the IEE meets TEA criteria). Such consideration does not make the JHW School liable for payment of the evaluation.

VIII. COMPLAINT PROCEDURES

TAC §89.1150. General Provisions.

(a) It is the policy and intent of the Texas Education Agency (TEA) to encourage and support the resolution of any dispute that arises between a parent and a public education agency relating to the identification, evaluation, or educational placement of or the provision of a free appropriate public education (FAPE) to a student with a disability at the lowest level possible and in a prompt, efficient, and effective manner.

(b) The possible options for resolving disputes include, but are not limited to:

- (1) meetings of the student's admission, review, and dismissal committee, including individualized education program (IEP) facilitation if offered by the public education

agency in accordance with §89.1196 of this title (relating to Individualized Education Program Facilitation);

(2) meetings or conferences with the student's teachers;

(3) meetings or conferences, subject to the public education agency's policies, with the campus administrator, the special education director of the public education agency (or the shared services arrangement to which the public education agency may be a member), the superintendent of the public education agency, or the board of trustees of the public education agency;

(4) requesting state IEP facilitation in accordance with §89.1197 of this title (relating to State Individualized Education Program Facilitation);

(5) requesting mediation through the TEA in accordance with 34 Code of Federal Regulations (CFR), §300.506;

(6) filing a complaint with the TEA in accordance with 34 CFR, §300.153; or

(7) requesting a due process hearing through the TEA in accordance with 34 CFR, §§300.507-300.514.

If there is a dispute relating to the identification, evaluation, or educational placement of or the provision of a free appropriate public education (FAPE), to a student with a disability, it is the intent of the JHW School to encourage and support the resolution of any dispute at the lowest level possible and in a prompt, efficient, and effective manner.

The JHW School should always be sure the parents have a current Procedural Safeguards document if there is disagreement expressed by the parent. If the parents say they do not have the document, provide them with the document, an explanation, and keep documentation that they have received the document. This documentation of receipt of the Procedural Safeguards is kept in the Special Education student eligibility file. The possible options for resolving disputes include, but are not limited to §89.1150(c) found on the following pages below:

Schools should contact the Director of Special Education as soon as there is reason to believe any type of complaint will be made.

A. Administration may encourage parents to follow local complaint procedures. The following may also be suggested:

- 1. schedule an ARD Committee meeting to discuss concern,*
- 2. follow 10 day recess procedures to try to reach mutual agreement (see ARD Section),*
- 3. encourage the parents to contact the Director of Special Education for a meeting to discuss possible alternatives or mediation.*

B. Parents may notify the Texas Education Agency and file a complaint. The TEA will:

- 1. collect information concerning special education and analyzing the information in conjunction with other information on file with the TEA;*
- 2. respond to inquiries concerning special education services;*
- 3. take appropriate action on substantial complaints;*
- 4. engage in mediation activities; and*
- 5. provide information on the formal procedures available in the impartial hearing process.*

Complaint must include: §300.153 .

TAC §89.1196. Individualized Education Program Facilitation

(a) For the purpose of this section and Texas Education Code, §29.019, individualized education program (IEP) facilitation refers to a method of alternative dispute resolution that involves the use of a trained facilitator to assist an admission, review, and dismissal (ARD) committee in developing an IEP for a student with a disability. The facilitator uses facilitation techniques to help the committee members communicate and collaborate effectively. While public education agencies are not required to offer IEP facilitation as an alternative dispute resolution method, the Texas Education Agency (TEA) encourages the use of IEP facilitation as described in this section.

(b) A public education agency is not prohibited from incorporating elements of IEP facilitation into ARD committee meetings that are conducted without the assistance of a facilitator as described in this section. For example, a public education agency may provide training on communication skills, conflict management, or meeting effectiveness to individuals who participate in ARD committee meetings to enhance collaboration and efficiency in those meetings.

(c) A public education agency that chooses to offer IEP facilitation under this section may determine whether to use independent contractors, employees, or other qualified individuals as facilitators. At a minimum, an individual who serves as a facilitator must:

- (1) have demonstrated knowledge of federal and state requirements relating to the provision of special education and related services to students with disabilities;
- (2) have demonstrated knowledge of and experience with the ARD committee meeting process;
- (3) have completed 18 hours of training in IEP facilitation, consensus building, and/or conflict resolution; and
- (4) complete continuing education as determined by the public education agency.

(d) A public education agency that chooses to offer IEP facilitation under this section must ensure that:

- (1) participation is voluntary on the part of the parties;
- (2) the facilitation is provided at no cost to parents; and
- (3) the process is not used to deny or delay the right to pursue a special education complaint, mediation, or a due process hearing in accordance with Part B of the Individuals with Disabilities Education Act (IDEA) and this division.

(e) A public education agency that chooses to offer IEP facilitation under this section must develop written policies and procedures that include:

- (1) the procedures for requesting facilitation;
- (2) facilitator qualifications, including whether facilitators are independent contractors, employees, or other qualified individuals;
- (3) the process for assigning a facilitator;
- (4) the continuing education requirements for facilitators; and
- (5) a method for evaluating the effectiveness of the facilitation services and the individual facilitators.

(f) A public education agency that chooses to offer IEP facilitation under this section must provide parents with information about the process, including a description of the procedures for requesting IEP facilitation and information related to facilitator qualifications. This information must be included when a copy of the procedural safeguards notice under 34 Code of Federal Regulations (CFR), §300.504 is provided to parents, although this information may be provided as a separate document and may be provided in a written or electronic format.

(g) A facilitator under this section must not be a member of the student's ARD committee, must not have any decision-making authority over the committee, and must remain impartial to the topics under discussion. The facilitator must assist with the overall organization and conduct of the ARD committee meeting by:

- (1) assisting the committee in establishing an agenda and setting the time allotted for the meeting;
- (2) assisting the committee in establishing a set of guidelines for the meeting;
- (3) guiding the discussion and keeping the focus on developing a mutually agreed upon IEP for the student;
- (4) ensuring that each committee member has an opportunity to participate;
- (5) helping to resolve disagreements that arise; and
- (6) helping to keep the ARD committee on task so that the meeting purposes can be accomplished within the time allotted for the meeting.

(h) Promptly after being assigned to facilitate an ARD committee meeting, or within a timeline established under the public education agency's procedures, the facilitator must contact the parents and public education agency representative to clarify the issues, gather necessary information, and explain the IEP facilitation process.

(i) A public education agency that chooses to offer IEP facilitation under this section must ensure that facilitators protect the confidentiality of personally identifiable information about the student and comply with the requirements in the Family Educational Rights and Privacy Act regulations, 34 CFR, Part 99, relating to the disclosure and redisclosure of personally identifiable information from a student's education record.

(j) The TEA will develop information regarding IEP facilitation as an alternative dispute resolution method, and such information will be available upon request from the TEA and on the TEA website.

State Complaint Procedures

TAC §89.1195. Special Education Complaint Resolution

(a) In accordance with 34 Code of Federal Regulations (CFR), §300.151, the Texas Education Agency (TEA) has established a complaint resolution process that provides for the investigation and issuance of findings regarding alleged violations of Part B of the Individuals with Disabilities Education Act (IDEA).

(b) A complaint may be filed with the TEA by any individual or organization and must:

(1) be in writing;

(2) include the signature and contact information for the complainant;

(3) contain a statement that a public education agency has violated Part B of the IDEA; 34 CFR, §300.1 et seq.; or a state special education statute or administrative rule;

(4) include the facts upon which the complaint is based;

(5) if alleging violations with respect to a specific student, include:

(A) the name and address of the residence of the student;

(B) the name of the school the student is attending;

(C) in the case of a homeless child or youth (within the meaning of §725(2) of the McKinney-Vento Homeless Act (42 United States Code, §11434a(2)), available contact information for the student and the name of the school the student is attending;

(D) a description of the nature of the problem of the student, including facts relating to the problem; and

(E) a proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed;

(6) allege a violation that occurred not more than one calendar year prior to the date the complaint is received; and

(7) be forwarded to the public education agency that is the subject of the complaint at the same time that the complaint is filed with the TEA.

(c) A complaint must be filed with the TEA by mail, hand-delivery, or facsimile. The TEA has developed a form that may be used by persons or organizations filing a complaint. The form is available on request from the TEA and is also available on the TEA website.

(d) If a complaint does not meet the requirements outlined in subsection (b) of this section, the TEA must notify the complainant of the deficiencies in the complaint.

(e) Upon receipt of a complaint that meets the requirements of this section, the TEA must initiate an investigation to determine whether the public education agency is in compliance with applicable law and regulations in accordance with the following procedures.

(1) The TEA must send written notification to the parties acknowledging receipt of a complaint.

(A) The notification must include:

(i) the alleged violations that will be investigated;

(ii) alternative procedures available to address allegations in the complaint that are outside of the scope of Part B of the IDEA; 34 CFR, §300.1, et seq.; or a state special education statute or administrative rule;

(iii) a statement that the public education agency may, at its discretion, investigate the alleged violations and propose a resolution of the complaint;

(iv) a statement that the parties have the opportunity to resolve the complaint through mediation in accordance with the procedures in §89.1193 of this title (relating to Special Education Mediation);

(v) a timeline for the public education agency to submit:

(I) documentation demonstrating that the complaint has been resolved; or

(II) a written response to the complaint and all documentation and information requested by the TEA;

(vi) a statement that the complainant may submit additional information about the allegations in the complaint, either orally or in writing within a timeline specified by the TEA, and may provide a copy of any additional

information to the public education agency to assist the parties in resolving the dispute at the local level; and

(vii) a statement that the TEA may grant extensions of the timeline for a party to submit information under clause (v) or (vi) of this subparagraph at the request of either party.

(B) The public education agency must provide the TEA with a written response to the complaint and all documentation and information requested by the TEA. The public education agency must forward its response to the parent who filed the complaint at the same time that the response is provided to the TEA. The public education agency may also provide the parent with a copy of the documentation and information requested by the TEA. If the complaint was filed by an individual other than the student's parent, the public education agency must forward a copy of the response to that individual only if written parental consent has been provided to the public education agency.

(2) If the complaint is also the subject of a due process hearing or if it contains multiple issues of which one or more are part of that due process hearing, the TEA must:

(A) set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing; and

(B) resolve any issue in the complaint that is not a part of the due process hearing.

(3) If an issue raised in the complaint has previously been decided in a due process hearing involving the same parties, the TEA must inform the complainant that the due process hearing decision is binding.

(4) The TEA has 60 calendar days after a valid written complaint is received to carry out the investigation and to resolve the complaint. The TEA may extend the time limit beyond 60 calendar days if exceptional circumstances, as determined by the TEA, exist with respect to a particular complaint. The parties will be notified in writing by the TEA of the exceptional circumstances, if applicable, and the extended time limit. The time limit may also be extended if the parties agree to extend it in order to engage in mediation pursuant to §89.1193 of this title or other alternative means of dispute resolution. In accordance with the Texas Education Code, §29.010(e), the TEA must expedite a complaint alleging that a public education agency has refused to enroll a student eligible for special education and related services or that otherwise indicates a need for expedited resolution, as determined by the TEA.

(5) During the course of the investigation, the TEA must:

(A) conduct an investigation of the complaint that must include a complete review of all relevant documentation and that may include interviews with appropriate individuals and an independent on-site investigation, if necessary;

(B) consider all facts and issues presented and the applicable requirements specified in law, regulations, or standards;

(C) make a determination of compliance or noncompliance on each issue in the complaint based upon the facts and applicable law, regulations, or standards and issue a written report of findings of fact and conclusions, including reasons for the decision, and any corrective actions that are required, including the time period within which each action must be taken;

(D) review any evidence that the public education agency has corrected noncompliance on its own initiative;

(E) ensure that the TEA's final decision is effectively implemented, if needed, through technical assistance activities, negotiations, and corrective actions to achieve compliance; and

(F) in the case of a complaint filed by an individual other than the student's parent, provide a copy of the written report only if written parental consent has been provided to the TEA.

(6) In resolving a complaint in which a failure to provide appropriate services is found, the TEA must address:

(A) the failure to provide appropriate services, including corrective action appropriate to address the needs of the student, including compensatory services, monetary reimbursement, or other corrective action appropriate to the needs of the student; and

(B) appropriate future provision of services for all students with disabilities.

(7) In accordance with 34 CFR, §300.600(e), the public education agency must complete all required corrective actions as soon as possible, and in no case later than one year after the TEA's identification of the noncompliance. A public education agency's failure to correct the identified noncompliance within the one-year timeline will result in an additional finding of noncompliance under 34 CFR, §300.600(e), and may result in sanctions against the public education agency in accordance with §89.1076 of this title (relating to Interventions and Sanctions).

(f) If a party to a complaint believes that the TEA's written report includes an error that is material to the determination in the report, the party may submit a signed, written request for reconsideration to the TEA by mail, hand-delivery, or facsimile within 15 calendar days of the date of the report. The party's reconsideration request must identify the asserted error and include any documentation to support the claim. The party filing a reconsideration request must forward a copy of the request to the other party at the same time that the request is filed with the TEA. The other party may respond to the reconsideration request within five calendar days of the date on which the TEA received the request. The TEA will consider the reconsideration request and provide a written response to the parties within 45 calendar days of receipt of the request. The

filing of a reconsideration request must not delay a public education agency's implementation of any corrective actions required by the TEA.

(g) In accordance with 34 CFR, §300.151, the TEA's complaint resolution procedures must be widely disseminated to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities.

TAC §89.1197. State Individualized Education Program Facilitation

(a) In accordance with the Texas Education Code, §29.020, the Texas Education Agency (TEA) will establish a program that provides independent individualized education program (IEP) facilitators beginning with the 2014-2015 school year.

(b) For the purpose of this section, IEP facilitation has the same general meaning as described in §89.1196(a) of this title (relating to Individualized Education Program Facilitation), except that state IEP facilitation is used when the admission, review, and dismissal (ARD) committee is in dispute about decisions relating to the provision of a free and appropriate public education to a student with a disability and the facilitator is an independent facilitator provided by the TEA.

(c) A request for IEP facilitation under this section must be filed by completing a form developed by the TEA that is available upon request from the TEA and on the TEA website. The form must be filed with the TEA by one of the parties by mail, hand-delivery, or facsimile.

(d) IEP facilitation under this section must be voluntary on the part of the parties and provided at no cost to the parties.

(e) In order for the TEA to provide an independent facilitator, the following conditions must be met.

(1) The required form must be completed and signed by both parties.

(2) The dispute must relate to an ARD committee meeting in which mutual agreement about one or more of the required elements of the IEP was not reached and the parties have agreed to recess and reconvene the meeting in accordance with §89.1050(f) of this title (relating to The Admission, Review, and Dismissal Committee).

(3) The request for IEP facilitation must have been filed within five calendar days of the ARD committee meeting that ended in disagreement, and a facilitator must be available on the date set for reconvening the meeting.

(4) The dispute must not relate to a manifestation determination or determination of interim alternative educational setting under 34 Code of Federal Regulations (CFR), §300.530 or §300.531.

(5) The same parties must not be concurrently involved in special education mediation under §89.1193 of this title (relating to Special Education Mediation).

(6) The issues in dispute must not be the subject of a special education complaint under §89.1195 of this title (relating to Special Education Complaint Resolution) or a special education due process hearing under §89.1151 of this title (relating to Special Education Due Process Hearings) and §89.1165 of this title (relating to Request for Special Education Due Process Hearing).

(7) The same parties must not have participated in IEP facilitation concerning the same student under this section within the same school year of the filing of the current request for IEP facilitation.

(f) Within five business days of receipt of a request for an IEP facilitation under this section, the TEA will determine whether the conditions in subsections (c)-(e) of this section have been met and will notify the parties of its determination and the assignment of the independent facilitator, if applicable.

(g) Notwithstanding subsections (b)-(e) of this section, if a special education due process hearing or complaint decision requires a public education agency to provide an independent facilitator to assist with an ARD committee meeting, the public education agency may request that the TEA assign an independent facilitator. Within five business days of receipt of a written request for IEP facilitation under this subsection, the TEA will notify the parties of its decision to assign or not assign an independent facilitator. If TEA declines the request to assign an independent facilitator, the public education agency must provide an independent facilitator at its own expense.

(h) The TEA's decision not to provide an independent facilitator is final and not subject to review or appeal.

(i) The independent facilitator assignment may be made based on a combination of factors, including, but not limited to, geographic location and availability. Once assigned, the independent facilitator must promptly contact the parties to clarify the issues, gather necessary information, and explain the IEP facilitation process.

(j) The TEA will use a competitive solicitation method to seek independent facilitation services, and the contracts with independent facilitators will be developed and managed in accordance with the TEA's contracting practices and procedures.

(k) At a minimum, an individual who serves as an independent facilitator under this section:

(1) must have demonstrated knowledge of federal and state requirements relating to the provision of special education and related services to students with disabilities;

(2) must have demonstrated knowledge of and experience with the ARD committee meeting process;

(3) must have completed 18 hours or more of training in IEP facilitation, consensus building, and/or conflict resolution as specified in the TEA's competitive solicitation;

(4) must complete continuing education as determined by the TEA;

(5) may not be an employee of the TEA or the public education agency that the student attends; and

(6) may not have a personal or professional interest that conflicts with his or her impartiality.

(l) An individual is not an employee of the TEA solely because the individual is paid by the TEA to serve as an independent facilitator.

(m) An independent facilitator must not be a member of the student's ARD committee, must not have any decision-making authority, and must remain impartial to the topics under discussion. The independent facilitator must assist with the overall organization and conduct of the ARD committee meeting by:

(1) assisting the committee in establishing an agenda and setting the time allotted for the meeting;

(2) assisting the committee in establishing a set of guidelines for the meeting;

(3) guiding the discussion and keeping the focus on developing a mutually agreed upon IEP for the student;

(4) ensuring that each committee member has an opportunity to participate;

(5) helping to resolve disagreements that arise; and

(6) helping to keep the ARD committee on task so that the meeting purposes can be accomplished within the time allotted for the meeting.

(n) An independent facilitator must protect the confidentiality of personally identifiable information about the student and comply with the requirements in the Family Educational Rights and Privacy Act regulations, 34 CFR, Part 99, relating to the disclosure and redisclosure of personally identifiable information from a student's education record.

(o) The TEA will develop surveys to evaluate the IEP facilitation program and the independent facilitators and will request that parties who participate in the program complete the surveys.

§300.151 Adoption of State complaint procedures.

(a) **General.** Each SEA must adopt written procedures for--

(1) **Resolving any complaint, including a complaint filed by an organization or individual from another State, that meets the requirements of §300.153 by--**

(i) **Providing for the filing of a complaint with the SEA; and**

(ii) **At the SEA's discretion, providing for the filing of a complaint with a public agency and the right to have the SEA review the public agency's decision on the complaint; and**

- (2) Widely disseminating to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities, the State procedures under §§300.151 through 300.153.
- (b) **Remedies for denial of appropriate services.** In resolving a complaint in which the SEA has found a failure to provide appropriate services, an SEA, pursuant to its general supervisory authority under Part B of the Act, must address--
 - (1) The failure to provide appropriate services, including corrective action appropriate to address the needs of the child (such as compensatory services or monetary reimbursement); and
 - (2) Appropriate future provision of services for all children with disabilities. (Authority: 20 U.S.C. 1221e-3)

§300.152 Minimum State complaint procedures.

