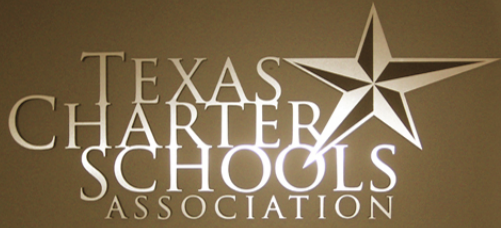


Special Education: IDEA, 504, and Tex. Educ. Code

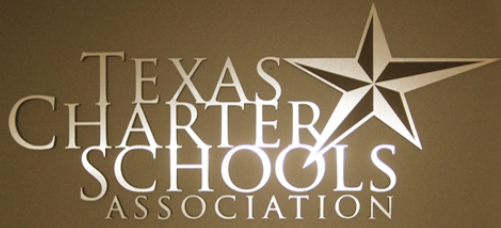




Special Education Overview

- **Abbreviations**
- **Legal Statutes**
 - Individual with Disabilities Education Act
 - Section 504 of the Rehabilitation Act
 - Texas Education Code and regulations
- **Requirements**
 - Child Find
 - FAPE
 - IEP
 - Discipline
- **Complaints**
 - TEA
 - Due Process
 - OCR
- **Policies**
 - Framework posted on ESC18

- **IEP** – Individual Education Plan
- **BIP** – Behavior Intervention Plan
- **MDR** – Manifestation Determination Review
- **FIE** – Full Individual Evaluation
- **FBA** – Functional Behavior Assessment
- **OHI** – Other Health Impairment
- **FAPE** – Free Appropriate Public Education
- **504** – Section 504 of the Rehabilitation Act
- **IDEA** – Individuals with Disabilities Education Improvement Act (IDEA 2004)



Introduction to Special Education Legal Statutes

Legal Statutes: IDEA

- Individuals with Disabilities Education Act
 - Education for All Handicapped Children Act
 - Purpose is to provide access to general, public education
- **ALL** schools are required to follow the IDEA
- Most protections for students and most requirements for school
- Regulations start at 34 CFR 300.000

Legal Statutes: IDEA

- Available to students who have a **disability** and there is an **educational need**
 - disability effects the students learning
- Requires students to have an IEP
- Provides services, accommodations, modifications, and specialized instruction
 - Inclusions support, pull out support, OT services, speech services, reading specialist
 - IEP goals geared towards students needs

Legal Statutes: 504

- Section 504 of the Rehabilitation Act
- **ALL** schools are required to follow Section 504
 - Purpose is to prevent discrimination based on disability
 - students determined to be IDEA-eligible are also eligible under § 504.
- Less protections than IDEA
 - If student qualifies for special education 504 is not a substitute

Legal Statutes: 504

- Available to students with a **disability** that **substantially limits a major life activity**
 - Self care, breathings, walking, reading, speaking, learning, etc.
- Requires students to have a 504 plans
- Provides services and accommodations, but does not provide specialized instruction
 - accommodations are limited and cannot fundamentally alter the instruction; not specialized instruction

- Fry v. Napoleon Community Schools
 - Request for a service animal
 - Exhaustion of IDEA is not necessary for ADA or 504 claim
 - Something other than FAPE
 - Could the claim be made about another public facility?
 - Could an adult bring the claim?
 - History of complaint?

- Texas Education Code
- Texas Administrative Code, Chapter 89
- Dyslexia Law
 - (TEC) § 38.003
 - (TAC) § 74.28
- Side-by-Side

Special Education Rules & Regulations

Individuals with Disabilities Education Act
State Board of Education Rules
Commissioner's Rules
Texas State Laws

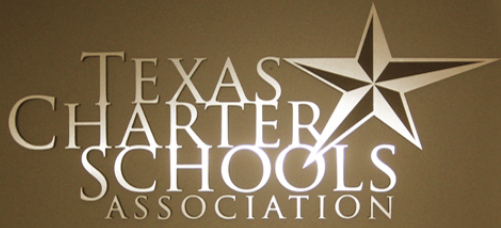
To ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education employment and independent living.

34 CFR §300.1(a)



Special education services shall 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).

19 TAC §89.1001(a)



Requirements

Requirements: Child Find

- Child Find 34 CFR § 300.111
 - Each school must have a policy and procedure to ensure
 - all children with disabilities are identified, located, and evaluated
 - And implement IEPs for students already receiving services.
- PBMAS reporting requirement for Child Find

Requirements: Child Find

- Referral for evaluation
 - If you suspect a student has a disability, you need to refer
 - If a parent requests an evaluation, you need to get consent or provide prior written notice
 - RTI can be used for data
 - RTI cannot be used to delay evaluation
- Independent evaluation
 - Grant or file for due process

- Free Appropriate Public Education
 - At no cost to the parent
 - Follow procedural requirements
 - Substantive requirements
 - Meets the needs of the student through an IEP
 - IEP is written to confer some benefit on the student
 - Student needs to make progress
 - Not expected to reach full potential

- **Rowley, 458 U.S. 176**
 - “State satisfies the FAPE requirement by providing personalized instruction with sufficient support services to permit the child to benefit educational from that instruction”

- **Michael F., 118 F.3d 245 (5th Cir. 1997)**
 - Educational benefit means that the educational program must be likely to produce meaningful , not trivial, progress
 - Four part test
 - Was the program individualized on the basis of the student’s assessment?
 - Was the program in the LRE?
 - Were the services provided in a collaborative manner by key stakeholders?
 - Were positive academic & nonacademic benefits demonstrated?

