

(REQUIRED BY LAW)

TEC 12.104. Applicability of Title

- (a) An open-enrollment charter school is subject to . . . special education programs under Subchapter A, Chapter 29.

POLICY

Child Find

The School shall ensure that all children residing within the School's boundaries who have disabilities, regardless of the severity of their disabilities, and who are in need of special education and related services are identified, located, and evaluated. This requirement applies to:

1. Homeless children;
2. Children who are wards of the state;
3. Children attending private schools;
4. Highly mobile children (including migrant children); and
5. Children who are suspected of being in need of special education but who are advancing from grade to grade.

20 U.S.C. 1412(a)(3)(A); 34 CFR 300.111(a)(1)(i), (c).

Private School Students

The School shall conduct a timely and meaningful consultation with private school representatives regarding the child find process and the provision of special education and related services to children enrolled in private schools within the School's boundaries.

The School shall undertake activities similar to those undertaken for public school children and shall complete the child find process for children enrolled in private schools in a time period comparable to that for other students attending the public schools within the School's boundaries. 20 U.S.C. 1412(a)(10)(A)(ii)–(iv).

Preschool Students

The School shall develop a system to notify residents within the School's boundaries with children who are at least three and younger than six and who are eligible for enrollment in a special education program of the availability of such programs. Education Code 29.009

Referral

Referral of students for a full and individual initial evaluation for possible special education services shall be a part of the School's overall general education referral or

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screening system. Either a parent, TEA, another state agency, or the School may initiate a request for an initial evaluation.

Before referral, students experiencing difficulty in the general classroom should be considered for all support services available to all students. If a student continues to experience difficulty in the general classroom after the provision of interventions, School personnel must refer the student for a full and individual initial evaluation. 20 U.S.C. 1414(a)(1); 34 CFR 300.301; 19 TAC 89.1011.

NOTICE OF RIGHTS

The School shall provide written notice to a student’s parent or guardian within a reasonable time before proposing or refusing to initiate the identification, evaluation, or educational placement of a student or the provision of a FAPE. 20 U.S.C. 1415(b)(3); 34 CFR 300.503(a).

Initial Evaluation

The School shall conduct a full and individual initial evaluation before the initial provision of special education and related services. 20 U.S.C. 1414(a)(1)(A).

The School shall ensure that evaluations of children who transfer from one district to another in the same academic year are coordinated with the children’s prior and subsequent schools, as necessary and as expeditiously as possible, to ensure prompt completion of evaluations. 20 U.S.C. 1414(b)(3)(D).

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

Consent For Initial Evaluation

The School shall make reasonable efforts to obtain informed parental consent before conducting an initial evaluation.

If the parent does not provide consent for an initial evaluation or fails to respond to a request to provide consent, the School may—but is not required to—pursue the initial evaluation by utilizing due process procedures, except to the extent inconsistent with state law relating to such parental consent.

Parental consent to initial evaluation shall not be construed as consent for placement for special education and related services. 20 U.S.C. 1414(a)(1)(D)(i)(1); 34 CFR 300.300.

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Wards of the State

If the child is a ward of the state and is not residing with the child's parent, the District shall make reasonable efforts to obtain the informed consent from the parent for an initial evaluation, unless:

1. The School cannot discover the whereabouts of the parent, despite reasonable efforts to do so;
2. The rights of the parent have been terminated; or
3. The rights of the parent to make educational decisions have been subrogated and an individual appointed by a judge to represent the student has given consent for an initial evaluation.

20 U.S.C. 1414(a)(1)(D)(iii); 34 CFR 300.300(a)(2).

The School must conduct the initial evaluation within 45 days of receiving parental consent for the evaluation, or a shorter time frame if one is established by the state.

This time frame shall not apply if:

1. A child enrolls in the School after the relevant time frame has begun and before the child's previous district made a determination as to whether the child has a disability, but only if the School is making sufficient progress to ensure a prompt completion of the evaluation and the parent and the School agree to a specific time for completion of the evaluation; or
2. The parent repeatedly fails or refuses to produce the child for the evaluation.

20 U.S.C. 1414(a)(1)(C); 34 CFR 300.301(c)–(e); Education Code 29.004

Psychological Exams

If the School determines that an additional examination or test is required for the evaluation, the School shall provide the information required by Education Code 29.0041(a) and shall obtain parental consent. If a parent does not give consent within 20 calendar days after the School provides the information, the parent's consent is considered denied.