- (a) **Time limit; minimum procedures.** Each SEA must include in its complaint procedures a time limit of 60 days after a complaint is filed under §300.153 to--
 - (1) Carry out an independent on-site investigation, if the SEA determines that an investigation is necessary;
 - (2) Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;
 - (3) Provide the JHW School with the opportunity to respond to the complaint, including, at a minimum--
 - (i) At the discretion of the JHW School, a proposal to resolve the complaint; and
 - (ii) An opportunity for a parent who has filed a complaint and the JHW School to voluntarily engage in mediation consistent with §300.506;
 - (4) Review all relevant information and make an independent determination as to whether the JHW School is violating a requirement of Part B of the Act or of this part; and
 - (5) Issue a written decision to the complainant that addresses each allegation in the complaint and contains--
 - (i) Findings of fact and conclusions; and
 - (ii) The reasons for the SEA's final decision.
- (b) **Time extension; final decision; implementation.** The SEA's procedures described in paragraph (a) of this section also must--
 - (1) Permit an extension of the time limit under paragraph (a) of this section only if--
 - (i) Exceptional circumstances exist with respect to a particular complaint; or
 - (ii) The parent (or individual or organization, if mediation or other alternative means of dispute resolution is available to the individual or organization under State procedures) and the JHW School involved agree to extend the time to engage in mediation pursuant to paragraph (a)(3)(ii) of this section; or to engage in other alternative means of dispute resolution, if available in the State; and
 - (2) Include procedures for effective implementation of the SEA's final decision, if needed, including--
 - (i) Technical assistance activities;
 - (ii) Negotiations; and
 - (iii) Corrective actions to achieve compliance.
- (c) **Complaints filed under this section and due process hearings under §300.507 and §§300.530 through 300.532.**
 - (1) If a written complaint is received that is also the subject of a due process hearing under §300.507 or §§300.530 through 300.532, or the State must set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing. However, any issue in the complaint that is not a part of the due process action must be resolved using the time limit and procedures described in paragraphs (a) and (b) of this section.
 - (2) If an issue is raised in a complaint filed under this section has previously been decided in a due process hearing involving the same parties--
 - (i) The due process hearing decision is binding on that issue; and
 - (ii) The SEA must inform the complainant to that effect.
 - (3) A complaint alleging a public agency's failure to implement a due process hearing decision must be resolved by the SEA. (Authority: 20 U.S.C. 1221e-3)

§300.153 Filing a complaint.

- (a) An organization or individual may file a signed written complaint under the procedures described in §§300.151 through 300.152.
- (b) The complaint must include--
 - (1) A statement that a public agency has violated a requirement of Part B of the Act or of this part;
 - (2) The facts on which the statement is based;
 - (3) The signature and contact information for the complainant; and
 - (4) If alleging violations with respect to a specific child--
 - (i) The name and address of the residence of the child;
 - (ii) The name of the school the child is attending;
 - (iii) In the case of a homeless child or youth (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), available contact information for the child, and the name of the school the child is attending;
 - (iv) A description of the nature of the problem of the child, including facts relating to the problem; and
 - (v) A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.
- (c) The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received in accordance with §300.151.
- (d) The party filing the complaint must forward a copy of the complaint to the LEA or public agency serving the child at the same time the party files the complaint with the SEA.
(Authority: 20 U.S.C. 1221e-3)

§300.507 Filing a due process complaint.

- (a) **General.**
 - (1) A parent or the JHW School may file a due process complaint on any of the matters described in §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).
 - (2) The due process complaint must allege a violation that occurred not more than two years before the date the parent or JHW School knew or should have known about the alleged action that forms the basis of the due process complaint, or, if the State has an explicit time limitation for filing a due process complaint under this part, in the time allowed by that State law, except that the exceptions to the timeline described in §300.511(f) apply to the timeline in this section.
- (b) **Information for parents.** The JHW School must inform the parent of any free or low-cost legal and other relevant services available in the area if--
 - (1) The parent requests the information; or
 - (2) The parent or the agency files a hearing under this section.
(Authority: 20 U.S.C. 1415(b)(6))

§300.508 Due process complaint.

- (a) **General.**
 - (1) The JHW School must have procedures that require either party, or the attorney representing a party, to provide to the other party a due process complaint (which must remain confidential).
 - (2) The party filing a due process complaint must forward a copy of the due process complaint to the SEA.
- (b) **Content of complaint.** The due process complaint required in paragraph (a)(1) of this section must include--
 - (1) The name of the child;
 - (2) The address of the residence of the child;
 - (3) The name of the school the child is attending;
 - (4) In the case of a homeless child or youth (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), available contact information for the child, and the name of the school the child is attending;
 - (5) A description of the nature of the problem of the child relating to the proposed or refused initiation or change, including facts relating to the problem; and

- (6) A proposed resolution of the problem to the extent known and available to the party at the time.
- (c) **Notice required before a hearing on a due process complaint.** A party may not have a hearing on a due process complaint until the party, or the attorney representing the party, files a due process complaint that meets the requirements of paragraph (b) of this section.
- (d) **Sufficiency of complaint.**
 - (1) The due process complaint required by this section must be deemed sufficient unless the party receiving the due process complaint notifies the hearing officer and the other party in writing, within 15 days of receipt of the due process complaint, that the receiving party believes the due process complaint does not meet the requirements in paragraph (b) of this section.
 - (2) Within 5 days of receipt of notification under paragraph (d)(1) of this section, the hearing officer must make a determination on the face of the due process complaint of whether the due process complaint meets the requirements of paragraph (b) of this section, and must immediately notify the parties in writing of that determination.
 - (3) A party may amend its due process complaint only if--
 - (i) The other party consents in writing to the amendment and is given the opportunity to resolve the due process complaint through a meeting held pursuant to §300.510; or
 - (ii) The hearing officer grants permission, except that the hearing officer may only grant permission to amend at any time not later than five days before the due process hearing begins.
 - (4) If a party files an amended due process complaint, the timelines for the resolution meeting in §300.510(a) and the time period to resolve in §300.510(b) begin again with the filing of the amended due process complaint.
- (e) **LEA response to a due process complaint.**
 - (1) If the JHW School has not sent a prior written notice under §300.503 to the parent regarding the subject matter contained in the parent's due process complaint, the JHW School must, within 10 days of receiving the due process complaint, send to the parent a response that includes--
 - (i) An explanation of why the JHW School proposed or refused to take the action raised in the due process complaint;
 - (ii) A description of other options that the IEP Team considered and the reasons why those options were rejected;
 - (iii) A description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action; and
 - (iv) A description of the other factors that are relevant to the agency's proposed or refused action.
 - (2) A response by an LEA under paragraph (e) (1) of this section shall not be construed to preclude the JHW School from asserting that the parent's due process complaint was insufficient, where appropriate.
- (f) **Other party response to a due process complaint.** Except as provided in paragraph (e) of this section, the party receiving a due process complaint must, within 10 days of receiving the due process complaint, send to the other party a response that specifically addresses the issues raised in the due process complaint. (Authority: 20 U.S.C. 1415(b)(7), 1415(c)(2))

§300.509 Model forms.

- (a) Each SEA must develop model forms to assist parents in filing a due process complaint in accordance with §§300.507(a) and 300.508(a) through (c) and to assist parents and other parties in filing a State complaint under §§300.151 through 300.153. However the SEA or LEA may not require the use of the model forms.
- (b) Parents, public agencies, and other parties may use the appropriate model form described in paragraph (a) of the section, or another form or other document, so long as the form or document that is used meets, as appropriate, the content requirements in §300.508(b) for filing a due process complaint, or the requirements in §300.153(b) for filing a State complaint. (Authority: 20 U.S.C. 1415(b)(8))

§300.510 Resolution process.

- (a) **Resolution meeting.**
 - (1) Within 15 days of receiving notice of the parents' due process complaint, and prior to the initiation of a due process hearing under §300.511, the JHW School must convene a meeting with the parents and the relevant member or members of the IEP Team who have specific knowledge of the facts identified in the due process complaint that--

- (i) Includes a representative of the JHW School who has decision-making authority on behalf of that agency; and
- (ii) May not include an attorney of the JHW School unless the parent is accompanied by an attorney.
- (2) The purpose of the meeting is for the parents of the child to discuss their due process complaint, and the facts that form the basis of the due process complaint, so that the JHW School has the opportunity to resolve the dispute that is the basis for the due process complaint.
- (3) The meeting described in paragraph (a)(1) and (2) of this section need not be held if--
 - (i) The parents and the JHW School agree in writing to waive the meeting; or
 - (ii) The parents and the JHW School agree to use the mediation process described in §300.506.
- (4) The parents and the JHW School determine the relevant members of the IEP Team to attend the meeting.
- (b) **Resolution period.**
 - (1) If the JHW School has not resolved the due process complaint to the satisfaction of the parents within 30 days of the receipt of the due process complaint, the due process hearing must occur.
 - (2) Except as provided in paragraph (c) of this section, the timeline for issuing a final decision under §300.515 begins at the expiration of this 30-day period.
 - (3) Except where the parties have jointly agreed to waive the resolution process or to use mediation, notwithstanding paragraphs (b)(1) and (2) of this section, the failure of a parent filing a due process complaint to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until the meeting is held.
 - (4) If the JHW School is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made (and documented using the procedures in §300.322(d)), the JHW School may, at the conclusion of the 30-day period, request that a hearing officer dismiss the parent's due process complaint.
 - (5) If the JHW School fails to hold the resolution meeting specified in paragraph (a) of this section within 15 days of receiving notice of a parent's due process complaint or fails to participate in the resolution meeting, the parent may seek the intervention of a hearing officer to begin the due process hearing timeline.
- (c) **Adjustments to 30-day resolution period.** The 45-day timeline for the due process hearing in §300.515(a) starts the day after one of the following events:
 - (1) Both parties agree in writing to waive the resolution meeting;
 - (2) After either the mediation or resolution meeting starts but before the end of the 30-day resolution period, the parties agree in writing that no agreement is possible;
 - (3) If both parties agree in writing to continue the mediation at the end of the 30-day resolution period, but later, the parent or JHW School withdraws from the mediation process.
- (d) **Written settlement agreement.** If a resolution to the dispute is reached at the meeting described in paragraphs (a)(1) and (2) of this section, the parties must execute a legally binding agreement that is--
 - (1) Signed by both the parent and a representative of the agency who has the authority to bind the agency; and
 - (2) Enforceable in any State court of competent jurisdiction or in a district court of the United States, or by the SEA, if the State has other mechanisms or procedures that permit parties to seek enforcement of resolution agreements, pursuant to §300.537.
- (e) **Agreement review period.** If the parties execute an agreement pursuant to paragraph (c) of this section, a party may void the agreement within 3 business days of the agreement's execution.
(Authority: 20 U.S.C. 1415(f)(1)(B))

This process allows an opportunity for the school to resolve the parent's complaint. This can take up to 30 days and the timelines for a due process hearing begin to run only after those first 30 days. Also, there is an "expedited hearing" in the case of a disciplinary appeal.

Children with Disabilities Enrolled by their Parents in Private Schools

§300.140 Due process complaints and State complaints. *(See also Section 5. of this manual which includes Parentally Placed Students in Private Schools)*

- (a) **Due process not applicable, except for child find.**

- (1) Except as provided in paragraph (b) of this section, the procedures in §§300.504 through 300.519 do not apply to complaints that an LEA has failed to meet the requirements of §§300.132 through 300.139, including the provision of services indicated on the child's services plan.
- (b) **Child find complaints—to be filed with the LEA in which the private school is located.**
 - (1) The procedures in §§300.504 through 300.519 apply to complaints that an LEA has failed to meet the child find requirements in §§300.131 including the requirements in §§300.300 through 300.311.
 - (2) Any due process complaint regarding the child find requirements (as described in paragraph (b)(1) of the section) must be filed with the LEA in which the private school is located and a copy must be forwarded to the SEA.
- (c) **State complaints.**
 - (1) Any complaints that an SEA or LEA has failed to meet the requirements of §§300.132 through 300.135 and §§300.137 through 300.134 must be filed under the procedures in §§300.151 through 300.153.
 - (2) A complaint filed by a private school official under §300.136(a) must be filed with the SEA in accordance with the procedures in §300.136(b). (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.

- (f) 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, §§300.151-300.153. Additionally, parents may request mediation as outlined in 34 CFR, §300.506. The procedures in 34 CFR, §§300.300, 300.504, 300.507, 300.508, and 300.510-300.518 (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). (*subsection (c) refers to dual enrollment and this is found in this manual in Section 4 – IEP*)

IX. MEDIATION

§300.506 Mediation.

- (a) **General.** The JHW School must ensure that procedures are established and implemented to allow parties to disputes involving any matter under this part, including matters arising prior to the filing of a due process complaint, to resolve disputes through a mediation process.
- (b) **Requirements.** The procedures must meet the following requirements:
 - (1) The procedures must ensure that the mediation process--
 - (i) Is voluntary on the part of the parties;
 - (ii) Is not used to deny or delay a parent's right to a hearing on the parent's due process complaint, or to deny any other rights afforded under Part B of the Act; and
 - (iii) Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.
 - (2) The JHW School may establish procedures to offer to parents and schools that choose not to use the mediation process, an opportunity to meet, at a time and location convenient to the parents, with a disinterested party--
 - (i) Who is under contract with an appropriate alternative dispute resolution entity, or a parent training and information center or community parent resource center in the State established under section 671 or 672 of the Act; and
 - (ii) Who would explain the benefits of, and encourage the use of, the mediation process to the parents.
 - (3)
 - (i) The State must maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services.
 - (ii) The SEA must select mediators on a random, rotational, or other impartial basis.
 - (4) The State must bear the cost of the mediation process, including the costs of meetings described in paragraph (b)(2) of this section.
 - (5) Each session in the mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the dispute.

- (6) If the parties resolve a dispute through the mediation process, the parties must execute a legally binding agreement that sets forth that resolution and that--
 - (i) States that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding arising from that dispute; and
 - (ii) Is signed by both the parent and a representative of the agency who has the authority to bind such agency.
- (7) A written, signed mediation agreement under this paragraph is enforceable in any State court of competent jurisdiction or in a district court of the United States. Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearing or civil proceedings arising from that dispute of any Federal court or State court of a State receiving assistance under this part.
- (c) **Impartiality of mediator.**
 - (1) An individual who serves as a mediator under this part--
 - (i) May not be an employee of the SEA or the JHW School that is involved in the education or care of the child; and
 - (ii) Must not have a personal or professional interest that conflicts with the person's objectivity.
 - (2) A person who otherwise qualifies as a mediator is not an employee of an JHW School or State agency described under §300.228 solely because he or she is paid by the agency to serve as a mediator. (Authority: 20 U.S.C. 1415(e))

X. DUE PROCESS HEARING

§300.511 Impartial due process hearing.

- (a) **General.** Whenever a due process complaint is filed under §300.507, the parents or the JHW School involved in the dispute must have an opportunity for an impartial due process hearing, consistent with the procedures in §§300.507 through 300.508, and §300.510.
- (b) **Agency responsible for conducting the due process hearing.** The hearing described in paragraph (a) of this section must be conducted by the SEA or the public agency directly responsible for the education of the child, as determined under State statute, State regulation, or a written policy of the SEA.
- (c) **Impartial hearing officer.**
 - (1) At a minimum, a hearing officer--
 - (i) Must not be--
 - (A) An employee of the SEA or the JHW School that is involved in the education or care of the child; or
 - (B) A person having a personal or professional interest that conflicts with the person's objectivity in the hearing;
 - (ii) Must possess knowledge of, and the ability to understand, the provisions of the Act, Federal and State regulations pertaining to the Act, and legal interpretations of the Act by Federal and State courts;
 - (iii) Must possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and
 - (iv) Must possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.
 - (2) A person who otherwise qualifies to conduct a hearing under paragraph (c)(1) of this section is not an employee of the agency solely because he or she is paid by the agency to serve as a hearing officer.
 - (3) Each public agency must keep a list of the persons who serve as hearing officers. The list must include a statement of the qualifications of each of those persons.
- (d) **Subject matter of due process hearings.** The party requesting the due process hearing may not raise issues at the due process hearing that were not raised in the due process complaint filed under §300.508(b), unless the other party agrees otherwise.
- (e) **Timeline for requesting a hearing.** A parent or agency must request an impartial hearing on their due process complaint within two years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the due process complaint, or if the State has an explicit time limitation for requesting such a due process hearing under this part, in the time allowed by that State law.

- (f) **Exceptions to the timeline.** The timeline described in paragraph (e) of this section does not apply to a parent if the parent was prevented from filing a due process complaint due to--
- (1) Specific misrepresentations by the JHW School that it had resolved the problem forming the basis of the due process complaint; or
 - (2) The JHW School's withholding of information from the parent that was required under this part to be provided to the parent.
- (Authority: 20 U.S.C. 1415(f)(1)(A), 1415(f)(3)(A)–(D))

Hearing Rights

§300.512 Hearing rights.

- (a) **General.** Any party to a hearing conducted pursuant to §§300.507 through 300.513 or §§300.530 through 300.534, or an appeal conducted pursuant to §300.514, has the right to--
- (1) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;
 - (2) Present evidence and confront, cross-examine, and compel the attendance of witnesses;
 - (3) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing;
 - (4) Obtain a written, or, at the option of the parents, electronic, verbatim record of the hearing; and
 - (5) Obtain written, or, at the option of the parents, electronic findings of fact and decisions.
- (b) **Additional disclosure of information.**
- (1) At least five business days prior to a hearing conducted pursuant to §300.511(a), each party must disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing.
 - (2) A hearing officer may bar any party that fails to comply with paragraph (b)(1) of this section from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.
- (c) **Parental rights at hearings.** Parents involved in hearings must be given the right to--
- (1) Have the child who is the subject of the hearing present;
 - (2) Open the hearing to the public; and
 - (3) Have the record of the hearing and the findings of fact and decisions described in paragraphs (a)(4) and (a)(5) of this section provided at no cost to parents.
- (Authority: 20 U.S.C. 1415(f)(2), 1415(h))

TAC §89.1151. Due Process Hearings.

- (a) A parent or public education agency may initiate a due process hearing as provided in the Individuals with Disabilities Education Act (IDEA), Part B, as amended, 20 United States Code (USC), §§1401 et seq., and the applicable federal regulations, 34 Code of Federal Regulations (CFR), §§300.1 et seq.
- (b) The Texas Education Agency (TEA) shall implement a one-tier system of due process hearings under the IDEA. The proceedings in due process hearings shall be governed by the provisions of 34 CFR, §§300.507-300.514, and 34 CFR, §300.532, if applicable, and §§89.1151, 89.1165, 89.1170, 89.1180, 89.1185 and 89.1191 of this subchapter.
- (c) A parent or public education agency must request a due process hearing within one year of the date the complainant knew or should have known about the alleged action that serves as the basis for the hearing request.

TAC §89.1165. Request for Hearing.

- (a) A request for a due process hearing (due process complaint) must be in writing and must be filed with the Texas Education Agency, 1701 N. Congress Avenue, Austin, Texas 78701. The request for a due process hearing may be filed by mail, hand-delivery, or facsimile. The Individuals with Disabilities Education Act (IDEA) timelines applicable to due process hearings shall commence when the non-filing party first receives the request for a due process hearing. Unless rebutted, it will be presumed that the non-filing party first received the hearing request on the date it is sent to the parties by the Texas Education Agency (TEA). The TEA has developed a model form which may be used by a parent to initiate a due process hearing. The form is available on request from TEA, all regional education service centers, and all school districts. The form is also available on TEA's website.

- (b) The party filing a request for a due process hearing must provide a copy of the request to the other party.
- (c) The request for due process hearing must include:
 - (1) the name of the child;
 - (2) the address of the residence of the child;
 - (3) the name of the school the child is attending;
 - (4) in the case of a homeless child or youth (within the meaning of §725(2) of the McKinney-Vento Homeless Assistance Act (42 United States Code §11434a(2)), available contact information for the child, and the name of the school the child is attending;
 - (5) a description of the nature of the problem of the child relating to the proposed or refused initiation or change, including facts relating to the problem; and
 - (6) a proposed resolution of the problem to the extent known and available to the party at the time.
- (d) A party may not have a due process hearing until the party, or the attorney representing the party, files a request for a due process hearing that meets the requirements of paragraph (c) of this section.

TAC §89.1170. Impartial Hearing Officer.

- (a) Each due process hearing shall be conducted by an impartial hearing officer selected by the Texas Education Agency (TEA).
- (b) The hearing officer has the authority to administer oaths; call and examine witnesses; rule on motions, including discovery and dispositive motions; determine admissibility of evidence and amendments to pleadings; maintain decorum; schedule and recess the proceedings from day to day; and make any other orders as justice requires, including the application of sanctions as necessary to maintain an orderly hearing process.
- (c) If the hearing officer is removed, dies, becomes disabled, or withdraws from an appeal before the completion of duties, the TEA may designate a substitute hearing officer to complete the performance of duties without the necessity of repeating any previous proceedings.

TAC §89.1180. Prehearing Procedures.