- Andrew F.
 - IDEA case determined the *de minimus* standard was too low
 - SCOTUS requires a school to “offer an IEP reasonably calculated to enable a child to make progress **appropriate in light of child’s circumstances**”
 - Appropriately ambitious to meet challenging objectives
 - School **must be able to offer** a cogent and responsive explanation for their decisions

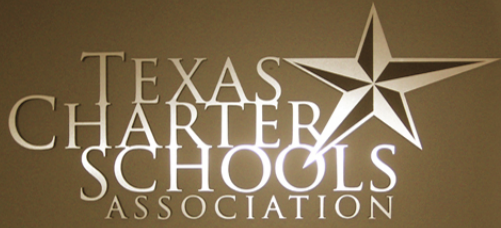
- June 22, 2017
 - The lower court focused on the four factors from *Michael F.*
 - “guide a district court in the fact-intensive inquiry of evaluating whether an IEP provided an educational benefit.”
 - The court held that all four factors weighed in favor of concluding that her IEP was reasonable based on her specific needs and progress.
 - fully consistent with that *Andrew F.*
 - “appropriately ambitious in light of [her] circumstances.”

- Individualized Education Program 34 CFR § 300.112
 - All students that qualify for special education must have an IEP
 - Updated at least **annually**
 - Implemented by all staff who interact with the student
 - A copy must be provided to students' teachers
 - IEP must be **based** on what the **child needs** to make progress, not what the school has access to
 - Must be translated into Spanish for parent

- IEPs are based on evaluation
- Required Components of an IEP
 - Measurable Goals
 - Schedule of Services
 - LRE consideration and placement
 - Must maintain a continuum of placement
 - Accommodations and modifications
 - Assessment
- Additional Requirements
 - BIP
 - Autism Supplement

- ARD Committee Meeting 19 TAC § 89.1050
 - Notice
 - 5 days prior; attendees; purpose of meeting
 - Members
 - Parent, gen-ed teacher, special-ed teacher, administrator, evaluator
 - Agreement/Disagreement
 - Parent and administrator required
 - Minutes
 - What was discussed? What was offered? What is the timeline?

- Functional Behavior Assessment
- Suspension/Removal
 - Maximum 10 day removal for a pattern of behavior or an incident per year prior to holding MDR
- Manifestation Determination Review 34 CFR § 300.530
 - Must be held within 10 days of the removal
 - May not remove if it is a manifestation
 - May remove, but must provide FAPE if not a manifestation



Complaints

- Administrative Complaints
 - Request for mediation
 - File Complaint
 - TEA has 60 days to investigate and provide response
 - School must submit documents
 - Procedural violations
 - Child Find
 - Individual students v. systemic complaints

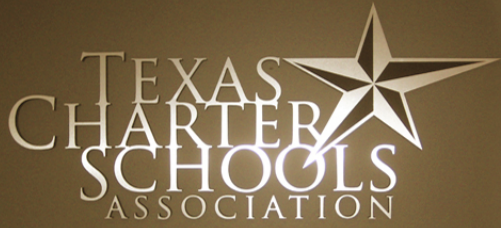
Due Process Complaints

- Request for Impartial Due Process
 - Quick timeline
 - 15 day resolution deadline
 - 30 day mediation deadline
 - 45 day timeline for hearing after resolution
 - Hearing-mini trial
 - Decision is appealable to Federal Court
- Exhaustion
 - Must exhaust all claims before going to federal court

Due Process Complaints

- IDEA v. ADA
 - Due process can be used for an ADA claim in order to exhaust and get to federal court
 - Lower standard under IDEA for services— meaningful progress
 - Higher standard under ADA for access— equal opportunity
 - *K.M. v. Tustin Unified School District* 725 F.3d 1088 (9th Cir. 2013)

- Office of Civil Rights
 - 504 complaints
 - Discrimination and Failure to implement 504 plan
 - Key Discrimination issues
 - Extracurricular activities
 - Diabetes
 - Honors/AP classes
 - Bullying/Harassment/Title IX
 - Must be filed within 180 days of incident



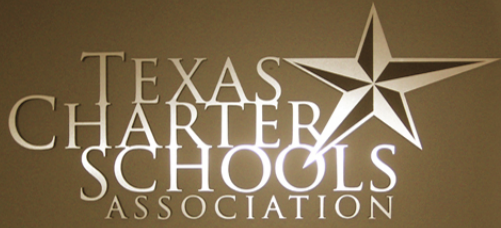
Updates

- Repeal of 8.5% Cap
 - TEA cannot create an indicator for the total percentage of students receiving special education
 - TEA can still have PBMAS indicators to address disproportionality
 - New ESSA has 98 disproportionate indicators