The time required for the School to provide information and seek consent may not be counted toward the 60 calendar days for completion of an evaluation. Education Code 29.0041.

Eligibility Determinations

Upon completion of the administration of assessments and other evaluation measures, a team of qualified professionals and the parent shall make the determination of whether the child has a disability and of the educational needs of the child.

The School shall provide a copy of the evaluation report and the documentation of determination of eligibility at no cost to the parent. 20 U.S.C. 1414(b)(4)(B); 34 CFR 300.306(a).

Reevaluations

The School shall ensure that each child with a disability is reevaluated if the School determines that the educational or related services needs of the child, including improved academic achievement and functional performance, warrant a reevaluation, or if the child's parent or teacher requests a reevaluation.

Reevaluation shall occur:

1. No more than once a year, unless the parent and the School agree otherwise; and
2. At least once every three years, unless the parent and the School agree that a reevaluation is unnecessary.

The School shall obtain informed parental consent before conducting a reevaluation, except that informed parental consent is not needed if the School can demonstrate that it has taken reasonable measures to obtain consent and the child's parent has failed to respond. 20 U.S.C. 1414(a)(2), (c)(3); 34 CFR 300.303.

Evaluation for Change in Eligibility

The School shall evaluate a child before determining that the child is no longer a child with a disability. However, an evaluation is not required before the termination of eligibility due to graduation from secondary school with a regular diploma or due to exceeding the age eligibility for FAPE under state law. 20 U.S.C. 1414(c)(5); 34 CFR 300.305(e).

Independent Evaluation

Parents have a right to obtain an independent educational evaluation of their child. Upon such a request, the School shall provide the parents with information regarding where one can be obtained and the School's criteria for independent evaluations.

At Public Expense

If a parent requests an independent evaluation at public expense, the School shall, without unnecessary delay, either:

1. File a due process complaint to request a hearing to show that its evaluation is appropriate; or
2. Ensure that an independent evaluation is provided at public expense, unless the School demonstrates that the evaluation obtained by the parent did not meet the School's criteria for independent evaluations.

At Private Expense

If the School initiates a hearing, and the final decision is that the School's evaluation is appropriate, the parent still has a right to an independent evaluation, but not at public expense. If the parent obtains an independent evaluation at private expense, the School shall consider the results of the evaluation, if it meets the School's criteria, in any decision made with respect to providing FAPE to the child. 34 CFR 300.502.

Eligibility for Participation

A student is eligible to participate in the School's special education program if:

1. The student is between the ages of 3 and 21, inclusive;
2. The student has one or more of the disabilities listed in federal regulations, state law, or both; and
3. The student's disability(ies) prevents the student from being adequately or safely educated in the public schools without the provision of special services.

20 U.S.C. 1401(3); Education Code 29.003(b); 19 TAC 89.1035, 89.1040.

Visual and Auditory Impairments

A student with a visual or auditory impairment shall be eligible to participate in the School's special education program from birth. 19 TAC 89.1035(b); Education Code 30.002.

Parental Consent

The School must obtain informed consent from the parent for the initial provision of special education and related services. If the parent of a child fails to respond to a request for, or refuses to consent to, the initial provision of services, the School:

1. May not use the procedures in 34 CFR part 300 subpart E (including the mediation and due process procedures) in order to obtain agreement or a ruling that the services may be provided to the child;
2. Will not be considered to be in violation of the requirement to make FAPE available to the child for the failure to provide the services for which the School requests consent; and
3. Is not required to convene an ARD meeting or develop an IEP for the child for the services.

If, at any time after the provision of initial services, the parent of a child revokes consent in writing for the continued provision of services, the School:

1. May not continue to provide services to the child, but must provide prior written notice before ceasing services;

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2. May not use the procedures in 34 CFR part 300 subpart E in order to obtain agreement or a ruling that the services may be provided to the child;
3. Will not be considered to be in violation of the requirement to make FAPE available to the child because of the failure to provide the child with further services; and
4. Is not required to convene an ARD meeting or develop an IEP for further provision of services.

34 CFR 300.300(b).

Requiring Prescription Medication

School employees are prohibited from requiring a child to obtain a prescription for a substance covered under the federal Controlled Substances Act (21 U.S.C. 801 et seq.) as a condition of attending school, receiving an evaluation for special education, or receiving special education and related services.

School employees are not prohibited from consulting or sharing classroom-based observations with parents regarding a student's academic and functional performance, behavior in the classroom or school, or the need for evaluation for special education or related services. 20 U.S.C. 1412(a)(25)