- (a) Promptly upon being assigned to a hearing, the hearing officer will forward to the parties a scheduling order which sets the time, date, and location of the hearing and contains the timelines for the following actions, as applicable:
 - (1) Response to Complaint (34 Code of Federal Regulations (CFR), §300.508(f));
 - (2) Resolution Meeting (34 CFR, §300.510(a));
 - (3) Contesting Sufficiency of the Complaint (34 CFR, §300.508(d));
 - (4) Resolution Period (34 CFR, §300.510(b));
 - (5) Five-Business Day Disclosure (34 CFR, §300.512 (a)(3)); and
 - (6) the date by which the final decision of the hearing officer shall be issued (34 CFR, §300.515 and §300.532(c)(2)).
- (b) The hearing officer shall schedule a prehearing conference to be held at a time reasonably convenient to the parties to the hearing. The prehearing conference shall be held by telephone unless the hearing officer determines that circumstances require an in-person conference.
- (c) The prehearing shall be recorded and transcribed by a reporter, who shall immediately prepare a transcript of the prehearing for the hearing officer with copies to each of the parties.
- (d) The purpose of the prehearing conference shall be to consider any of the following:
 - (1) specifying issues as set forth in the due process complaint notice;
 - (2) admitting certain assertions of fact or stipulations;
 - (3) establishing any limitation of the number of witnesses and the time allotted for presenting each party's case; and/or
 - (4) discussing other matters which may aid in simplifying the proceeding or disposing of matters in controversy, including settling matters in dispute.

- (e) Promptly upon the conclusion of the prehearing conference, the hearing officer will issue and deliver to the parties, or their legal representatives, a written prehearing order which confirms and/or identifies:
 - (1) the time, place, and date of the hearing;
 - (2) the issues to be adjudicated at the hearing;
 - (3) the relief being sought at the hearing;
 - (4) the deadline for disclosure of evidence and identification of witnesses, which must be at least five business days prior to the scheduled date of the hearing (hereinafter referred to as the "Disclosure Deadline");
 - (5) the date by which the final decision of the hearing officer shall be issued; and
 - (6) other information determined to be relevant by the hearing officer.
- (f) No pleadings, other than the request for hearing, and Response to Complaint, if applicable, are mandatory, unless ordered by the hearing officer. Any pleadings after the request for a due process hearing shall be filed with the hearing officer. Copies of all pleadings shall be sent to all parties of record in the hearing and to the hearing officer. If a party is represented by an attorney, all copies shall be sent to the attorney of record. Telephone facsimile copies may be substituted for copies sent by other means. An affirmative statement that a copy of the pleading has been sent to all parties and the hearing officer is sufficient to indicate compliance with this rule.
- (g) Discovery methods shall be limited to those specified in the Administrative Procedure Act (APA), Texas Government Code, Chapter 2001, and may be further limited by order of the hearing officer. Upon a party's request to the hearing officer, the hearing officer may issue subpoenas and commissions to take depositions under the APA. Subpoenas and commissions to take depositions shall be issued in the name of the Texas Education Agency.
- (h) On or before the Disclosure Deadline (which must be at least five business days prior to a scheduled due process hearing), each party must disclose and provide to all other parties and the hearing officer copies of all evidence (including, without limitation, all evaluations completed by that date and recommendations based on those evaluations) which the party intends to use at the hearing. An index of the documents disclosed must be included with and accompany the documents. Each party must also include with the documents disclosed a list of all witnesses (including their names, addresses, phone numbers, and professions) which the party anticipates calling to testify at the hearing.
- (i) A party may request a dismissal or nonsuit of a due process hearing to the same extent that a plaintiff may dismiss or nonsuit a case under Texas Rules of Civil Procedure, Rule 162. However, if a party requests a dismissal or nonsuit of a due process hearing after the Disclosure Deadline has passed and, at any time within one year thereafter requests a subsequent due process hearing involving the same or substantially similar issues as those alleged in the hearing which was dismissed or nonsuited, then, absent good cause or unless the parties agree otherwise, the Disclosure Deadline for the subsequent due process hearing shall be the same date as was established for the hearing that was dismissed or nonsuited.

TAC §89.1185. Hearing.

- (a) The hearing officer shall afford the parties an opportunity for hearing within the timelines set forth in 34 Code of Federal Regulations (CFR), §300.515 and §300.532, as applicable, unless the parties agree otherwise, except that the parties must comply with the timelines for expedited hearings.
- (b) Each hearing shall be conducted at a time and place that are reasonably convenient to the parents and child involved.
- (c) All persons in attendance shall comport themselves with the same dignity, courtesy, and respect required by the district courts of the State of Texas. All argument shall be made to the hearing officer alone.
- (d) Except as modified or limited by the provisions of 34 CFR, §§300.507-300.514, or 300.532, or the provisions of §§89.1151-89.1191 of this subchapter, the Texas Rules of Civil Procedure shall govern the proceedings at the hearing and the Texas Rules of Evidence shall govern evidentiary issues.

- (e) Before a document may be offered or admitted into evidence, the document must be identified as an exhibit of the party offering the document. All pages within the exhibit must be numbered, and all personally identifiable information must be redacted from the exhibit.
- (f) The hearing officer may set reasonable time limits for presenting evidence at the hearing.
- (g) Upon request, the hearing officer, at his or her discretion, may permit testimony to be received by telephone.
- (h) Granting of a motion to exclude witnesses from the hearing room shall be at the hearing officer's discretion.
- (i) Hearings conducted under this subchapter shall be closed to the public, unless the parent requests that the hearing be open.
- (j) The hearing shall be recorded and transcribed by a reporter, who shall immediately prepare and transmit a transcript of the evidence to the hearing officer with copies to each of the parties. The hearing officer shall instruct the reporter to delete all personally identifiable information from the transcription of the hearing.
- (k) Filing of post-hearing briefs shall be permitted only upon order of the hearing officer.
- (l) The hearing officer shall issue a final decision, signed and dated, no later than 45 days after the expiration of the 30-day period under 34 CFR, §300.510(b), or the adjusted time periods described in 34 CFR, §300.510(c), after a request for hearing is received by the Texas Education Agency, unless the deadline for a final decision has been extended by the hearing officer as provided in subsection (n) of this section. A final decision must be in writing and must include findings of fact and conclusions of law separately stated. Findings of fact must be based exclusively on the evidence presented at the hearing. The final decision shall be mailed to each party by the hearing officer. The hearing officer, at his or her discretion, may render his or her decision following the conclusion of the hearing, to be followed by written findings of fact and written decision.
- (m) At the request of either party, the hearing officer shall include, in the final decision, specific findings of fact regarding the following issues:
 - (1) whether the parent or the JHW School unreasonably protracted the final resolution of the issues in controversy in the hearing; and
 - (2) if the parent was represented by an attorney, whether the parent's attorney provided the JHW School the appropriate information in the due process complaint in accordance with 34 CFR, §300.508(b).
- (n) A hearing officer may grant extensions of time for good cause beyond the time period specified in subsection (l) of this section at the request of either party. Any such extension shall be granted to a specific date and shall be stated in writing by the hearing officer to each of the parties.
- (o) The decision issued by the hearing officer is final, except that any party aggrieved by the findings and decision made by the hearing officer, or the performance thereof by any other party, may bring a civil action with respect to the issues presented at the due process hearing in any state court of competent jurisdiction or in a district court of the United States, as provided in 20 United States Code (USC), §1415(i)(2), and 34 CFR, §300.516.
- (p) In accordance with 34 CFR, §300.518(d), a school district shall implement any decision of the hearing officer that is, at least in part, adverse to the school district in a timely manner within ten school days after the date the decision was rendered. School districts must provide services ordered by the hearing officer, but may withhold reimbursement during the pendency of appeals.

TEC §29.016. Evaluation Conducted Pursuant to a Special Education Due Process Hearing.

A special education hearing officer in an impartial due process hearing brought under 20 U.S.C. Section 1415 may issue an order or decision that authorizes one or more evaluations of a student who is eligible for, or who is suspected as being eligible for, special education services. Such an order or decision authorizes the evaluation of the student without parental consent as if it were a court order for purposes of any state or federal law providing for consent by order of a court.

TEC §29.0161. Contract with State Office of Administrative Hearings for Special Education Due Process Hearings.

Not later than December 1, 2003, the agency and the State Office of Administrative Hearings shall jointly determine whether it would be cost-effective for the agency to enter an interagency contract with the office under which the office would conduct all or part of the agency's special education due process hearings under 20 U.S.C. Section 1415 and its subsequent amendments.

§300.513 Hearing decisions.

(a) Decision of hearing officer.

- (1) Subject to paragraph (a)(2) of this section, a hearing officer's determination of whether a child received FAPE must be based on substantive grounds.
- (2) In matters alleging a procedural violation, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies--
 - (i) Impeded the child's right to a FAPE;
 - (ii) Significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to the parents' child; or
 - (iii) Caused a deprivation of educational benefit.
- (3) Nothing in paragraph (a) of this section shall be construed to preclude a hearing officer from ordering an LEA to comply with procedural requirements under §§300.500 through 300.536.

(b) Construction clause. Nothing in §§300.507 through 300.513 shall be construed to affect the right of a parent to file an appeal of the due process hearing decision with the SEA under §300.514(b), if a State level appeal is available.

(c) Separate request for a due process hearing. Nothing in §§300.500 through 300.536 shall be construed to preclude a parent from filing a separate due process complaint on an issue separate from a due process complaint already filed.

(d) Findings and decision to advisory panel and general public. The JHW School, after deleting any personally identifiable information, must--

- (1) Transmit the findings and decisions referred to in §300.512(a)(5) to the State advisory panel established under §300.167; and
- (2) Make those findings and decisions available to the public.
(Authority: 20 U.S.C. 1415(f)(3)(E) and (F), 1415(h)(4), 1415(o))

§300.514 Finality of decision; appeal; impartial review.

(a) Finality of hearing decision. A decision made in a hearing conducted pursuant to §§300.507 through 300.513 or §§300.530 through 300.534 is final, except that any party involved in the hearing may appeal the decision under the provisions of paragraph (b) of this section and §300.516.

(b) Appeal of decisions; impartial review.

- (1) If the hearing required by §300.511 is conducted by a public agency other than the SEA, any party aggrieved by the findings and decision in the hearing may appeal to the SEA.
- (2) If there is an appeal, the SEA must conduct an impartial review of the findings and decision appealed. The official conducting the review must--
 - (i) Examine the entire hearing record;
 - (ii) Ensure that the procedures at the hearing were consistent with the requirements of due process;
 - (iii) Seek additional evidence if necessary. If a hearing is held to receive additional evidence, the rights in §300.512 apply;
 - (iv) Afford the parties an opportunity for oral or written argument, or both, at the discretion of the reviewing official;
 - (v) Make an independent decision on completion of the review; and
 - (vi) Give a copy of the written, or, at the option of the parents, electronic findings of fact and decisions to the parties.

- (c) **Findings and decision to advisory panel and general public.** The SEA, after deleting any personally identifiable information, must--
 - (1) Transmit the findings and decisions referred to in paragraph (b)(2)(vi) of this section to the State advisory panel established under §300.167; and
 - (2) Make those findings and decisions available to the public.
- (d) **Finality of review decision.** The decision made by the reviewing official is final unless a party brings a civil action under §300.516.
(Authority: 20 U.S.C. 1415(g) and (h)(4), 1415(i)(1)(A), 1415(i)(2))

§300.515 Timelines and convenience of hearings and reviews.

- (a) The JHW School must ensure that not later than 45 days after the expiration of the 30 day period under §300.510(b), or the adjusted time periods described in 300.510(c)--
 - (1) A final decision is reached in the hearing; and
 - (2) A copy of the decision is mailed to each of the parties.
- (b) The SEA must ensure that not later than 30 days after the receipt of a request for a review--
 - (1) A final decision is reached in the review; and
 - (2) A copy of the decision is mailed to each of the parties.
- (c) A hearing or reviewing officer may grant specific extensions of time beyond the periods set out in paragraphs (a) and (b) of this section at the request of either party.
- (d) Each hearing and each review involving oral arguments must be conducted at a time and place that is reasonably convenient to the parents and child involved.
(Authority: 20 U.S.C. 1415(f)(1)(B)(ii), 1415(g), 1415(i)(1))

TAC §89.1191. Special Rule for Expedited Due Process Hearings.

An expedited due process hearing requested by a party under 34 Code of Federal Regulations, §300.532, shall be governed by the same rules as are applicable to due process hearings generally, except that the final decision of the hearing officer must be issued and mailed to each of the parties no later than 45 days after the date the request for the expedited hearing is received by the Texas Education Agency, without exceptions or extensions.

§300.517 Attorneys' fees.

- (a) **In general.**
 - (1) In any action or proceeding brought under section 615 of the Act, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to--
 - (i) The prevailing party who is the parent of a child with a disability;
 - (ii) To a prevailing party who is an SEA or LEA against the attorney of a parent who files a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or
 - (iii) To a prevailing SEA or LEA against the attorney of a parent, or against the parent, if the parent's request for a due process hearing or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.
 - (2) Nothing in this subsection shall be construed to affect section 327 of the District of Columbia Appropriations Act, 2005.
- (b) **Prohibition on use of funds.**
 - (1) Funds under Part B of the Act may not be used to pay attorneys' fees or costs of a party related to any action or proceeding under section 615 of the Act and subpart E of this part.
 - (2) Paragraph (b)(1) of this section does not preclude JHW School from using funds under Part B of the Act for conducting an action or proceeding under section 615 of the Act.
- (c) **Award of fees.** A court awards reasonable attorneys' fees under section 615(i)(3) of the Act consistent with the following:
 - (1) Fees awarded under section 615(i)(3) of the Act must be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded under this paragraph.

- (2) (i) Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding under section 615 of the Act for services performed subsequent to the time of a written offer of settlement to a parent if--
- (A) The offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than 10 days before the proceeding begins;
- (B) The offer is not accepted within 10 days; and
- (C) The court or administrative hearing officer finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement.
- (ii) Attorneys' fees may not be awarded relating to any meeting of the IEP Team unless the meeting is convened as a result of an administrative proceeding or judicial action, or at the discretion of the State, for a mediation described in §300.506.
- (iii) A meeting conducted pursuant to §300.510 shall not be considered--
- (A) A meeting convened as a result of an administrative hearing or judicial action; or
- (B) An administrative hearing or judicial action for purposes of this section.
- (3) Notwithstanding paragraph (c)(2) of this section, an award of attorneys' fees and related costs may be made to a parent who is the prevailing party and who was substantially justified in rejecting the settlement offer.
- (4) Except as provided in paragraph (c)(5) of this section, the court reduces, accordingly, the amount of the attorneys' fees awarded under section 615 of the Act, if the court finds that--
- (i) The parent, or the parent's attorney, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;
- (ii) The amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience;
- (iii) The time spent and legal services furnished were excessive considering the nature of the action or proceeding; or
- (iv) The attorney representing the parent did not provide to the JHW School the appropriate information in the due process request notice in accordance with §300.508.
- (5) The provisions of paragraph (c)(4) of this section do not apply in any action or proceeding if the court finds that the State or local agency unreasonably protracted the final resolution of the action or proceeding or there was a violation of section 615 of the Act.
- (Authority: 20 U.S.C. 1415(i)(3)(B)-(G))

X. CIVIL ACTION

§300.516 Civil action.

- (a) **General.** Any party aggrieved by the findings and decision made under §§300.507 through 300.513 or §§300.530 through 300.534 who does not have the right to an appeal under §300.514(b), and any party aggrieved by the findings and decision under §300.514(b), has the right to bring a civil action with respect to the due process complaint notice requesting a due process hearing under §300.507 or §§300.530 through 300.532. The action may be brought in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy.
- (b) **Time limitation.** The party bringing the action shall have 90 days from the date of the decision of the hearing officer or if applicable, the decision of the State review official, to file a civil action, or, if the State has an explicit time limitation for bringing civil actions under Part B of the Act, in the time allowed by that State law.
- (c) **Additional requirements.** In any action brought under paragraph (a) of this section, the court—
- (1) Receives the records of the administrative proceedings;
- (2) Hears additional evidence at the request of a party; and
- (3) Basing its decision on the preponderance of the evidence, grants the relief that the court determines to be appropriate.
- (d) **Jurisdiction of district courts.** The district courts of the United States have jurisdiction of actions brought under section 615 of the Act without regard to the amount in controversy.
- (e) **Rule of construction.** Nothing in this part restricts or limits the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990, title V of the Rehabilitation Act of 1973, or other Federal laws protecting the rights of children with disabilities, except that before

the filing of a civil action under these laws seeking relief that is also available under section 615 of the Act, the procedures under §§300.507 and 300.514 must be exhausted to the same extent as would be required had the action been brought under section 615 of the Act.
(Authority: 20 U.S.C. 1415(i)(2) and (3)(A), 1415(l))

XI. STUDENT STATUS DURING PROCEEDINGS

§300.518 Child's status during proceedings.

- (a) Except as provided in §300.533, during the pendency of any administrative or judicial proceeding regarding a request for a due process complaint notice requesting a due process hearing under §300.507, unless the State or local agency and the parents of the child agree otherwise, the child involved in the complaint must remain in his or her current educational placement.
- (b) If the complaint involves an application for initial admission to public school, the child, with the consent of the parents, must be placed in the public school until the completion of all the proceedings.
- (c) If the complaint involves an application for initial services under this part from a child who is transitioning from Part C of the Act to Part B and is no longer eligible for Part C services because the child has turned three, the JHW School is not required to provide the Part C services that the child had been receiving. If the child is found eligible for special education and related services under Part B and the parent consents to the initial provision of special education and related services under §300.300(b), then the JHW School must provide those special education and related services that are not in dispute between the parent and the JHW School.
- (d) If the hearing officer in a due process hearing conducted by the SEA or a State review official in an administrative appeal agrees with the child's parents that a change of placement is appropriate, that placement must be treated as an agreement between the State or local agency and the parents for purposes of paragraph (a) of this section.
(Authority: 20 U.S.C. 1415(j))

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Section 8 - ADMINISTRATION

I. SCOPE AND APPLICABILITY

§300.1 Purposes.

The purposes of this part are--

- (a) To ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living;
 - (b) To ensure that the rights of children with disabilities and their parents are protected;
 - (c) To assist States, localities, educational service agencies, and Federal agencies to provide for the education of all children with disabilities; and
 - (d) To assess and ensure the effectiveness of efforts to educate children with disabilities.
- (Authority: 20 U.S.C. 1400(d))

TAC §89.1001. Scope and Applicability.

- (a) Special education services must be provided to eligible students in accordance with all applicable federal law and regulations, state statutes, rules of the State Board of Education (SBOE) and commissioner of education, and the State Plan under Part B of the Individuals with Disabilities Education Act (IDEA).
- (b) Education programs, under the direction and control of the Texas Youth Commission, Texas School for the Blind and Visually Impaired, Texas School for the Deaf, and schools within the Texas Department of Criminal Justice must comply with state and federal law and regulations concerning the delivery of special education and related services to eligible students and must be monitored by the Texas Education Agency in accordance with the requirements identified in subsection (a) of this section.
- (c) A school district having a residential facility that is licensed by appropriate state agencies and located within the district's boundaries must provide special education and related services to eligible students residing in the facility. If, after contacting the facility to offer services to eligible students with disabilities, the district determines that educational services are provided through a charter school, approved non-public school, or a facility operated private school, the district is not required to provide services. However, the district must annually contact the facility to offer services to eligible students with disabilities.

§300.212 Public information.

The JHW School 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.

(Authority: 20 U.S.C. 1413(a)(8))

II. FAPE – FREE APPROPRIATE PUBLIC EDUCATION

§300.17 Free appropriate public education. Free appropriate public education or FAPE means special education and related services that--

- (a) Are provided at public expense, under public supervision and direction, and without charge;
- (b) Meet the standards of the SEA, including the requirements of this part;
- (c) Include an appropriate preschool, elementary school, or secondary school education in the State involved; and
- (d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of §§300.320 through 300.324. (Authority: 20 U.S.C. 1401(9))

§300.101 Free appropriate public education (FAPE).