- Camera's in the classroom
 - Clean up bill from 84th
 - Self-contained or special education classrooms where student spends majority of the day
 - Clarifies request is limited to single classroom or campus
 - Shortens time period to maintain video from 6 to 3 months
 - Parents can appeal a denial to TEA

- Surrogate Parents
 - Allows foster parent to be surrogate parent for student with disabilities after receiving training
 - School can appoint someone
 - Not an employee or former employee
 - Not DFPS employee
 - No conflicts of interest

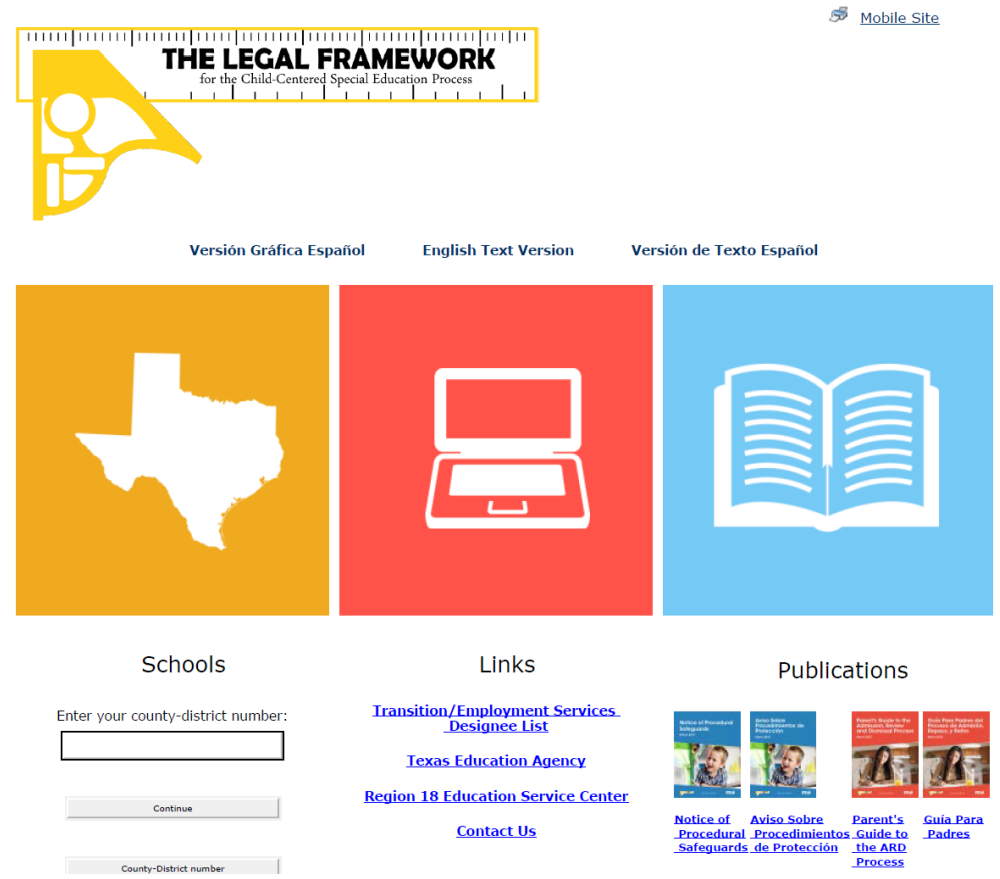
- Transition planning for students in special education
 - Over 18, parent can be invited by student or school
 - Must review annually
 - Transfer of rights notices must include information and resources
 - regarding guardianship, alternatives to guardianship, including a supported decision-making agreement, and other supports to enable the student to live independently.



Policies

Special Education Policies

- All schools are **required** to post **special education policies** as part of the **Legal Framework** on ESC 18's website
- <https://framework.esc18.net/display/Webforms/LandingPage.aspx>



Mobile Site

THE LEGAL FRAMEWORK
for the Child-Centered Special Education Process

Versión Gráfica Español English Text Version Versión de Texto Español

Schools

Enter your county-district number:

Continue

County-District number

Links

[Transition/Employment Services Designee List](#)

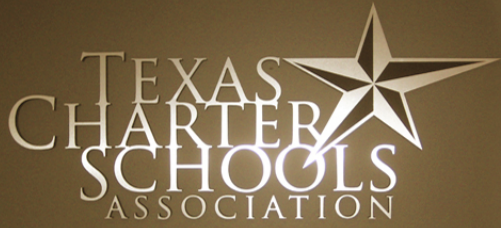
[Texas Education Agency](#)

[Region 18 Education Service Center](#)

[Contact Us](#)

Publications

[Notice of Procedural Safeguards](#)
 [Aviso Sobre Procedimientos de Protección de Safeguards](#)
 [Parent's Guide to the ARD Process](#)
 [Guía Para Padres](#)



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