- (a) **General.** A free appropriate public education must be available to all children residing in the State between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school, as provided for in §300.530(d).
- (b) **FAPE for children beginning at age 3.**
- (1) Each State must ensure that--
 - (i) The obligation to make FAPE available to each eligible child residing in the State begins no later than the child's third birthday; and
 - (ii) An IEP or an IFSP is in effect for the child by that date, in accordance with §300.323(b).
 - (2) If a child's third birthday occurs during the summer, the child's IEP Team must determine the date when services under the IEP or IFSP will begin.
- (c) **Children advancing from grade to grade.**
- (1) Each State must ensure 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.
 - (2) The determination that a child described in paragraph (a) of this section is eligible under this part, must be made on an individual basis by the group responsible within the child's LEA for making eligibility determinations.
- (Authority: 20 U.S.C. 1412(a)(1)(A))

A Free Appropriate Public Education will provided to all children through a continuum of services that may include content mastery, inclusion support, resource classes, and self-contained developmental classes.

§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:
- (1) Children aged 3, 4, 5, 18, 19, 20, or 21 in a State to the extent that its application to those children would be inconsistent with State law or practice, or the order of any court, respecting the provision of public education to children of those ages.
 - (2)
 - (i) Children aged 18 through 21 to the extent that State law does not require that special education and related services under Part B of the Act be provided to students with disabilities who, in the last educational placement prior to their incarceration in an adult correctional facility--
 - (A) Were not actually identified as being a child with a disability under §300.8; and
 - (B) Did not have an IEP under Part B of the Act.
 - (ii) The exception in paragraph (a)(2)(i) of this section does not apply to children with disabilities, aged 18 through 21, who--
 - (A) Had been identified as a child with a disability under §300.8 and had received services in accordance with an IEP, but who left school prior to their incarceration; or
 - (B) Did not have an IEP in their last educational setting, but who had actually been identified as a child with a disability under §300.8.
 - (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 students who have graduated 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 (a)(3)(iii) for this section, the term regular high school diploma does not include an alternative degree that is not fully aligned with the State's academic standards, such as a certificate or a general educational development credential (GED).
 - (4) Children with disabilities who are eligible under subpart H of this part, but who receive early intervention services under Part C of the Act.
- (b) **Documents relating to exceptions.** The State must assure that the information it has provided to the Secretary regarding the exceptions in paragraph (a) of this section, as required by §300.700 (for purposes of making grants to States under this part), is current and accurate.
- (Authority: 20 U.S.C. 1412(a)(1)(B)-(C))

§300.103 FAPE – methods and payments.

- (a) Each State may use whatever State, local, Federal, and private sources of support are available to the State to meet the requirements of this part. For example, if it is necessary to place a child with a disability in a residential facility, a State could use joint agreements between the agencies involved for sharing the cost of that placement.
- (b) Nothing in this part relieves an insurer or similar third party from an otherwise valid obligation to provide or to pay for service provided to a child with a disability.
- (c) Consistent with 300.323(c), the State must ensure that there is no delay in implementing a child's IEP, including any case in which the payment source for providing or paying for special education and related services to the child is being determined. (Authority: 20 U.S.C. 1401(8), 1412(a)(1))

§300.109 Full educational opportunity goal (FEOG).

The State must have in effect policies and procedures to demonstrate that the State has established a goal of providing full educational opportunity to all children with disabilities, aged birth through 21, and a detailed timetable for accomplishing that goal.

(Authority: 20 U.S.C. 1412(a)(2))

§300.110 Program options.

The State must ensure that each public agency takes steps to ensure that its children with disabilities have available to them the variety of educational programs and services available to nondisabled children in the area served by the agency, including art, music, industrial arts, consumer and homemaking education, and vocational education.

(Authority: 20 U.S.C. 1412(a)(2), 1413(a)(1))

III. SPECIAL EDUCATION DEFINED

§300.39 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 the child can meet the educational standards within the jurisdiction of the JHW School 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 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.
- (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))

§300.34 Related Services *(located in Section 4 of this manual)*

§300.42 Supplementary aids and services. Supplementary aids and services means aids, services, and other supports that are provided in regular education classes or other education-related settings to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with §§300.112 through 300.116. (Authority: 20 U.S.C. 1401(33))

§300.35 Scientifically based research. Scientifically based research has the meaning given the term in section 9101(37) of the ESEA. (Authority: 20 U.S.C. 1411(e)(2)(C)(xi))

ESEA section 9101 (37)

- (37) **SCIENTIFICALLY BASED RESEARCH-** The term scientifically based research —
- (A) means research that involves the application of rigorous, systematic, and objective procedures to obtain reliable and valid knowledge relevant to education activities and programs; and
 - (B) includes research that —
 - (i) employs systematic, empirical methods that draw on observation or experiment;
 - (ii) involves rigorous data analyses that are adequate to test the stated hypotheses and justify the general conclusions drawn;
 - (iii) relies on measurements or observational methods that provide reliable and valid data across evaluators and observers, across multiple measurements and observations, and across studies by the same or different investigators;
 - (iv) is evaluated using experimental or quasi-experimental designs in which individuals, entities, programs, or activities are assigned to different conditions and with appropriate controls to evaluate the effects of the condition of interest, with a preference for random-assignment experiments, or other designs to the extent that those designs contain within-condition or across-condition controls;
 - (v) ensures that experimental studies are presented in sufficient detail and clarity to allow for replication or, at a minimum, offer the opportunity to build systematically on their findings; and
 - (vi) has been accepted by a peer-reviewed journal or approved by a panel of independent experts through a comparably rigorous, objective, and scientific review.

IV. PERSONNEL

§300.156 Personnel qualifications.

- (a) **General.** The SEA must establish and maintain qualifications to ensure that personnel necessary to carry out the purposes of this part are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities.
- (b) **Related services personnel and paraprofessionals.** The qualifications under paragraph (a) of this section must include qualifications for related services personnel and paraprofessionals that--
- (1) Are consistent with any State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services; and
 - (2) Ensure that related services personnel who deliver services in their discipline or profession--
 - (i) Meet the requirements of paragraph (b)(1) of this section; and
 - (ii) Have not had certification or licensure requirements waived on an emergency, temporary, or provisional basis; and
 - (iii) Allow paraprofessionals and assistants who are appropriately trained and supervised, in accordance with State law, regulation, or written policy, in meeting the requirements of this part to be used to assist in the provision of special education and related services under this part to children with disabilities.
- (c) **Qualifications for special education teachers.** The qualifications described in paragraph (a) of this section must ensure that each person employed as a public school special education teacher in the State who teaches in an elementary school, middle school, or secondary school is highly qualified as a special education teacher by the deadline established in section 1119(a)(2) of the ESEA.
- (d) **Policy.** In implementing this section, a State must adopt a policy that includes a requirement that LEAs in the State take measurable steps to recruit, hire, train, and retain highly qualified personnel to provide special education and related services under this part to children with disabilities.
- (e) **Rule of construction.** Notwithstanding any other individual right of action that a parent or student may maintain under this part, nothing in this part must be construed to create a right of action on behalf of an individual student or a class of students for the failure of a particular SEA or LEA employee to be highly qualified; or to prevent a parent from filing a complaint about staff qualifications with the SEA as provided for under this part.

(Authority: 20 U.S.C. 1412(a)(14))

TEC §21.002. Teacher Employment Contracts.

- (a) A school district must employ each classroom teacher, principal, librarian, nurse, or counselor under:
- (1) a probationary contract, as provided by Subchapter C;
 - (2) a continuing contract, as provided by Subchapter D; or
 - (3) a term contract, as provided by Subchapter E.
- (b) A district is not required to employ a person other than an employee listed in Subsection (a) under a probationary, continuing, or term contract.
- (c) Each board of trustees must establish a policy designating specific positions of employment, or categories of positions based on considerations such as length of service, to which continuing contracts or term contracts apply.

TEC §21.003. Certification Required.

- (a) A person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, or counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by Subchapter B.
- (b) Except as otherwise provided by this subsection, a person may not be employed by a school district as an audiologist, occupational therapist, physical therapist, physician, nurse, school psychologist, associate school psychologist, marriage and family therapist, social worker, or speech language pathologist unless the person is licensed by the state agency that licenses that profession and may perform specific services within those professions for a school district only if the person holds the

appropriate credential from the appropriate state agency. As long as a person employed by the district before September 1, 2011, to perform marriage and family therapy, as defined by Section 502.002, Occupations Code, is employed by the same district, the person is not required to hold a decision as a marriage and family therapist to perform marriage and family therapy with that district.

TAC §89.1131. Qualifications of Special Education, Related Service, and Paraprofessional Personnel.

- (a) All special education and related service personnel must be certified, endorsed, or licensed in the area or areas of assignment in accordance with 34 Code of Federal Regulation, §300.156; the Texas Education Code, §§21.002, 21.003, and 29.304; or appropriate state agency credentials.
- (b) A **teacher** who holds a special education certificate or an endorsement may be assigned to any level of a basic special education instructional program serving eligible students 3-21 years of age, as defined in §89.1035(a) of this title (relating to Age Ranges for Student Eligibility), in accordance with the limitation of their certification, except for the following.
 - (1) Persons assigned to provide **speech therapy** instructional services must hold a valid Texas Education Agency certificate in speech and hearing therapy or speech and language therapy, or a valid state license as a speech/language pathologist.
 - (2) Teachers holding only a special education endorsement for **early childhood** education for students with disabilities must be assigned only to programs serving infants through Grade 6.
 - (3) Teachers certified in the education of students with **visual impairments** must be available to students with visual impairments, including deaf-blindness, through one of the school district's instructional options, a shared services arrangement with other school districts, or an education service center.
 - (4) Teachers certified in the education of students with **auditory impairments** must be available to students with auditory impairments, including deaf-blindness, through one of the school district's instructional options, a regional day school program for the deaf, or a shared services arrangement with other school districts.
 - (5) The following provisions apply to **physical education**.
 - (A) When the admission, review, and dismissal committee has made the determination and the arrangements are specified in the student's individualized education program, physical education may be provided by the following personnel:
 - (i) special education instructional or related service personnel who have the necessary skills and knowledge;
 - (ii) physical education teachers;
 - (iii) occupational therapists;
 - (iv) physical therapists; or
 - (v) occupational therapy assistants or physical therapy assistants working under supervision in accordance with the standards of their profession.
 - (B) When these services are provided by special education personnel, the district must document that they have the necessary skills and knowledge. Documentation may include, but need not be limited to, inservice records, evidence of attendance at seminars or workshops, or transcripts of college courses.
 - (6) Teachers assigned full-time or part-time to instruction of students from **birth through age two** with visual impairments, including deaf-blindness, must be certified in the education of students with visual impairments. Teachers assigned full-time or part-time to instruction of students from birth through age two who are deaf, including deaf-blindness, must be certified in education for students who are deaf and severely hard of hearing.
 - (7) Teachers with **secondary certification** with the generic delivery system may be assigned to teach Grades 6-12 only.
- (c) **Paraprofessional** personnel must be certified and may be assigned to work with eligible students, general and special education teachers, and related service personnel. Educational aides may also be

assigned to assist students with special education transportation, serve as a job coach, or serve in support of community-based instruction. Educational aides paid from state administrative funds may be assigned to special education clerical or administrative duties.

- (d) **Interpreting services** for students who are deaf must be provided by an interpreter who is certified in the appropriate language mode(s), if certification in such mode(s) is available. If certification is available, the interpreter must be a certified member of or certified by the Registry of Interpreters for the Deaf (RID) or the Texas Board for Evaluation of Interpreters (BEI), Department of Assistive and Rehabilitative Services (DARS), Office for Deaf and Hard of Hearing Services (DHHS).
- (e) **Orientation and mobility instruction** must be provided by a certified orientation and mobility specialist (COMS) who is certified by the Academy for Certification of Vision Rehabilitation and Education Professionals.

TEC §29.304. Qualifications of Personnel

- (a) A student who is **deaf or hard of hearing** must have an education in which teachers, psychologists, speech therapists, progress assessors, administrators, and others involved in education understand the unique nature of deafness and the hard-of-hearing condition. A teacher of students who are deaf or hard of hearing either must be proficient in appropriate language modes or use an interpreter certified in appropriate language modes if certification is available.
- (b) Each school district must employ or provide access to appropriate qualified staff with proficient communications skills, consistent with credentialing requirements, to fulfill the responsibilities of the school district, and must make positive efforts to employ qualified individuals with disabilities.
- (c) Regular and special personnel who work with students who are deaf or hard of hearing must be adequately prepared to provide educational instruction and services to those students.

§300.18 Highly qualified special education teacher.

- (a) Requirements for special education teachers teaching core academic subjects. For any public elementary or secondary school special education teacher teaching core academic subjects, the term **highly qualified** has the meaning given the term in section 9101 of the ESEA and 34 CFR 200.56, except that the requirements for highly qualified also--
 - (1) Include the requirements described in paragraph (b) of this section; and
 - (2) Include the option for teachers to meet the requirements of section 9101 of the ESEA by meeting the requirements of paragraphs (c) and (d) of this section.
- (b) Requirements for special education teachers in general.
 - (1) When used with respect to any public elementary school or secondary school special education teacher teaching in a State, highly qualified that--
 - (i) The teacher has obtained full State certification as a special education teacher (including certification obtained through alternative routes to certification), or passed the State special education teacher licensing examination, and holds a license to teach in the State as a special education teacher, except that when used with respect to any teacher teaching in a public charter school, highly qualified means that the teacher meets the certification or licensing requirements, if any, set forth in the State's public charter school law;
 - (ii) The teacher has not had special education certification or licensure requirements waived on an emergency, temporary, or provisional basis; and
 - (iii) The teacher holds at least a bachelor's degree.
 - (2) A teacher will be considered to meet the standard in paragraph (b)(1)(i) of this section if that teacher is participating in an alternative route to certification program under which--
 - (i) The teacher--
 - (A) Receives high-quality professional development that is sustained, intensive, and classroom-focused in order to have a positive and lasting impact on classroom instruction, before and while teaching;
 - (B) Participates in a program of intensive supervision that consists of structured guidance and regular ongoing support for teachers or a teacher mentoring program;

- (C) Assumes functions as a teacher only for a specified period of time not to exceed three years; and
- (D) Demonstrates satisfactory progress toward full certification as prescribed by the State; and
- (ii) The State ensures, through its certification and licensure process, that the provisions in paragraph (b)(2)(i) of this section are met.
- (3) Any public elementary school or secondary school special education teacher teaching in a State, who is not teaching a core academic subject, is highly qualified if the teacher meets the requirements of paragraph (b)(1) or the requirements in (b)(1)(iii) and (b)(2) of this section.
- (c) **Requirements for special education teachers teaching to alternate achievement standards.** Subject to paragraph (e) of this section, when used with respect to a special education teacher who teaches core academic subjects exclusively to children who are assessed against alternate achievement standards established under 34 CFR 200.1(d), highly qualified means the teacher, whether new or not new to the profession, may either--
 - (1) Meet the applicable requirements of section 9101 of the ESEA and 34 CFR 200.56 for any elementary, middle, or secondary school teacher who is new or not new to the profession; or
 - (2) Meet the requirements of subparagraph (B) or (C) of section 9101(23) of the ESEA as applied to an elementary school teacher, or, in the case of instruction above the elementary level, meet the requirements of subparagraph (B) or (C) of section 9101(23) of the ESEA as applied to an elementary school teacher and have subject matter knowledge appropriate to the level of instruction being provided and needed to effectively teach to those standards, as determined by the State.
- (d) **Requirements for highly qualified special education teachers teaching multiple subjects.** When used with respect to a special education teacher who teaches two or more core academic subjects exclusively to children with disabilities, highly qualified means that the teacher may either--
 - (1) Meet the applicable requirements of section 9101 of the ESEA and 34 CFR 200.56(b) or (c);
 - (2) In the case of a teacher who is not new to the profession, demonstrate competence in all the core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher who is not new to the profession under 34 CFR 200.56(c) which may include a single, high objective uniform State standard of evaluation (HOUSSE) covering multiple subjects; or
 - (3) In the case of a new special education teacher who teaches multiple subjects, and who is highly qualified in mathematics, language arts, or science, demonstrate, not later than two years after the date of employment, competence in the other core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher under 34 CFR 200.56(c), which may include a single, high objective State standard of evaluation (HOUSSE) covering multiple subjects.
- (e) **Separate HOUSSE standards for special education teachers.** Provided that any adaptations of the State's HOUSSE would not establish a lower standard for the content knowledge requirements for special education teachers and meets all the requirements for a HOUSSE for regular education teachers—
 - (1) A State may develop a separate HOUSSE for special education teachers; and
 - (2) The standards described in paragraph (e)(1) of this section may include single HOUSSE evaluations that cover multiple subjects.
- (f) **Rule of construction.** Notwithstanding any other individual right of action that a parent or student may maintain under this part, nothing in this section or part must be construed to create a right of action on behalf of an individual student or class of students for the failure of a particular SEA or LEA employee to be highly qualified, or to prevent a parent from filing a complaint under §§300.151 through 300.153 about staff qualifications with the SEA as provided for under this part.
- (g) **Applicability of definition to ESEA; and clarification of new special education teacher.**
 - (1) A teacher who is highly qualified under this section is considered highly qualified for purposes of the ESEA.
 - (2) For purposes of 300.18(d)(3), a fully certified regular education teacher who subsequently becomes fully certified or licensed as a special education teacher is a new special education teacher when first hired as a special education teacher.
- (h) **Private school teachers not covered.** The requirements in this section do not apply to teachers hired by private elementary schools and secondary schools including private school teachers hired or contracted by LEAs to provide equitable services to parentally-placed private school children with disabilities under §300.138. (Authority: 20 U.S.C. 1401(10))

Also reference NCLB Section 1119. Qualifications at: www.edgov/policy/elsec/leg/esea02/index.html

§300.207 Personnel development.

The LEA must ensure that all personnel necessary to carry out Part B of the Act are appropriately and adequately prepared, subject to the requirements of §300.156 (related to personnel qualifications) and section 2122 of the ESEA. (Authority: 20 U.S.C. 1413(a)(3))

§21.451 Staff Development Requirements

- (a) The staff development provided by a school district to an educator other than a principal must be:
 - (1) Conducted in accordance with standards developed by the district; and
 - (2) Designed to improve education in the district
- (a-1) Section 21.3541 and rules adopted under that section govern the professional development provided to a principal .
- (A) The staff development described by Subsection (a) must be predominantly campus-based, related to achieving campus performance objectives established under Section 11.253, and developed and approved by the campus-level committee established under Section 11.251.
- (B) For staff development under Subsection (a), a school district may use district-wide staff development developed and approved through the district-level decision process under Section 11.251.
- (C) The staff development:
 - (1) May include training in:
 - a. Technology
 - b. Conflict resolution
 - c. Discipline strategies, including classroom management, district discipline policies, and the student code of conduct adopted under Section 37.001 and Chapter 37; and
 - d. Preventing, identifying, responding to, and reporting incidents of bullying; and
 - (2) Subject to Subsection (e) and to the Section 21.3541 and rules adopted under that section, must include training based on scientifically based research, as defined by Section 9101, No Child Left Behind Act of 2001 (20 U.S.C. Section 7801) that:
 - (A) relates to instruction of students with disabilities; and
 - (B) is designed for educators who work primarily outside the area of Special Education.

V. CURRICULUM FOR STUDENTS WITH DISABILITIES

The John H. Wood, Jr. Public Charter District has the responsibility for providing educational and related services to eligible students in the least restrictive environment. Students with disabilities must have the opportunity to participate in educational programs and activities with non-disabled students to the maximum extent appropriate.

The JHW School curriculum will enable each student to acquire knowledge and skills in the basic areas of learning commensurate with the student's needs and abilities. These skills may be attained in the general program of instruction or in a program of special education instruction, as determined by the Admission, Review, and Dismissal committee.

All students, regardless of special need or condition, will be provided a well-balanced curriculum. The Texas state standards are found in the TEKS – Texas Essential Knowledge and Skills. The TEKS represent core knowledge, skills, and competencies students should learn. Students with special needs must be instructed in those same TEKS in a manner appropriate to their needs. The TEKS constitute a sound developmental sequence of instruction and their mastery should be the goal for all students, including students with disabilities. Although some students with disabilities will have different learning rates or different levels of mastery, the JHW School must provide each student with disabilities the opportunity to make satisfactory progress in the essential knowledge and skills in a manner appropriate to the student's needs. If a student's disability is such that mastery of some or all of the TEKS is

inappropriate for that student, the ARD/IEP committee has the responsibility to develop an appropriate scope and sequence of skills for that student and to modify/accommodate the method of instruction, pacing, and/or materials, as appropriate, to provide full opportunity for learning the TEKS.

- *Identified special education students will follow the general education curriculum, consisting of the essential elements, when deemed appropriate by the ARD/IEP committee and reflected in the IEP.*
- *Identified special education students will follow the general education curriculum with modification and/or special education support when deemed appropriate by the ARD/IEP committee and reflected in the IEP. Each identified special education student must follow the IEP developed and approved by the ARD/IEP committee.*

Tutorials - *Students in special education programs will be eligible for tutorial services, but the tutorials will not replace other special services provided for the student.*

Textbooks - *State-adopted textbooks are available for identified students with disabilities' use, regardless of placement. State-adopted textbooks may be requested by the teacher of the student with disabilities, following local building procedures. Local JHW School guidelines will be followed when textbooks are issued to identified students with disabilities.*

Scientifically Research Based Interventions/Strategies (Definition on page 805)

- *Based on IDEA 2004, the IEP now requires 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.*
- *Also based on IDEA 2004, prior to, or as a part of the referral process, the child must have been provided appropriate high-quality, research-based instruction in regular education settings, consistent with section 1111(b)(8)(D) and (E) of the ESEA, including that the instruction was delivered by qualified personnel.*
- *As a result, it is incumbent upon the special education department to continually evaluate the programs and strategies used by special education staff and to train staff on the use of scientifically research based interventions and programs to address the curriculum.*
- *The term “scientifically based research” means research that involves the application of rigorous, systematic and objective procedures to obtain reliable and valid knowledge relevant to education activities and programs, and includes research that:*
 1. *employs systematic, empirical methods that draw on observation or experiment;*
 2. *involves rigorous data analyses that are adequate to test the state hypotheses and justify the general conclusions drawn;*
 3. *relies on measurements or observational methods that provide reliable and valid data across evaluators and observers, across multiple measurements and observations, and across studies by the same or different investigators;*
 4. *is evaluated using experimental or quasi-experimental designs;*
 5. *ensures that experimental studies are presented in sufficient detail and clarity to allow for replication, and*
 6. *has been accepted by a peer-reviewed journal or approved by a panel of independent experts through a comparably rigorous, objective, and scientific review.*

VI. PEIMS – PUBLIC EDUCATION INFORMATION MANAGEMENT SYSTEM

§300.640 Annual report of children served—report requirement.

- (a) The SEA must annually report to the Secretary on the information required by section 618 of the Act at the times specified by the Secretary.
- (b) The SEA must submit the report on forms provided by the Secretary.

§300.641 Annual report of children served—information required in the report. *For all specific requirements the JHW School will remain diligent in following requirements specified in the PEIMS manual provided annually by the Texas Education Agency.*

The JHW School utilizes a computer information system to provide an efficient method of collecting and generating the student data necessary for special education program management. This comprehensive system provides a data bank of student-related information and generates required state and federal reports. It also provides other administrative information critical to program planning and management.

VII. PBMAS – PERFORMANCE BASED MONITORING ANALYSIS SYSTEM

For continuous updated information, see the TEA website; www.tea.state.tx.us and review the PBMAS Manual.

§300.157 Performance goals and indicators.

The State must--

- (a) Have in effect established goals for the performance of children with disabilities in the State that--
 - (1) Promote the purposes of this part, as stated in §300.1;
 - (2) Are the same as the State's objectives for progress by children in its definition of adequate yearly progress, including the State's objectives for progress by children with disabilities, under section 1111(b)(2)(C) of the ESEA, 20 U.S.C. 6311;
 - (3) Address graduation rates and dropout rates, as well as such other factors as the State may determine; and
 - (4) Are consistent, to the extent appropriate, with any other goals and academic standards for children established by the State;
- (b) Have in effect established performance indicators the State will use to assess progress toward achieving the goals described in paragraph (a) of this section, including measurable annual objectives for progress by children with disabilities under section 1111(b)(2)(C)(v)(II)(cc) of the ESEA, 20 U.S.C. 6311; and
- (c) Annually report to the Secretary and the public on the progress of the State, and of children with disabilities in the State, toward meeting the goals established under paragraph (a) of this section, which may include elements of the reports required under section 1111(h) of the ESEA.
(Authority: 20 U.S.C. 1412(a)(15))

§300.229 Disciplinary information.

- (a) The State may require that JHW School include in the records of a child with a disability a statement of any current or previous disciplinary action that has been taken against the child and transmit the statement to the same extent that the disciplinary information is included in, and transmitted with, the student records of nondisabled children.
- (b) The statement may include a description of any behavior engaged in by the child that required disciplinary action, a description of the disciplinary action taken, and any other information that is relevant to the safety of the child and other individuals involved with the child.
- (c) If the State adopts such a policy, and the child transfers from one school to another, the transmission of any of the child's records must include both the child's current IEP and any statement of current or previous disciplinary action that has been taken against the child. (Authority: 20 U.S.C. 1413(i))

§300.170 Suspension and expulsion rates.

(a) **General.** The SEA must examine data, including data disaggregated by race and ethnicity, to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities--

- (1) Among LEAs in the State; or
- (2) Compared to the rates for nondisabled children within those agencies.

(b) **Review and revision of policies.** If the discrepancies described in paragraph (a) of this section are occurring, the SEA must review and, if appropriate, revise (or require the affected State agency or LEA to revise) its policies, procedures, and practices relating to the development and implementation of IEPs, the use of positive behavioral interventions and supports, and procedural safeguards, to ensure that these policies, procedures, and practices comply with the Act. (Authority: 20 U.S.C. 1412(a)(22))

§300.173 Overidentification and disproportionality.

The State must have in effect, consistent with the purposes of this part and with section 618(d) of the Act, policies and procedures designed to prevent the inappropriate overidentification or disproportionate representation by race and ethnicity of children as children with disabilities, including children with disabilities with a particular impairment described in §300.8.

(Authority: 20 U.S.C. 1412(a)(24))

§300.646 Disproportionality.

(a) **General.** Each State that receives assistance under Part B of the Act, and the Secretary of the Interior, must provide for the collection and examination of data to determine if significant disproportionality based on race and ethnicity is occurring in the State and the LEAs of the State with respect to--

- (1) The identification of children as children with disabilities, including the identification of children as children with disabilities in accordance with a particular impairment described in section 602(3) of the Act;
- (2) The placement in particular educational settings of these children; and
- (3) The incidence, duration, and type of disciplinary actions, including suspensions and expulsions.

(b) **Review and revision of policies, practices, and procedures.** In the case of a determination of significant disproportionality with respect to the identification of children as children with disabilities, or the placement in particular educational settings of these children, in accordance with paragraph (a) of this section, the State or the Secretary of the Interior must--

- (1) Provide for the review and, if appropriate revision of the policies, procedures, and practices used in the identification or placement to ensure that the policies, procedures, and practices comply with the requirements of the Act.
- (2) Require any LEA identified under paragraph (a) of this section to reserve the maximum amount of funds under section 613(f) of the Act to provide comprehensive coordinated early intervening services to serve children in the LEA, particularly, but not exclusively, children in those groups that were significantly overidentified under paragraph (a) of this section; and
- (3) Require the LEA to publicly report on the revision of policies, practices, and procedures described under paragraph (b)(1) of this section.

(Authority: 20 U.S.C. 1418(d))

§300.211 Information for SEA.

The JHW School must provide the SEA with information necessary to enable the SEA to carry out its duties under Part B of the Act, including, with respect to §§300.157 and 300.160, information relating to the performance of children with disabilities participating in programs carried out under Part B of the Act.

(Authority: 20 U.S.C. 1413(a)(7))

§300.213 Records regarding migratory children with disabilities.

The JHW School must cooperate in the Secretary's efforts under section 1308 of the ESEA to ensure the linkage of records pertaining to migratory children with disabilities for the purpose of electronically exchanging, among the States, health and educational information regarding those children.

(Authority: 20 U.S.C. 1413(a)(9))

Development of the Performance-Based Monitoring Analysis System (PBMAS)

Statutory changes, combined with a 2003 reorganization of the agency, resulted in a revised alignment of agency functions and an emphasis on a coordinated approach to agency monitoring. In this approach, the agency is moving toward an integration of several different agency evaluation and monitoring components, including:

- the new performance-based monitoring analysis system;*
- federal program and fiscal compliance;*
- the new state accountability system, including alternative education accountability (AEA) procedures; JHW falls under (AEA)*
- federal accountability provisions, including Adequate Yearly Progress;*
- the Financial Integrity Rating System (FIRST);*
- financial audits;*
- complaints;*
- due process hearings;*
- governance; and*
- other monitoring responsibilities such as those required by Civil Action 5281 and the Office of Civil Rights.*

These changes also led to a new definition of agency monitoring: Monitoring is:

- using a data-driven, performance-based model to observe, evaluate, and report on the public education system at the individual student group, campus, local education agency, regional, and statewide levels across diverse areas including program effectiveness, compliance with federal and state law and regulations, financial management, and data integrity for the purpose of assessing that student needs are being met;*
- promoting diagnostic and evaluative systems in LEAs that are integrated with the agency's desk audit and intervention process; and*
- relying on a research-based framework of interventions that ensure compliance and enhance student success.*

The Special Education Monitoring unit of Program Monitoring and Interventions develops and implements integrated program review processes for special education programs statewide that promote program effectiveness and ensure that state supervision and oversight requirements for special education programs are met as required by state and federal law.

The Division of Performance-Based Monitoring is responsible for developing performance-based indicators and elements that will facilitate a coordinated approach to the monitoring of local education agencies. The specific functions of the division include developing indicators, reviewing district and campus performance data, identifying risk areas, and coordinating with other agency divisions to ensure the effective implementation of a data-driven, risk-based monitoring system focused on improving student performance.

From the data contained in the PBMAS, the division also designs and maintains the annual Performance-Based Monitoring Analysis System Summary Report. This is a district-level report that includes specific data for each performance indicator in the PBMAS. A technical resource for understanding this summary report is the [PBMAS Manual](#). The manual is available on-line at the Texas Education Agency website.

The Division of Performance-Based Monitoring is also responsible for developing and reporting on a variety of data integrity indicators, including indicators to examine leaver/dropout records, disciplinary data, and student assessment data.

§300.120 Monitoring activities.

- (a) **The SEA must carry out activities to ensure that §300.114 (*LRE section 4 of this document*) is implemented by each public agency.**
- (b) **If there is evidence that the JHW School makes placements that are inconsistent with §300.114, the TEA must--**
 - (1) **Review the public agency's justification for its actions; and**
 - (2) **Assist in planning and implementing any necessary corrective action. (Authority: 20 U.S.C. 1412(a)(5))**

TEC §29.001. Statewide Plan

The agency must develop, and modify as necessary, a statewide design, consistent with federal law, for the delivery of services to children with disabilities in this state that includes rules for the administration and funding of the special education program so that a free appropriate public education is available to all of those children between the ages of three and 21. The statewide design must include the provision of services primarily through school districts and shared services arrangements, supplemented by regional education service centers. The agency must also develop and implement a statewide plan with programmatic content that includes procedures designed to:

- (5) allow the agency to effectively monitor and periodically conduct site visits of all school districts to ensure that rules adopted under this section are applied in a consistent and uniform manner, to ensure that districts are complying with those rules, and to ensure that annual statistical reports filed by the districts and not otherwise available through the Public Education Information Management System under Section 42.006, are accurate and complete;

TEC §29.010. Compliance.

- (a) The TEA must adopt and implement a comprehensive system for monitoring school district compliance with federal and state laws relating to special education. The monitoring system must provide for ongoing analysis of district special education data and of complaints filed with the agency concerning special education services and for inspections of school districts at district facilities. The agency must use the information obtained through analysis of district data and from the complaints management system to determine the appropriate schedule for and extent of the inspection.
- (b) To complete the inspection, the agency must obtain information from parents and teachers of students in special education programs in the district.
- (c) The TEA must develop and implement a system of sanctions for school districts whose most recent monitoring visit shows a failure to comply with major requirements of the Individuals with Disabilities Education Act (20 U.S.C. Section 1400 et seq.), federal regulations, state statutes, or agency requirements necessary to carry out federal law or regulations or state law relating to special education.
- (d) For districts that remain in noncompliance for more than one year, the first stage of sanctions must begin with annual or more frequent monitoring visits. Subsequent sanctions may range in severity up to the withholding of funds. If funds are withheld, the agency may use the funds to provide, through alternative arrangements, services to students and staff members in the district from which the funds are withheld.
- (e) The agency's complaint management division must develop a system for expedited investigation and resolution of complaints concerning a district's failure to provide special education or related services to a student eligible to participate in the district's special education program.
- (f) This section does not create an obligation for or impose a requirement on a school district or open-enrollment charter school that is not also created or imposed under another state law or a federal law.

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

- (a) Each school district must maintain an eligibility folder for each student receiving special education services, in addition to the student's cumulative record. The eligibility folder must include, but need not be limited to: copies of referral data; documentation of notices and consents; evaluation reports and supporting data; admission, review, and dismissal (ARD) committee reports; and the student's individualized education programs (IEPs).

VIII. COLLABORATION WITH AGENCIES REGARDING MOU's

TAC §89.1100. Memorandum of Understanding on Coordination of Services to Disabled Persons.

Clarification of financial and service responsibilities of the Texas Department of Human Services, the Texas Department of Health, the Texas Department of Mental Health and Mental Retardation, the Texas Rehabilitation Commission, the Texas Commission for the Blind, the Texas Commission for the Deaf, Texas Department of Protective and Regulatory Services, Texas Interagency Council on Early Childhood Intervention, and the Texas Education Agency related to disabled persons are contained in the Memorandum of Understanding on Coordination of Services to Disabled Persons, which is adopted by reference as a rule of the Texas Education Agency. The complete text of the memorandum of understanding may be found in the rules of the Texas Department of Human Services, 40 Texas Administrative Code (TAC) Chapter 72. A copy of the memorandum of understanding is available for examination during regular office hours, 8:00 a.m. to 5:00 p.m., except holidays, Saturdays, and Sundays, at the Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701.

TAC §89.1115. Memorandum of Understanding Concerning Interagency Coordination of Special Education Services to Students with Disabilities in Residential Facilities. *(89.1115 not updated by TEA - some agency names are incorrect)*

- (a) Parties. The state agencies named in this subsection are parties to this memorandum of understanding (MOU) and will be collectively referred to as the "parties." The term "Health and Human Service (HHS) agencies" will refer to all parties except the Texas Education Agency, Texas Juvenile Probation Commission, and Texas Youth Commission.
- (1) Texas Education Agency (TEA);
 - (2) Texas Department of Human Services (TDHS);
 - (3) Texas Department of Mental Health and Mental Retardation (TDMHMR);
 - (4) Texas Department of Health (TDH);
 - (5) Texas Department of Protective and Regulatory Services (PRS);
 - (6) Texas Interagency Council on Early Childhood Intervention (ECI);
 - (7) Texas Commission on Alcohol and Drug Abuse (TCADA);
 - (8) Texas Juvenile Probation Commission (TJPC); and
 - (9) Texas Youth Commission (TYC).
- (b) Purpose. In accordance with Texas Education Code (TEC), §29.012(d), the purpose of this MOU is to:
- (1) establish the respective responsibilities of school districts and of residential facilities (RFs) for the provision of a free appropriate public education (FAPE), as required by the Individuals with Disabilities Education Act (IDEA)(20 USC §1400 et seq.) and its subsequent amendments, including each requirement for children with disabilities who reside in those facilities;
 - (2) coordinate regulatory and planning functions of the parties;
 - (3) establish criteria for determining when a public school will provide educational services;
 - (4) provide for appropriate educational space when education services will be provided at the residential facility;
 - (5) establish measures designed to ensure the safety of students and teachers; and
 - (6) provide for binding arbitration consistent with Texas Government Code, Chapter 2009, and Civil Practice and Remedies Code, §154.027.

- (c) Definitions. The following words and terms, when used in this MOU, must have the following meaning, unless the context clearly indicates otherwise.
- (1) Consistent with TEC, §5.001(8), "residential facility" (RF) means:
 - (A) a facility operated by a state agency or political subdivision, including a child placement agency, that provides 24-hour custody or care of a person 22 years of age or younger, if the person resides in the facility for detention, treatment, foster care, or any non-educational purpose; and
 - (B) any person or entity that contracts with or is funded, licensed, certified, or regulated by a state agency or political subdivision to provide custody or care for a person under subparagraph (A) of this paragraph. RFs include, but are not limited to:
 - (i) child care facilities or institutions;
 - (ii) independent foster group homes providing basic, therapeutic or rehabilitative services;
 - (iii) independent foster family homes providing basic, therapeutic or rehabilitative services;
 - (iv) agency foster family/group homes verified by a child placing agency licensed by PRS;
 - (v) intermediate care facilities for the mentally retarded (ICFs-MR);
 - (vi) psychiatric treatment centers;
 - (vii) therapeutic camps or ranches;
 - (viii) residential treatment centers licensed by PRS;
 - (ix) nursing facilities;
 - (x) TYC halfway houses and contract facilities;
 - (xi) emergency shelters;
 - (xii) hospitals;
 - (xiii) juvenile pre-adjudication detention facilities;
 - (xiv) juvenile post-adjudication secure correctional facilities;
 - (xv) residential facilities funded and/or licensed by TCADA;
 - (xvi) settings other than the student's natural or adoptive home in which residential services are provided in programs authorized by the Social Security Act, §1915(c); and
 - (xvii) state hospitals, state schools, and state centers operated by TDMHMR.
 - (2) "Student with a disability" means an individual who is eligible to receive special education and related services in accordance with IDEA and its implementing regulations, Code of Federal Regulations, Title 34, §§300.1 et seq., and state laws and rules, including, without limitation, TEC, Chapter 29, and Chapter 89 of this title (relating to Adaptations for Special Populations).
 - (3) Consistent with 20 USC §1401(8), "free appropriate public education" (FAPE) means special education and related services that:
 - (A) are provided at public expense, under public supervision and direction, and without charge;
 - (B) meet the standards of TEA;
 - (C) include preschool, elementary, or secondary school education; and
 - (D) are provided in conformity with the student's individualized education program (IEP).
 - (4) Consistent with 20 U. S. C. §1401(15), "local educational agency" (LEA) means any public authority, institution, or agency having administrative control and direction of a public elementary or secondary school, including a public charter school that is established as an LEA under state law.
- (d) Terms of MOU. The parties agree to the following terms:
- (1) The responsibilities of LEAs and RFs related to the provision of a FAPE to students with disabilities who reside in RFs are established as follows.
 - (A) LEAs must provide or ensure the provision of a FAPE to students with disabilities residing in RFs in accordance with IDEA, applicable federal regulations, and state laws and rules.
 - (i) Except as provided in paragraph (2) of this subsection, an LEA must provide or ensure the provision of a FAPE for a student with a disability residing in an RF located in the geographical area served by that LEA.

- (ii) If an LEA places a student with a disability in an RF for educational purposes, the placing LEA must provide or ensure the provision of a FAPE to the student.
- (B) Not later than the third day after the date a person 22 years of age or younger is placed in an RF, the RF must provide notification in accordance with TEC, §29.012(a), as follows:
 - (i) if the person placed in the RF is three years of age or older, the RF must notify the LEA in which the RF is located, unless the RF is an open-enrollment charter school or the RF has been designated as an LEA (e.g., TYC correctional facilities, Texas School for the Deaf, the University of Texas Medical Branch); or
 - (ii) if the person placed in the RF is younger than three years of age, the RF must notify a local early childhood intervention program in the area in which the RF is located.
- (2) Regulatory and planning functions of the parties are coordinated as follows.
 - (A) The parties will require LEAs and RFs to:
 - (i) share, within a reasonable period of time and to the extent permitted by applicable statutes and regulations, all appropriate records and relevant information relating to a student with a disability. This subsection does not authorize the LEA to modify requirements for admission and enrollment into an LEA as set forth in TEC, Chapter 25. The records and information to be shared may include, but are not limited to:
 - (I) birth certificate or other identifying document that proves the student's age;
 - (II) medical history and medical records, including current immunization records and a history of infectious disease (e.g., Hepatitis B, tuberculosis), including a description of any behavioral characteristics related to the transmission of such disease;
 - (III) social history;
 - (IV) vision and hearing screening and evaluation;
 - (V) evaluation reports, including psychological, educational, related service, assistive technology and vocational evaluations, and behavioral assessments;
 - (VI) treatment plan of care or service;
 - (VII) educational history (e.g., previous educational placement information);
 - (VIII) any relevant court orders (e.g., orders related to placement in an RF, guardianship or conservatorship, or court-ordered services);
 - (IX) information regarding a student's movement from an RF to a subsequent residence, including but not limited to the date the student left the RF and the location of the student's subsequent residence; and
 - (X) name and phone number of contact persons representing the RF and the LEA; and
 - (ii) coordinate a student's individualized education program (IEP) and treatment plan of care or service. Coordination between an LEA and RF includes but is not limited to communication about responsibilities and timelines related to the development and implementation of the IEP and treatment plan, including permanency planning.
 - (B) TEA will require LEAs to provide:
 - (i) the name and phone number of the contact person representing the RF to the surrogate parent, upon assignment of the surrogate parent;
 - (ii) the name and phone number of the surrogate parent, upon assignment of the surrogate parent, to the contact person representing the RF; and
 - (iii) designation and training of surrogate parents in accordance with §89.1047 of this title (relating to Procedures for Surrogate and Foster Parents).
 - (C) TYC and the HHS agencies will provide the following notifications to TEA.
 - (i) TYC and the HHS agencies, other than PRS, will notify TEA when an RF opens, closes, expands, or reduces its capacity to provide services, if the notifying agency expects such action will have a significant effect on one or more LEAs. The notice will be provided to TEA before the RF opens, closes, expands, or reduces its capacity to provide services, or as soon thereafter as the notifying agency becomes aware of the action. If an RF is

closing, the notifying TYC or HHS agency will request that the RF attempt to obtain any consent necessary to release to TEA and an LEA, information about a student with a disability residing in the RF, including the student's name, date of birth, social security number, disability, and name of the LEA to which the student will be moving. TEA will notify the affected LEA of the expected action so the LEA can adjust its capacity to serve students with disabilities.

- (ii) PRS will provide TEA with a copy of the notice required by Texas Human Resources Code, §42.0461(a)(2). Additionally, PRS and TEA will explore possible use of PRS' Child Care Licensing Automation Support Services management system to generate information that may assist TEA in its effort to notify LEAs when an RF opens, closes, expands, or reduces its capacity to provide services.
- (3) Criteria for determining when a public school will provide educational services are established as follows.
- (A) TEA will ensure that the local school district provides a FAPE to all eligible students with disabilities, in the least restrictive environment (LRE), to the maximum extent appropriate, to meet the individual educational needs of the student as determined by a duly-constituted admission, review, and dismissal (ARD) committee, and in accordance with §89.1001 of this title (relating to Scope and Applicability).
 - (B) The student's ARD committee must determine the appropriate educational placement for the student, considering all available information regarding the educational needs of the student, and including the non-educational needs that may restrict the ability of the LEA to serve the student on a public school campus or other instructional setting. These non-educational needs could include the student's health and safety (e.g. substance abuse), and/or the student's placement in a restrictive RF program (e.g., juvenile incarceration or restrictive court-ordered placements). The ARD committee's determination must be individualized based on student need and not made on a categorical basis, such as the student's disability or residence in an RF. Further, ARD committees must not determine educational placement on the basis of what is most convenient to LEAs or RFs.
- (4) When educational services will be provided at an RF, appropriate educational space will be determined as follows.
- (A) The ARD committee must determine whether space available at the RF is appropriate for the provision of a FAPE. This determination must be based on the individual student's needs and the RF's available space.
 - (B) An ARD committee must find alternative locations for providing educational services if the ARD committee or RF determines that the RF has no appropriate available space.
- (5) Measures designed to ensure the safety of students and teachers are established as follows.
- (A) The parties will require RFs and LEAs to agree in writing to the staffing levels that will be maintained by both the RF and the LEA to ensure the safety of students and teachers while educational services are provided at an RF.
 - (B) TYC, TJPC, and HHS agencies will require RFs to communicate to LEA staff applicable safety, emergency, and security procedures to be followed while educational services are provided at an RF.
- (6) Disputes concerning the implementation of this MOU will be resolved as follows.
- (A) Local disputes. Resolution of disputes concerning implementation of this MOU between LEAs or between an LEA and an RF must first be attempted at the local level. The specific issues involved in the dispute and possible solutions must be identified and referred to local personnel authorized to make decisions necessary to resolve the dispute. If resolution is not reached after a reasonable period of time (not to exceed 45 calendar days unless the disputing entities agree otherwise), the LEA must refer (and the RF may refer) the dispute to TEA for further negotiations toward a mutually agreeable resolution. TEA will contact the disputing entities and set up a meeting for this purpose. Local entities referring disputes to TEA must

- identify:
- (i) the nature of the dispute;
 - (ii) any resolutions agreed upon;
 - (iii) the issues that remain unresolved; and
 - (iv) the contact persons representing the disputing entities.
- (B) State agency disputes. Resolution of disputes concerning implementation of this MOU between two or more parties must first be attempted at the staff level. If resolution is not reached after a reasonable period of time (not to exceed 45 calendar days unless the disputing parties agree otherwise), the disputing parties will refer the dispute to their respective executive officers, or their designees for further negotiation. The appropriate state officials must meet to seek resolution of the dispute.
- (i) Mediation. If the chief executive officers of the disputing parties determine that the dispute cannot be resolved at their level, the disputing parties may pursue resolution through the use of mediation pursuant to the Governmental Dispute Resolution Act, Texas Government Code, Chapter 2009.
 - (ii) Arbitration. If the disputing parties do not agree to pursue resolution of their dispute through mediation, or if mediation does not result in a resolution of their dispute, the disputing parties will participate in binding arbitration consistent with Texas Government Code, Chapter 2009, and Texas Civil Practice and Remedies Code, §154.027.
- (7) Other terms of this MOU.
- (A) This MOU must be signed by the executive officers of the participating agencies and must be effective upon signature by all.
 - (B) This MOU may be considered for expansion, modification, or amendment upon mutual agreement of the executive officers of the participating agencies.
 - (C) In the event that federal and/or state laws should be amended, federally interpreted, or judicially interpreted so as to render continued implementation of this MOU unreasonable or impossible, the participating agencies may agree to amend or terminate this MOU.

IX. TRANSFER OF ASSISTIVE TECHNOLOGY DEVICES

TEC §30.0015. Transfer of Assistive Technology Devices.

- (a) In this section:
- (1) "Assistive technology device" means any device, including equipment or a product system, that is used to increase, maintain, or improve functional capabilities of a student with a disability.
 - (2) "Student with a disability" means a student who is eligible to participate in a school district's special education program under Section 29.003.
 - (3) "Transfer" means the process by which a school district that has purchased an assistive technology device may sell, lease, or loan the device for the continuing use of a student with a disability changing the school of attendance in the district or leaving the district.
- (b) The TEA by rule must develop and annually disseminate standards for a school district's transfer of an assistive technology device to an entity listed in this subsection when a student with a disability using the device changes the school of attendance in the district or ceases to attend school in the district that purchased the device and the student's parents, or the student if the student has the legal capacity to enter into a contract, agrees to the transfer. The device may be transferred to:
- (1) the school or school district in which the student enrolls;
 - (2) a state agency, including the Texas Rehabilitation Commission and the Texas Department of Mental Health and Mental Retardation, that provides services to the student following the student's graduation from high school; or
 - (3) the student's parents, or the student if the student has the legal capacity to enter into a contract.

- (c) The standards developed under this section must include:
 - (1) a uniform transfer agreement to convey title to an assistive technology device and applicable warranty information;
 - (2) a method for computing the fair market value of an assistive technology device, including a reasonable allowance for use; and
 - (3) a process to obtain written consent by the student's parents, or the student where appropriate, to the transfer.
- (d) This section does not alter any existing obligation under federal or state law to provide assistive technology devices to students with disabilities.

TAC §89.1056. Transfer of Assistive Technology Devices.

- (a) Unless otherwise specifically defined in this section, the terms used in this section must have the meanings ascribed to such terms in Texas Education Code (TEC), §30.0015, (Transfer of Assistive Technology Devices).
- (b) A transfer of an assistive technology device (ATD) pursuant to TEC, §30.0015, must be in accordance with a transfer agreement which incorporates the standards described in TEC, §30.0015(c), and which includes, specifically, the following.
 - (1) The transferor and transferee must represent and agree that the terms of the transfer are based on the fair market value of the ATD, determined in accordance with generally accepted accounting principles.
 - (2) The informed consent of the parent of the student with a disability for whom the ATD is being transferred must be obtained before the transfer of an ATD pursuant to TEC, §30.0015. The procedures employed by a school district in obtaining such informed consent must be consistent with the procedures employed by the district to obtain parental consent under 34 Code of Federal Regulations (CFR), §300.300. If the student has the legal capacity to enter into a contract, the informed consent may be obtained from the student. Consistent with 34 CFR, §300.505(c), informed parental or adult student consent need not be obtained if the school district can demonstrate that it has taken reasonable measures to obtain that consent, and the student's parent or the adult student has failed to respond. To meet the reasonable measures requirement, the school district must use procedures consistent with those described in 34 CFR, §300.322(d).
 - (3) If the transfer is a sale, then the sale of the ATD must be evidenced by a "Uniform Transfer Agreement" (UTA) which includes the following:
 - (A) the names of the transferor and the transferee (which may be any individual or entity identified in TEC, §30.0015(b));
 - (B) the date of the transfer;
 - (C) a description of the ATD being transferred;
 - (D) the terms of the transfer (including the transfer of warranties, to the extent applicable); and
 - (E) the signatures of authorized representatives of both the transferor and the transferee.
- (c) The Texas Education Agency must annually disseminate to school districts the standards for a school district's transfer of an ATD pursuant to TEC, §30.0015.
- (d) Nothing in this section or in TEC, §30.0015, must:
 - (1) alter any existing obligation under federal or state law to provide ATDs to students with disabilities;
 - (2) require a school district to transfer an ATD to any person or entity;
 - (3) limit a school district's right to sell, lease, loan, or otherwise convey or dispose of property as authorized by federal or state laws, rules, or regulations; or
 - (4) authorize any transfer of an ATD that is inconsistent with any restriction on transferability imposed by the manufacturer or developer of the ATD or applicable federal or state laws, rules, or regulations.

X. FUNDING

A. Federal Funds

§300.226 Early intervening services.

- (a) **General.** An LEA may not use more than 15 percent of the amount the LEA receives under Part B of the Act for any fiscal year, less any amount reduced by the LEA pursuant to §300.205, if any, in combination with other amounts (which may include amounts other than education funds), to develop and implement coordinated, early intervening services, which may include interagency financing structures, for students in kindergarten through grade 12 (with a particular emphasis on students in kindergarten through grade three) who have not been identified as needing special education or related services, but who need additional academic and behavioral support to succeed in a general education environment.
- (b) **Activities.** In implementing coordinated, early intervening services under this section, the JHW School may carry out activities that include--
- (1) Professional development (which may be provided by entities other than LEAs) for teachers and other school staff to enable such personnel to deliver scientifically based academic and behavioral interventions, including scientifically based literacy instruction, and, where appropriate, instruction on the use of adaptive and instructional software; and
 - (2) Providing educational and behavioral evaluations, services, and supports, including scientifically based literacy instruction.
- (c) **Construction.** Nothing in this section must be construed to either limit or create a right to FAPE under Part B of the Act or to delay appropriate evaluation of a child suspected of having a disability.
- (d) **Reporting.** Each LEA that develops and maintains coordinated, early intervening services under this section must annually report to the SEA on--
- (1) The number of children served under this section who received early intervening services; and
 - (2) The number of children served under this section who received early intervening services and subsequently receive special education and related services under Part B of the Act during the preceding two year period.
- (e) **Coordination with ESEA.** Funds made available to carry out this section may be used to carry out coordinated, early intervening services aligned with activities funded by, and carried out under the ESEA if those funds are used to supplement, and not supplant, funds made available under the ESEA for the activities and services assisted under this section. (Authority: 20 U.S.C. 1413(f))

§300.162 Supplementation of State, local, and other Federal funds.

- (a) **Expenditures.** Funds paid to a State under this part must be expended in accordance with all the provisions of this part.
- (b) **Prohibition against commingling.**
- (1) Funds paid to a State under this part must not be commingled with State funds.
 - (2) The requirement in paragraph (b)(1) of this section is satisfied by the use of a separate accounting system that includes an audit trail of the expenditure of funds paid to a State under this part. Separate bank accounts are not required. (See 34 CFR 76.702 (Fiscal control and fund accounting procedures)).
- (c) **State-level nonsupplanting.**
- (1) Except as provided in §300.202, funds paid to a State under Part B of the Act must be used to supplement the level of Federal, State, and local funds (including funds that are not under the direct control of the SEA or LEAs) expended for special education and related services provided to children with disabilities under Part B of the Act, and in no case to supplant those Federal, State, and local funds.
 - (2) If the State provides clear and convincing evidence that all children with disabilities have available to them FAPE, the Secretary may waive, in whole or in part, the requirements of paragraph (c)(1) of this section if the Secretary concurs with the evidence provided by the State under §300.164.
- (Authority: 20 U.S.C. 1412(a)(17))

§300.163 Maintenance of State financial support.

- (a) **General.** A State must not reduce the amount of State financial support for special education and related services for children with disabilities, or otherwise made available because of the excess costs of educating those children, below the amount of that support for the preceding fiscal year.
- (b) **Reduction of funds for failure to maintain support.** The Secretary reduces the allocation of funds under section 611 of the Act for any fiscal year following the fiscal year in which the State fails to comply with the requirement of paragraph (a) of this section by the same amount by which the State fails to meet the requirement.
- (c) **Waivers for exceptional or uncontrollable circumstances.** The Secretary may waive the requirement of paragraph (a) of this section for a State, for one fiscal year at a time, if the Secretary determines that--
 - (1) Granting a waiver would be equitable due to exceptional or uncontrollable circumstances such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the State; or
 - (2) The State meets the standard in §300.164 for a waiver of the requirement to supplement, and not to supplant, funds received under Part B of the Act.
- (d) **Subsequent years.** If, for any fiscal year, a State fails to meet the requirement of paragraph (a) of this section, including any year for which the State is granted a waiver under paragraph (c) of this section, the financial support required of the State in future years under paragraph (a) of this section must be the amount that would have been required in the absence of that failure and not the reduced level of the State's support. (Authority: 20 U.S.C. 1412(a)(18))

§300.164 Waiver of requirement regarding supplementing and not supplanting with Part B funds.

- (a) Except as provided under §§300.202 through 300.205, funds paid to a State under Part B of the Act must be used to supplement and increase the level of Federal, State, and local funds (including funds that are not under the direct control of SEAs or LEAs) expended for special education and related services provided to children with disabilities under Part B of the Act and in no case to supplant those Federal, State, and local funds. A State may use funds it retains under §300.704(a) and (b) without regard to the prohibition on supplanting other funds.
- (b) If a State provides clear and convincing evidence that all eligible children with disabilities throughout the State have FAPE available to them, the Secretary may waive for a period of one year in whole or in part the requirement under §300.162 (regarding State-level nonsupplanting) if the Secretary concurs with the evidence provided by the State.
- (c) If a State wishes to request a waiver under this section, it must submit to the Secretary a written request that includes--
 - (1) An assurance that FAPE is currently available, and will remain available throughout the period that a waiver would be in effect, to all eligible children with disabilities throughout the State, regardless of the public agency that is responsible for providing FAPE to them. The assurance must be signed by an official who has the authority to provide that assurance as it applies to all eligible children with disabilities in the State;
 - (2) All evidence that the State wishes the Secretary to consider in determining whether all eligible children with disabilities have FAPE available to them, setting forth in detail--
 - (i) The basis on which the State has concluded that FAPE is available to all eligible children in the State; and
 - (ii) The procedures that the State will implement to ensure that FAPE remains available to all eligible children in the State, which must include--
 - (A) The State's procedures under §300.111 for ensuring that all eligible children are identified, located and evaluated;
 - (B) The State's procedures for monitoring public agencies to ensure that they comply with all requirements of this part;
 - (C) The State's complaint procedures under §§300.151 through 300.153; and
 - (D) The State's hearing procedures under §§300.511 through 300.516 and §§300.530 through 300.536;
 - (3) A summary of all State and Federal monitoring reports, and State complaint decisions (see §§300.151 through 300.153) and hearing decisions (see §§300.511 through 300.516 and §§300.530 through 300.536), issued within three years prior to the date of the State's request for a waiver under this

- section, that includes any finding that FAPE has not been available to one or more eligible children, and evidence that FAPE is now available to all children addressed in those reports or decisions; and
- (4) Evidence that the State, in determining that FAPE is currently available to all eligible children with disabilities in the State, has consulted with the State advisory panel under §300.167.
- (d) If the Secretary determines that the request and supporting evidence submitted by the State makes a prima facie showing that FAPE is, and will remain, available to all eligible children with disabilities in the State, the Secretary, after notice to the public throughout the State, conducts a public hearing at which all interested persons and organizations may present evidence regarding the following issues:
- (1) Whether FAPE is currently available to all eligible children with disabilities in the State.
 - (2) Whether the State will be able to ensure that FAPE remains available to all eligible children with disabilities in the State if the Secretary provides the requested waiver.
- (e) Following the hearing, the Secretary, based on all submitted evidence, will provide a waiver, in whole or in part, for a period of one year if the Secretary finds that the State has provided clear and convincing evidence that FAPE is currently available to all eligible children with disabilities in the State, and the State will be able to ensure that FAPE remains available to all eligible children with disabilities in the State if the Secretary provides the requested waiver.
- (f) A State may receive a waiver of the requirement of section 612(a)(18)(A) of the Act and §300.164 if it satisfies the requirements of paragraphs (b) through (e) of this section.
- (g) The Secretary may grant subsequent waivers for a period of one year each, if the Secretary determines that the State has provided clear and convincing evidence that all eligible children with disabilities throughout the State have, and will continue to have throughout the one-year period of the waiver, FAPE available to them.
- (Authority: 20 U.S.C. 1412(a)(17)(C), (18)(C)(ii))

Subpart C – LEA Eligibility

§300.202 Use of amounts.

- (a) **General.** Amounts provided to the JHW School under Part B of the Act--
- (1) Must be expended in accordance with the applicable provisions of this part;
 - (2) Must be used only to pay the excess costs of providing special education and related services to children with disabilities, consistent with paragraph (b) of this section; and
 - (3) Must be used to supplement State, local, and other Federal funds and not to supplant those funds.
- (b) **Excess cost requirement.**
- (1) **General.**
 - (i) The excess cost requirement prevents the JHW School from using funds provided under Part B of the Act to pay for all of the costs directly attributable to the education of a child with a disability, subject to paragraph (b)(1)(ii) of this section.
 - (ii) The excess cost requirement does not prevent the JHW School from using Part B funds to pay for all of the costs directly attributable to the education of a child with a disability in any of the ages 3, 4, 5, 18, 19, 20, or 21, if no local or State funds are available for nondisabled children of these ages. However, the JHW School must comply with the nonsupplanting and other requirements of this part in providing the education and services for these children.
 - (2)
 - (i) An LEA meets the excess cost requirement if it has spent at least a minimum average amount for the education of its children with disabilities before funds under Part B of the Act are used.
 - (ii) The amount described in paragraph (b)(2)(i) of this section is determined in accordance with the definition of excess costs in §300.16. That amount may not include capital outlay or debt service.
 - (3) If two or more LEAs jointly establish eligibility in accordance with §300.223, the minimum average amount is the average of the combined minimum average amounts determined in accordance with the definition of excess costs in §300.16 in those agencies for elementary or secondary school students, as the case may be. (Authority: 20 U.S.C. 1413(a)(2)(A))

§300.16 Excess costs. Excess costs means those costs that are in excess of the average annual per-student expenditure in an LEA during the preceding school year for an elementary school or secondary school student, as may be appropriate, and that must be computed after deducting--

(a) **Amounts received--**

- (1) Under Part B of the Act;
 - (2) Under Part A of title I of the ESEA; and
 - (3) Under Parts A and B of title III of the ESEA; and
- (b) Any State or local funds expended for programs that would qualify for assistance under any of the parts described in paragraph (a) of this section, but excluding any amounts for capital outlay or debt service. (see Appendix A to Part 300 for an example of how excess cost must be calculated) (Authority: 20 U.S.C. 1401(8))

§300.221 Notification of LEA and State agency in case of ineligibility.

If the SEA determines that an LEA or State agency is not eligible under Part B of the Act, then the SEA must—

- (a) Notify the LEA or State agency of that determination; and
- (b) Provide the LEA or State agency with reasonable notice and an opportunity for a hearing. (Authority: 20 U.S.C. 1413(c))

§300.222 LEA and State agency compliance.

- (a) **General.** If the SEA, after reasonable notice and an opportunity for a hearing, finds that an LEA or State agency that has been determined to be eligible under this subpart is failing to comply with any requirement described in §§300.201 through 300.213, the SEA must reduce or must not provide any further payments to the LEA or State agency until the SEA is satisfied that the LEA or State agency is complying with that requirement.
- (b) **Notice requirement.** Any State agency or LEA in receipt of a notice described in paragraph (a) of this section must, by means of public notice, take the measures necessary to bring the pendency of an action pursuant to this section to the attention of the public within the jurisdiction of the agency.
- (c) **Consideration.** In carrying out its responsibilities under this section, each SEA must consider any decision resulting from a hearing held under §§300.511 through 300.533 that is adverse to the LEA or State agency involved in the decision. (Authority: 20 U.S.C. 1413(d))

§300.223 Joint establishment of eligibility.

- (a) **General.** An SEA may require an LEA to establish its eligibility jointly with another LEA if the SEA determines that the LEA will be ineligible under this subpart because the agency will not be able to establish and maintain programs of sufficient size and scope to effectively meet the needs of children with disabilities.
- (b) **Charter school exception.** An SEA may not require a charter school that is an LEA to jointly establish its eligibility under paragraph (a) of this section unless the charter school is explicitly permitted to do so under the State's charter school statute.
- (c) **Amount of payments.** If an SEA requires the joint establishment of eligibility under paragraph (a) of this section, the total amount of funds made available to the affected LEAs must be equal to the sum of the payments that each LEA would have received under §300.705 if the agencies were eligible for those payments. (Authority: 20 U.S.C. 1413(e)(1) and (2))

§300.203 Maintenance of effort.

- (a) **General.** Except as provided in §§300.204 and 300.205, funds provided to JHW School under Part B of the Act must not be used to reduce the level of expenditures for the education of children with disabilities made by the LEA from local funds below the level of those expenditures for the preceding fiscal year.
- (b) **Standard.**
 - (1) Except as provided in paragraph (b)(2) of this section, the SEA must determine that an LEA complies with paragraph (a) of this section for purposes of establishing the LEA's eligibility for an award for a fiscal year if the LEA budgets, for the education of children with disabilities, at least the same total or per-capita amount from either of the following sources as the LEA spent for that purpose from the same source for the most recent prior year for which information is available:
 - (i) Local funds only.
 - (ii) The combination of State and local funds.

- (2) An LEA that relies on paragraph (b)(1)(i) of this section for any fiscal year must ensure that the amount of local funds it budgets for the education of children with disabilities in that year is at least the same, either in total or per capita, as the amount it spent for that purpose in the most recent fiscal year for which information is available and the standard in paragraph (b)(1)(i) of this section was used to establish its compliance with this section.
- (3) The SEA may not consider any expenditures made from funds provided by the Federal Government for which the SEA is required to account to the Federal Government or for which the LEA is required to account to the Federal Government directly or through the SEA in determining an LEA's compliance with the requirement in paragraph (a) of this section. (Authority: 20 U.S.C. 1413(a)(2)(A))

§300.204 Exception to maintenance of effort.

Notwithstanding the restriction in §300.203(a), the JHW School may reduce the level of expenditures by the JHW School under Part B of the Act below the level of those expenditures for the preceding fiscal year if the reduction is attributable to any of the following:

- (a) The voluntary departure, by retirement or otherwise, or departure for just cause, of special education or related services personnel.
- (b) A decrease in the enrollment of children with disabilities.
- (c) The termination of the obligation of the agency, consistent with this part, to provide a program of special education to a particular child with a disability that is an exceptionally costly program, as determined by the SEA, because the child--
 - (1) Has left the jurisdiction of the agency;
 - (2) Has reached the age at which the obligation of the agency to provide FAPE to the child has terminated; or
 - (3) No longer needs the program of special education.
- (d) The termination of costly expenditures for long-term purchases, such as the acquisition of equipment or the construction of school facilities.
- (e) The assumption of cost by the high cost fund operated by the SEA under §300.704(c). (Authority: 20 U.S.C. 1413(a)(2)(B))

§300.205 Adjustment to local fiscal efforts in certain fiscal years.

- (a) **Amounts in excess.** Notwithstanding §300.202(a)(2) and (b) and §300.203(a), and except as provided in paragraph (d) of this section and §300.230(e)(2), for any fiscal year for which the allocation received by an LEA under section §300.705 exceeds the amount the LEA received for the previous fiscal year, the LEA may reduce the level of expenditures otherwise required by §300.203(a) by not more than 50 percent of the amount of that excess.
- (b) **Use of amounts to carry out activities under ESEA.** If the JHW School exercises the authority under paragraph (a) of this section, the JHW School must use an amount of local funds equal to the reduction in expenditures under paragraph (a) of this section to carry out activities that could be supported with funds under the ESEA regardless of whether the JHW School is using funds under the ESEA for those activities.
- (c) **State prohibition.** Notwithstanding paragraph (a) of this section, if an SEA determines that an LEA is unable to establish and maintain programs of FAPE that meet the requirements of section 613(a) of the Act and this part or the SEA has taken action against the LEA under section 616 of the Act and subpart F of these regulations, the SEA must prohibit the LEA from reducing the level of expenditures under paragraph (a) of this section for that fiscal year.
- (d) **Special rule.** The amount of funds expended by JHW School for early intervening services under §300.226 must count toward the maximum amount of expenditures that the JHW School may reduce under paragraph (a) of this section. (Authority: 20 U.S.C. 1413(a)(2)(C))

§300.206 Schoolwide programs under title I of the ESEA.

- (a) **General.** Notwithstanding the provisions of §§300.202 and 300.203 or any other provision of Part B of the Act, an JHW School may use funds received under Part B of the Act for any fiscal year to carry out a

schoolwide program to carry out a Title 1, Part A school wide program under the Elementary and Secondary Education Act, except that the amount used in any schoolwide program may not exceed--

- (1) (i) The amount received by the JHW School under Part B of the Act for that fiscal year; divided by
 - (ii) The number of children with disabilities in the jurisdiction of the JHW School; and multiplied by
 - (2) The number of children with disabilities participating in the schoolwide program.
- (b) **Funding conditions.** The funds described in paragraph (a) of this section are subject to the following conditions:
- (1) The funds must be considered as Federal Part B funds for purposes of the calculations required by §300.202(a)(2) and (a)(3).
 - (2) The funds may be used without regard to the requirements of §300.202(a)(1).
- (c) **Meeting other Part B requirements.** Except as provided in paragraph (b) of this section, all other requirements of Part B of the Act must be met by an LEA using Part B funds in accordance with paragraph (a) of this section, including ensuring that children with disabilities in schoolwide program schools--
- (1) Receive services in accordance with a properly developed individualized education program and
 - (2) Are afforded all of the rights and services guaranteed to children with disabilities under the Act. (Authority: 20 U.S.C. 1413(a)(2)(D))

§300.208 Permissive use of funds.

- (a) **Uses.** Notwithstanding §§300.202, 300.203(a), and §300.162(b), funds provided to an LEA under Part B of the Act may be used for the following activities:
- (1) **Services and aids that also benefit nondisabled children.** For the costs of special education and related services, and supplementary aids and services, provided in a regular class or other education-related setting to a child with a disability in accordance with the IEP of the child, even if one or more nondisabled children benefit from these services.
 - (2) **Early intervening services.** To develop and implement coordinated, early intervening educational services in accordance with §300.226.
 - (3) **High cost education and related services.** To establish and implement cost or risk sharing funds, consortia, or cooperatives for the LEA itself, or for LEAs working in a consortium of which the LEA is a part, to pay for high cost special education and related services.
- (b) **Administrative case management.** The JHW School may use funds received under Part B of the Act to purchase appropriate technology for recordkeeping, data collection, and related case management activities of teachers and related services personnel providing services described in the IEP of children with disabilities, that is needed for the implementation of those case management activities. (Authority: 20 U.S.C. 1413(a)(4))

B. State Funds

TAC §89.1121. Distribution of State Funds.

- a) Procedures for counting the average daily attendance (ADA) of students receiving special education services in various instructional settings must be developed by the commissioner of education and included in the student attendance accounting handbook adopted under §129.1025 of this title (relating to Adoption by Reference: Student Attendance Accounting Handbook).
- (b) State special education funds must be distributed to school districts on the basis of ADA of full-time equivalents of eligible students served in accordance with §129.21 of this title (relating to Requirements for Student Attendance Accounting for State Funding Purposes).
- (c) The special education attendance must be converted to contact hours by instructional arrangement and then to full-time equivalents. The full-time equivalent for each instructional arrangement is multiplied by the school district's adjusted basic allotment (ABA) or adjusted allotment (AA) and then multiplied by the weight for the instructional arrangement as prescribed in the Texas Education Code (TEC), §42.151(a). Contact hours for any one student receiving special education services may not exceed six hours per day

or 30 hours per week for funding purposes. The total contact hours generated per week is divided by 30 to determine the full-time equivalents. Special education full-time equivalents generated are deducted from the school district's ADA for purposes of the regular education allotment.

(d) The receipt of special education funds is contingent upon the operation of an approved comprehensive special education program in accordance with state and federal laws and regulations. No district may divert special education funds for other purposes, with the exception of administrative costs as defined in Chapter 105, Subchapter B, of this title (relating to Use of State Funds). Funds generated by full-time equivalents in one instructional arrangement may be spent on the overall special education program and are not limited to the instructional arrangement which generated the funds. The district must maintain separate accountability for the total state special education program fund within the general fund.

(e) A special education fund balance may be carried over to the next fiscal year but must be expended on the special education program in the subsequent year. State special education carryover funds cannot be used for administrative costs.

(f) Students who are at least three, but younger than 22, years of age on September 1 of the current scholastic year who participate in the regional day school program for the deaf may be counted as part of the district's ADA if they receive instruction from the basic program for at least 50% of the school day.

(g) Students from birth through age two with a visual or auditory impairment or both who are provided services by the district according to an individual family services plan (IFSP) must be enrolled on the district home or regional day school campus and must be considered eligible for ADA on the same basis as other students receiving special education services.

(h) Funding for the mainstream special education instructional arrangement must be based on the average daily attendance of the students in the arrangement multiplied by the ABA or AA and the 1.1 weight. The attendance must not be converted to contact hours/full-time equivalents as with the other instructional arrangements.

TAC §89.1125. Allowable Expenditures of State Special Education Funds.

- (a) Persons paid from special education funds must be assigned to instructional or other duties in the special education program and/or to provide support services to the regular education program in order for students with disabilities to be included in the regular program. Support services must include, but not be limited to, collaborative planning, co-teaching, small group instruction with special and regular education students, direct instruction to special education students, or other support services determined necessary by the admission, review, and dismissal (ARD) committee for an appropriate program for the student with disabilities. Assignments may include duties supportive to school operations equivalent to those assigned to regular education personnel.
- (b) Personnel assigned to provide support services to the regular education program as stated in subsection (a) of this section may be fully funded from special education funds.
- (c) If personnel are assigned to special education on less than a full-time basis, except as stated in subsection (a) of this section, only that portion of time for which the personnel are assigned to students with disabilities must be paid from state special education funds.
- (d) State special education funds may be used for special materials, supplies, and equipment which are directly related to the development and implementation of individualized education programs (IEPs) of students and which are not ordinarily purchased for the regular classroom. Office and routine classroom supplies are not allowable. Special equipment may include instructional and assistive technology devices, audiovisual equipment, computers for instruction or assessment purposes, and assessment equipment only if used directly with students.

- (e) State special education funds may be used to contract with consultants to provide staff development, program planning and evaluation, instructional services, assessments, and related services to students with disabilities.
- (f) State special education funds may be used for transportation only to and from residential placements. Prior to using federal funds for transportation costs to and from a residential facility, a district must use state or local funds based on actual expenses up to the state transportation maximum for private transportation contracts.
- (g) State special education funds may be used to pay staff travel to perform services directly related to the education of eligible students with disabilities. Funds may also be used to pay travel of staff (including administrators, general education teachers, and special education teachers and service providers) to attend staff development meetings for the purpose of improving performance in assigned positions directly related to the education of eligible students with disabilities. In no event must the purpose for attending such staff development meetings include time spent in performing functions relating to the operation of professional organizations. Funds may also be used to pay for the joint training of parents and special education, related services, and general education personnel.

TEC §42.151. Special Education.

Acts 2003, 78th Leg., ch. 201, § 1(1) **repealed** this section effective September 1, 2004, provided the legislature enacts a law that creates a comprehensive school finance system.

- (a) For each student in average daily attendance in a special education program under Subchapter A, Chapter 29, in a mainstream instructional arrangement, a school district is entitled to an annual allotment equal to the adjusted basic allotment multiplied by 1.1. For each full-time equivalent student in average daily attendance in a special education program under Subchapter A, Chapter 29, in an instructional arrangement other than a mainstream instructional arrangement, a district is entitled to an annual allotment equal to the adjusted basic allotment multiplied by a weight determined according to instructional arrangement as follows:

Homebound/Hospital class-01	1.0
Hospital Class-02	4.5
Speech therapy-00	.25
Resource room-41 & 42	2.859
Self-contained, mild/moderate/severe, reg. campus 43 & 44	3.0
Full-time Early Childhood-45	2.859
Off home campus-91-98	4.25
State school-30	5.5
Vocational adjustment class-08	5.5
Residential care/treatment-81-89	5.50

- (b) A special instructional arrangement for students with disabilities residing in care and treatment facilities, other than state schools, whose parents or guardians do not reside in the district providing education services must be established under the rules of the State Board of Education. The funding weight for this arrangement must be 4.0 for those students who receive their education service on a local school district campus. A special instructional arrangement for students with disabilities residing in state schools must be established under the rules of the State Board of Education with a funding weight of 2.8.
- (c) For funding purposes, the number of contact hours credited per day for each student in the off home campus instructional arrangement may not exceed the contact hours credited per day for the multidistrict class instructional arrangement in the 1992-1993 school year.
- (d) For funding purposes the contact hours credited per day for each student in the resource room; self-contained, mild and moderate; and self-contained, severe, instructional arrangements may not exceed

the average of the statewide total contact hours credited per day for those three instructional arrangements in the 1992-1993 school year.

- (e) The State Board of Education by rule must prescribe the qualifications an instructional arrangement must meet in order to be funded as a particular instructional arrangement under this section. In prescribing the qualifications that a mainstream instructional arrangement must meet, the board must establish requirements that students with disabilities and their teachers receive the direct, indirect, and support services that are necessary to enrich the regular classroom and enable student success.
- (f) In this section, "full-time equivalent student" means 30 hours of contact a week between a special education student and special education program personnel.
- (g) The State Board of Education must adopt rules and procedures governing contracts for residential placement of special education students. The legislature must provide by appropriation for the state's share of the costs of those placements.
- (h) Funds allocated under this section, other than an indirect cost allotment established under State Board of Education rule, must be used in the special education program under Subchapter A, Chapter 29.
- (i) The agency must encourage the placement of students in special education programs, including students in residential instructional arrangements, in the least restrictive environment appropriate for their educational needs.
- (j) Each year, the TEA must make and disseminate to each school district a list of those districts that maintain for two successive years a ratio of full-time equivalent students placed in partially or totally self-contained classrooms to the number of full-time equivalent students placed in resource room or mainstream instructional arrangements that is 25 percent higher than the statewide average ratio.
- (k) A school district that provides an extended year program required by federal law for special education students who may regress is entitled to receive funds in an amount equal to 75 percent, or a lesser percentage determined by the commissioner, of the adjusted basic allotment or adjusted allotment, as applicable, for each full-time equivalent student in average daily attendance, multiplied by the amount designated for the student's instructional arrangement under this section, for each day the program is provided divided by the number of days in the minimum school year. The total amount of state funding for extended year services under this section may not exceed \$10 million per year. A school district may use funds received under this section only in providing an extended year program.
- (l) From the total amount of funds appropriated for special education under this section, the commissioner must withhold an amount specified in the General Appropriations Act, and distribute that amount to school districts for programs under Section 29.014. The program established under that section is required only in school districts in which the program is financed by funds distributed under this subsection and any other funds available for the program. After deducting the amount withheld under this subsection from the total amount appropriated for special education, the commissioner must reduce each district's allotment proportionately and must allocate funds to each district accordingly.

C. Hospitals

TEC §29.014. School Districts that Provide Education Solely to Students Confined to or Educated in Hospitals.

- (a) This section applies only to a school district that provides education and related services only to students who are confined in or receive educational services in a hospital.
- (b) A school district to which this section applies may operate an extended year program for a period not to exceed 45 days. The district's average daily attendance must be computed for the regular school year plus the extended year.

- (c) Notwithstanding any other provision of this code, a student whose appropriate education program is a regular education program may receive services and be counted for attendance purposes for the number of hours per week appropriate for the student's condition if the student:
 - (1) is temporarily classified as eligible for participation in a special education program because of the student's confinement in a hospital; and
 - (2) the student's education is provided by a district to which this section applies.
- (d) The basic allotment for a student enrolled in a district to which this section applies is adjusted by:
 - (1) the cost of education adjustment under Section 42.102 for the school district in which the district is geographically located; and
 - (2) the weight for a homebound student under Section 42.151(a).

D. JJAEP

TEC §37.0061. Funding for Alternative Education Services in Juvenile Residential Facilities

A school district that provides education services to pre-adjudicated and post-adjudicated students who are confined by court order in a juvenile residential facility operated by a juvenile board is entitled to count such students in the district's average daily attendance for purposes of receipt of state funds under the Foundation School Program. If the district has a wealth per student greater than the guaranteed wealth level but less than the equalized wealth level, the district in which the student is enrolled on the date a court orders the student to be confined to a juvenile residential facility must transfer to the district providing education services an amount equal to the difference between the average Foundation School Program costs per student of the district providing education services and the sum of the state aid and the money from the available school fund received by the district that is attributable to the student for the portion of the school year for which the district provides education services to the student.

E. Nonpublic - Private School

TAC §89.63. Instructional Arrangements and Settings.

- (e) For nonpublic day school placements, the JHW School will submit information to the TEA indicating the students' identification numbers, initial dates of placement, and the names of the facilities with which the school district or shared service arrangement is contracting. The school district or shared service arrangement must not count contract students' average daily attendance as eligible. The TEA will determine the number of contract students reported in full-time equivalents and pay state funds to the JHW School according to the formula prescribed in law.

§300.142 Use of personnel. See also Sect. 5 Instructional Arrangements for Private Schools

- (a) **Use of public school personnel.** The JHW School may use funds available under sections 611 and 619 of the Act to make public school personnel available in other than public facilities--
 - (1) To the extent necessary to provide services under §§300.130 through 300.144 for parentally-placed private school children with disabilities; and
 - (2) If those services are not normally provided by the private school.
- (b) **Use of private school personnel.** The JHW School may use funds available under sections 611 and 619 of the Act to pay for the services of an employee of a private school to provide services under §§300.130 through 300.144 if--
 - (1) The employee performs the services outside of his or her regular hours of duty; and
 - (2) The employee performs the services under public supervision and control.
 (Authority: 20 U.S.C. 1412(a)(10)(A))

F. Noneducational Funds

TEC §29.013. Noneducational Community-based Support Services for Certain Students with Disabilities.

- (a) The agency must establish procedures and criteria for the allocation of funds appropriated under this section to school districts for the provision of noneducational community-based support services to certain students with disabilities and their families so that those students may receive an appropriate free public education in the least restrictive environment.
- (b) The funds may be used only for eligible students with disabilities who would remain or would have to be placed in residential facilities primarily for educational reasons without the provision of noneducational community-based support services.
- (c) The support services may include in-home family support, respite care, and case management for families with a student who otherwise would have been placed by a district in a private residential facility.
- (d) The provision of services under this section does not supersede or limit the responsibility of other agencies to provide or pay for costs of noneducational community-based support services to enable any student with disabilities to receive a free appropriate public education in the least restrictive environment. Specifically, services provided under this section may not be used for a student with disabilities who is currently placed or who needs to be placed in a residential facility primarily for noneducational reasons.

G. Public Insurance

§300.154. Methods of ensuring services.

(d) Children with disabilities who are covered by public benefits or insurance.

- (1) The JHW School may use the Medicaid or other public benefits or insurance programs in which a child participates to provide or pay for services required under this part, as permitted under the public benefits or insurance program, except as provided in paragraph (d)(2) of this section.
- (2) With regard to services required to provide FAPE to an eligible child under this part, the JHW School--
 - (i) May not require parents to sign up for or enroll in public benefits or insurance programs in order for their child to receive FAPE under Part B of the Act;
 - (ii) May not require parents to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim for services provided pursuant to this part, but pursuant to paragraph (g)(2) of this section, may pay the cost that the parent otherwise would be required to pay;
 - (iii) May not use a child's benefits under a public benefits or insurance program if that use would--
 - (A) Decrease available lifetime coverage or any other insured benefit;
 - (B) Result in the family paying for services that would otherwise be covered by the public benefits or insurance program and that are required for the child outside of the time the child is in school;
 - (C) Increase premiums or lead to the discontinuation of benefits or insurance; or
 - (D) Risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures; and
 - (iv) (A) Must obtain parental consent consistent with §300.9 each time that access to public benefits or insurance is sought; and
(B) Notify parents that the parents' refusal to allow access to their public benefits or insurance does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents.

- (e) **Children with disabilities who are covered by private insurance.**
- (1) With regard to services required to provide FAPE to an eligible child under this part, the JHW School may access a parent's private insurance proceeds only if the parent provides consent consistent with §300.9.
 - (2) Each time the JHW School proposes to access the parent's private insurance proceeds, the JHW School must--
 - (i) Obtain parental consent in accordance with paragraph (e)(1) of this section; and
 - (ii) Inform the parents that their refusal to permit the JHW School to access their private insurance does not relieve the JHW School of its responsibility to ensure that all required services are provided at no cost to the parents.
- (f) **Use of Part B funds.**
- (1) If the JHW School is unable to obtain parental consent to use the parent's private insurance, or public benefits or insurance when the parent would incur a cost for a specified service required under this part, to ensure FAPE the JHW School may use its Part B funds to pay for the service.
 - (2) To avoid financial cost to parents who otherwise would consent to use private insurance, or public benefits or insurance if the parent would incur a cost, the JHW School may use its Part B funds to pay the cost that the parents otherwise would have to pay to use the parent's benefits or insurance (e.g., the deductible or co-pay amounts).
- (g) **Proceeds from public benefits or insurance or private insurance.**
- (1) Proceeds from public benefits or insurance or private insurance will not be treated as program income for purposes of 34 CFR 80.25.
 - (2) If the JHW School spends reimbursements from Federal funds (e.g., Medicaid) for services under this part, those funds will not be considered "State or local" funds for purposes of the maintenance of effort provisions in §§300.163 and 300.203.
- (h) **Construction.** Nothing in this part should be construed to alter the requirements imposed on a State Medicaid agency, or any other agency administering a public benefits or insurance program by Federal statute, regulations or policy under title XIX, or title XXI of the Social Security Act, 42 U.S.C. 1396 through 1396v and 42 U.S.C. 1397aa through 1397jj, or any other public benefits or insurance program. (Authority: 20 U.S.C. 1412(a)(12) and (e))

H. TSD – Texas School for the Deaf

TEC §30.087. Funding.

- (a) The cost of educating students who are deaf or hard of hearing must be borne by the state and paid from the foundation school fund, but independent school districts and institutions of higher education in the state may and are encouraged to make available property or services in cooperation with the regional day school programs for the deaf for any activities related to the education of students who are deaf or hard of hearing, including research, personnel training, and staff development.
- (b) From the amount appropriated for regional day school programs, the commissioner must allocate funds to each program based on the number of weighted full-time equivalent students served. The commissioner may consider local resources available in allocating funds under this subsection.
- (c) A school district may receive an allotment for transportation of students participating in a regional day school program, determined in the same manner as an allotment for the transportation of other special education students.

TEC §30.056. Funding of the Texas School for the Deaf.

The funding of the Texas School for the Deaf consists of:

- (1) money the legislature specifically appropriates for the school;
- (2) money the agency allocates to the school under this code;
- (3) money paid under a contract or other agreement;
- (4) money the school receives through a gift or bequest;
- (5) a payment the school receives from a school district under Section 30.003; and

- (6) the school's share of the available school fund and payments to compensate for payments no longer made from the available school fund as provided by Section 30.003(f).

TEC §30.003. Support of Students Enrolled in Texas School for the Blind and Visually Impaired or Texas School for the Deaf.

- (a) For each student enrolled in the Texas School for the Blind and Visually Impaired or the Texas School for the Deaf, the school district that is responsible for providing appropriate special education services to the student must share the cost of the student's education as provided by this section.
- (b) If the student is admitted to the school for a full-time program for the equivalent of two long semesters, the district's share of the cost is an amount equal to the dollar amount of maintenance and debt service taxes imposed by the district for that year divided by the district's average daily attendance for the preceding year.
- (c) If the student is admitted for a program less than two complete semesters in duration, other than a summer program, the district's share of the cost is an amount equal to the amount that would be the district's share under Subsection (b) for a full-time program multiplied by the quotient resulting from the number of full-time equivalent days in the program divided by the minimum number of days of instruction for students as provided by Section 25.081.
- (d) Each school district and state institution must provide to the commissioner the necessary information to determine the district's share under this section. The information must be reported to the commissioner on or before a date set by rule of the State Board of Education. After determining the amount of a district's share for all students for which the district is responsible, the commissioner must deduct that amount from the payments of foundation school funds payable to the district. Each deduction must be in the same percentage of the total amount of the district's share as the percentage of the total foundation school fund entitlement being paid to the district at the time of the deduction, except that the amount of any deduction may be modified to make necessary adjustments or to correct errors. The commissioner must provide for remitting the amount deducted to the appropriate school at the same time at which the remaining funds are distributed to the district. If a district does not receive foundation school funds or if a district's foundation school entitlement is less than the amount of the district's share under this section, the commissioner must direct the district to remit payment to the commissioner, and the commissioner must remit the district's share to the appropriate school.
- (e) For each student enrolled in the Texas School for the Blind and Visually Impaired or the Texas School for the Deaf, the appropriate school is entitled to the state available school fund apportionment.
- (f) The commissioner, with the assistance of the comptroller, must determine the amount that the Texas School for the Blind and Visually Impaired and the Texas School for the Deaf would have received from the available school fund if Chapter 28, Acts of the 68th Legislature, 2nd Called Session, 1984, had not transferred statutorily dedicated taxes from the available school fund to the foundation school fund. That amount, minus any amount the schools do receive from the available school fund, must be set apart as a separate account in the foundation school fund and appropriated to those schools for educational purposes.
- (g) The State Board of Education may adopt rules as necessary to implement this section.
- (h) Expired.

I. RDSPD – Regional Day School Programs for the Deaf

TEC §30.085. Use of Local Resources. Local resources must be used to the fullest practicable extent in the establishment and operation of the regional day school programs for the deaf.

TEC §30.086. Powers and Duties of Agency.

- (a) The agency must contract with any qualified organization or individual for diagnostic, evaluative, or instructional services or any other services relating to the education of students who are deaf or hard of hearing, including transportation or maintenance services.
- (b) The agency must employ educational and other personnel, may purchase or lease property, may accept gifts or grants of property or services from any source, including an independent school district or institution of higher education in this state, to establish and operate regional day school programs for the deaf.

TEC §30.087. Funding.

- (a) The cost of educating students who are deaf or hard of hearing must be borne by the state and paid from the foundation school fund, but independent school districts and institutions of higher education in the state may and are encouraged to make available property or services in cooperation with the regional day school programs for the deaf for any activities related to the education of students who are deaf or hard of hearing, including research, personnel training, and staff development.
- (b) From the amount appropriated for regional day school programs, the commissioner must allocate funds to each program based on the number of weighted full-time equivalent students served. The commissioner may consider local resources available in allocating funds under this subsection.
- (c) A school district may receive an allotment for transportation of students participating in a regional day school program, determined in the same manner as an allotment for the transportation of other special education students.

J. TSBVI – Texas School for the Blind and Visually Impaired

§300.210 Purchase of instructional materials.

- (a) **General.** Not later than December 3, 2006, an LEA that chooses to coordinate with the National Instructional Materials Access Center, when purchasing print instructional materials, must acquire those instructional materials in the same manner, and subject to the same conditions as an SEA under §300.172.
- (b) **Rights of LEA.**
 - (1) Nothing in this section must be construed to require an LEA to coordinate with the National Instructional Materials Access Center (NIMAC).
 - (2) If an LEA chooses not to coordinate with the National Instructional Materials Access Center, the LEA must provide an assurance to the SEA that the LEA will provide instructional materials to blind persons or other persons with print disabilities in a timely manner.
 - (3) Nothing in this section relieves an LEA of its responsibility to ensure that children with disabilities who need instructional materials in accessible formats but are not included under the definition of blind or other persons with print disabilities in 300.172(e)(1)(i) or who need materials that cannot be produced from NIMAS files, receive those instructional materials in a timely manner.
(Authority: 20 U.S.C. 1413(a)(6))

TEC §30.002. Education for Children with Visual Impairments.

- (g) To facilitate implementation of this section, the commissioner must develop a system to distribute from the foundation school fund to school districts or regional education service centers a special supplemental allowance for each student with a visual impairment and for each student with a serious visual disability and another medically diagnosed disability of a significantly limiting nature who is receiving special education services through any approved program. The supplemental allowance may be spent only for special services uniquely required by the nature of the student's disabilities and may not be used in lieu of educational funds otherwise available under this code or through state or local appropriations.

TEC §30.003. Support of Students Enrolled in Texas School for the Blind and Visually Impaired or Texas School for the Deaf. ([found in section H. above](#))

TAC §89.62. Support of Students Enrolled in the Texas School for the Blind and Visually Impaired and Texas School for the Deaf.

- (a) For each student enrolled in the Texas School for the Blind and Visually Impaired or Texas School for the Deaf, the school district responsible for providing appropriate special education and related services to the student must share the cost of the student's education (excluding the summer programs) as provided under the Texas Education Code, §30.003.
- (1) The information required in accordance with the Texas Education Code, §30.003(d), must be submitted in a form prescribed by the commissioner of education within 30 calendar days after the student enrolls in the Texas School for the Blind and Visually Impaired or Texas School for the Deaf.
- (2) School districts required to remit their shares to the Texas Education Agency in accordance with the Texas Education Code, §30.003(d), must do so within 60 days of notification by the commissioner of education.
- (b) School districts must provide, annually, in writing to each parent or legal guardian of an eligible student with visual or auditory impairments, the information specified in the Texas Education Code, §30.004(a)(1-3), before considering the student's placement for special education services.

TEC §30.025. Funding of Texas School for the Blind and Visually Impaired

The funding of the Texas School for the Blind and Visually Impaired consists of:

- (1) money the legislature specifically appropriates to the school;
- (2) money the agency allocates to the school under this code;
- (3) money paid under a contract or other agreement;
- (4) money the school receives through a gift or bequest;
- (5) a payment the school receives from a school district under Section 30.003; and
- (6) the school's share of the available school fund and payments to compensate for payments no longer made from the available school fund as provided by Section 30.003(f).

§300.172 Access to instructional materials.

(a) General. The State must—

- (1) Adopt the National Instructional Materials Accessibility Standard (NIMAS), published as Appendix C to Part 300, for the purposes of providing instructional materials to blind persons or other persons with print disabilities, in a timely manner after publication of the NIMAS in the Federal Register on July 19, 2006 (71 FR 41084); and**
- (2) Establish a State definition of “timely manner” for purposes of paragraphs (b)(2) and (b)(3) of this section if the State is not coordinating with the National Instructional Materials Access Center (NIMAC) or (b)(3) and (c)(2) of this section if the State is coordinating with the NIMAC.**

(b) Rights and responsibilities of SEA.

- (1) Nothing in this section must be construed to require any SEA to coordinate with the National Instructional Materials Access Center (NIMAC).**
- (2) If an SEA chooses not to coordinate with the NIMAC, the agency must provide an assurance to the Secretary that the agency will provide instructional materials to blind persons or other persons with print disabilities in a timely manner.**
- (3) Nothing in this section relieves an SEA of its responsibility to ensure that children with disabilities who need instructional materials in accessible formats, but are not included under the definition of blind or other persons with print disabilities in 300.172(e)(1)(i) or who need materials that cannot be produced from NIMAS files, receive those instructional materials in a timely manner.**

- (4) In order to meet its responsibility under paragraphs (b)(2), (b)(3), and (c) of this section to ensure that children with disabilities who need instructional materials in accessible formats are provided those materials in a timely manner, the SEA must ensure that all public agencies take all reasonable steps to provide instructional materials in accessible formats to children with disabilities who need those instructional materials at the same time as other children receive instructional materials.
- (c) **Preparation and delivery of files.** If an SEA chooses to coordinate with the NIMAC, as of December 3, 2006, the SEA must,
- (1) As part of any print instructional materials adoption process, procurement contract, or other practice or instrument used for purchase of print instructional materials, must enter into a written contract with the publisher of the print instructional materials to--
 - (i) Require the publisher to prepare and, on or before delivery of the print instructional materials, provide to NIMAC electronic files containing the contents of the print instructional materials using the NIMAS; or
 - (ii) Purchase instructional materials from the publisher that are produced in, or may be rendered in, specialized formats.
 - (2) Provide instructional materials to blind persons or other persons with print disabilities in a timely manner.
- (d) **Assistive technology.** In carrying out this section, the SEA, to the maximum extent possible, must work collaboratively with the State agency responsible for assistive technology programs.
- (e) **Definitions.**
- (1) In this section and §300.210--
 - (i) **Blind persons or other persons with print disabilities** means children served under this part who may qualify to receive books and other publications produced in specialized formats in accordance with the Act entitled "An Act to provide books for adult blind," approved March 3, 1931, 2 U.S.C 135a;
 - (ii) **National Instructional Materials Access Center or NIMAC** means the center established pursuant to section 674(e) of the Act;
 - (iii) **National Instructional Materials Accessibility Standard or NIMAS** has the meaning given the term in section 674(e)(3)(B) of the Act; and
 - (iv) **Specialized formats** has the meaning given the term in section 674(e)(3)(D) of the Act.
 - (2) The definitions in paragraph (e)(1) of this section apply to each State and LEA, whether or not the State or LEA chooses to coordinate with the NIMAC. (Authority: 20 U.S.C. 1412(a)(23), 1474(e))

K. Residential (*see Section 5 Instructional Arrangements for all references to Residential*)

XIII. STATE PERFORMANCE PLAN and ANNUAL PERFORMANCE REPORT

Information about the State Performance Plan (SPP) / Annual Performance Report (APR) and requirements related to the SPP/APR can be found on the TEA website at:

<http://www.tea.state.tx.us/special.ed/spp/index.html>.

About the SPP / APR

The Individuals with Disabilities Education Act of 2004 (IDEA 2004), requires each state to develop a six-year performance plan. This State Performance Plan (SPP) evaluates the State's efforts to implement the requirements and purposes of IDEA and illustrates how the State will continuously improve upon this implementation.

Continuous Improvement Plans in the JHW School will use data analysis and focus on the indicators from the SPP / PBMAS, etc.

XIV. INTERVENTIONS AND SANCTIONS

§300.120 Monitoring activities.

- (a) The SEA must carry out activities to ensure that §300.114 (*LRE activities*) is implemented by each public agency.
- (b) If there is evidence that a public agency makes placements that are inconsistent with §300.114, the SEA must—
- (1) Review the public agencies justification for its actions; and
 - (2) Assist in planning and implementing any necessary corrective action.
- Authority: 20 U.S.C. 1412(a)(5)

TAC §89.1076. Interventions and Sanctions.

The Texas Education Agency (TEA) must establish and implement a system of interventions and sanctions, in accordance with the Individuals with Disabilities Education Act, 20 United States Code, §§1400 et seq., Texas Education Code (TEC), §29.010, and TEC, Chapter 39, as necessary to ensure program effectiveness and compliance with federal and state requirements regarding the implementation of special education and related services. In accordance with TEC, §39.102, the TEA may combine any intervention and sanction. The system of interventions and sanctions will include, but not be limited to, the following:

- (1) on-site review for failure to meet program or compliance requirements;
- (2) required fiscal audit of specific programs and/or of the district, paid for by the district;
- (3) required submission of corrective actions, including compensatory services, paid for by the district;
- (4) required technical assistance, paid for by the district;
- (5) public release of program or compliance review findings;
- (6) special investigation and/or follow-up verification visits;
- (7) required public hearing conducted by the local school board of trustees;
- (8) assignment of a special purpose monitor, conservator, or management team, paid for by the district;
- (9) hearing before the commissioner of education or designee;
- (10) reduction in payment or withholding of funds;
- (11) lowering of the special education monitoring/compliance status and/or the accreditation rating of the district; and/or
- (12) other authorized interventions and sanctions as determined by the commissioner.

XV. SHARED SERVICE ARRANGEMENTS

Shared Service Arrangements

TEC §29.007. Shared Services Arrangements. School districts may enter into a written contract to jointly operate their special education programs. The contract must be approved by the commissioner. Funds to which the cooperating districts are entitled may be allocated to the districts jointly as shared services arrangement units or shared services arrangement funds in accordance with the shared services arrangement districts' agreement.

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

(f) School districts that jointly operate their special education programs as a shared services arrangement, in accordance with TEC, §29.007, must do so in accordance with procedures developed by the Texas Education Agency (TEA).

XVI. CHARTER SCHOOLS

§300.7 Charter school.

Charter school has the meaning given the term in section 5210(1) of the Elementary and Secondary Education Act of 1965, as amended, 20 U.S.C. 6301 *et. seq.* (ESEA). (Authority: 20 U.S.C. 7221i(1))

§300.209 Treatment of charter schools and their students.

- (a) **Rights of children with disabilities.** Children with disabilities who attend public charter schools and their parents retain all rights under this part.
- (b) **Charter schools that are public schools of the LEA.**
- (1) In carrying out Part B of the Act and these regulations with respect to charter schools that are public schools of the LEA, the LEA must--
- (i) Serve children with disabilities attending those charter schools in the same manner as the LEA serves children with disabilities in its other schools, including providing supplementary and related services on site at the charter school to the same extent to which the LEA has a policy or practice of providing such services on the site to its other public schools; and
- (ii) Provides funds under Part B of the Act to those charter schools--
- (A) On the same basis as the LEA provides funds to the LEA's other public schools, including proportional distribution based on relative enrollment of children with disabilities; and
- (B) At the same time as the LEA distributes other Federal funds to the LEA's other public schools, consistent with the State's charter school law.
- (2) If the public charter school is a school of an LEA that receives funding under §300.705 and includes other public schools--
- (i) The LEA is responsible for ensuring that the requirements of this part are met, unless State law assigns that responsibility to some other entity; and
- (ii) The LEA must meet the requirements of paragraph (b)(1) of this section.
- (c) **Public charter schools that are LEAs.** If the public charter school is an LEA, consistent with §300.28, that receives funding under §300.705, that charter school is responsible for ensuring that the requirements of this part are met, unless State law assigns that responsibility to some other entity.
- (d) **Public charter schools that are not an LEA or a school that is part of an LEA.**
- (1) If the public charter school is not an LEA receiving funding under §300.705, or a school that is part of an LEA receiving funding under §300.705, the SEA is responsible for ensuring that the requirements of this part are met.
- (2) Paragraph (d)(1) of this section does not preclude a State from assigning initial responsibility for ensuring the requirements of this part are met to another entity. However, the SEA must maintain the ultimate responsibility for ensuring compliance with this part, consistent with §300.149.
(Authority: 20 U.S.C. 1413(a)(5))