Developing Legally-Compliant and Understandable Special Education Operating Procedures

The legal requirement
The Texas Education Agency (TEA) requires districts to submit special education Operating Procedures to comply with 34 C.F.R. §300.201 (2020) in providing for the education of children with disabilities.
### Policies vs Procedures

<table>
<thead>
<tr>
<th>Policies</th>
<th>Procedures</th>
</tr>
</thead>
<tbody>
<tr>
<td>What</td>
<td>How</td>
</tr>
<tr>
<td>Why</td>
<td>When</td>
</tr>
<tr>
<td>Why</td>
<td>Who</td>
</tr>
</tbody>
</table>

**Policies**
- Widely applied
- Not negotiable
- Do not change often
- Broad terms
- Restatement of the law and regulation

**Procedures**
- More focused
- May change often
- Drive continuous improvement
- Explicit descriptions of activities
- Focused on day to day
### Policies vs Procedures

<table>
<thead>
<tr>
<th>Policies</th>
<th>Procedures</th>
</tr>
</thead>
<tbody>
<tr>
<td>Board Adopted</td>
<td>Not Board Adopted</td>
</tr>
</tbody>
</table>

### What are Operating Procedures?

Operating Procedures are intended to thoroughly describe the way the district’s policies will be carried out.

- Living document
- Processes districts follow
- Staff training alignment
- Foundation for practice
Components of Strong Operating Procedures

Written so that general and special population staff can understand what is expected.

Components of Strong Operating Procedures

Should include:
- Clear, detailed description of the PROCEDURE that implements the law
- Identify STAFF POSITION(S) responsible for implementation (district or campus level, special or general education)
- Specify a TIMELINE for implementation aligned to the law
- Provide options to show EVIDENCE OF PRACTICE
TEA Requirements

• LEAs must link or upload Board Policies no later than October 31, 2020. For the most part, districts have completed this across the state as this has been an ongoing requirement. TASB Policy Services assists ISDs with this requirement.

• LEAs must link or upload Operating Procedures for the three required sections no later than October 31, 2020.

This is the new requirement.

How did we get here?
Required Submission for Upload in 2020-21  By October 31, 2020

- Child Find
- Evaluation
- Free Appropriate Public Education (FAPE)*

* Includes ARD Committee sections of the Legal Framework

How did we get here

- Due Process Hearings
- Texas Corrective Action Plan (CAP)
- TEA Monitoring findings
### Due Process Hearings (2016-2019)

<table>
<thead>
<tr>
<th></th>
<th>2016</th>
<th>2017</th>
<th>2018</th>
<th>2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hearings Finalized</td>
<td>34</td>
<td>33</td>
<td>21</td>
<td>27</td>
</tr>
<tr>
<td>Total Key Issues Addressed</td>
<td>123</td>
<td>136</td>
<td>111</td>
<td>94</td>
</tr>
<tr>
<td>Total Different Key Issues Addressed</td>
<td>26</td>
<td>22</td>
<td>25</td>
<td>21</td>
</tr>
<tr>
<td>Hearings Filed on Behalf of Student</td>
<td>32</td>
<td>32</td>
<td>21</td>
<td>24</td>
</tr>
<tr>
<td>Hearings Filed on Behalf of District</td>
<td>2</td>
<td>1</td>
<td>0</td>
<td>3</td>
</tr>
</tbody>
</table>

*Aligned to required Operating Procedures upload*
Texas Corrective Action Plan (CAP)

US Dept of Education Visits Texas (2017-18)

- Two visits to the state
- Several public meetings
- Onsite review with TEA
- District level request for documentation
- District level site visits
- Review of all collected data

Texas Corrective Action Plan (CAP)

- Implementing a statewide special education professional development system, including multiple opportunities for follow-up support for all educators.
- Providing resources for parents of children suspected of having a disability to help inform them of their rights to FAPE.
- Requiring districts to provide compensatory services for students who are found to have needed services but did not receive them.
- Increasing oversight and monitoring of special education programs in local school districts.
- Restructuring TEA’s special education staff so that additional support is available for schools.

For more information, please contact us at studentsolutions@tasb.org

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Child Find, Evaluation and ARD Support Network

Learn More About Child Find, Evaluation and ARD Supports

Child Find  Evaluation  ARD Supports

TEA Monitoring findings

1. Evaluation & Child Find*
2. Assessment*
3. IEP Development*
4. IEP Content*
5. IEP Implementation*
6. Properly Construed ARDs*
7. Transition Requirements*

* Aligned to required Operating Procedures upload
TEA Monitoring findings

<table>
<thead>
<tr>
<th>Area</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Evaluation &amp; Child find</td>
<td>25.13%</td>
</tr>
<tr>
<td>Assessment</td>
<td>13.74%</td>
</tr>
<tr>
<td>IEP Development</td>
<td>11.48%</td>
</tr>
<tr>
<td>IEP Content</td>
<td>10.17%</td>
</tr>
<tr>
<td>IEP Implementation</td>
<td>8.61%</td>
</tr>
<tr>
<td>Properly Constituted ARDs</td>
<td>7.3%</td>
</tr>
<tr>
<td>Transition Requirements</td>
<td>6.83%</td>
</tr>
</tbody>
</table>

These 7 areas make up 83% of all instances of non-compliance between 2014 and 2018.

Representativeness: 450 LEAs
Categories of non-compliance: 33
Instances of non-compliance: 2,300

Submission Areas
Child Find


• School districts have an affirmative duty to locate and identify children in need of special education services.
• Includes the duty to locate children who do not attend public schools.
Child Find

- Child Find refers to the federal requirement under the Individuals with Disabilities Education Act (IDEA) that all children in need of special education services are identified, located and evaluated.
- LEAs are responsible for conducting Child Find and identifying all IDEA-eligible students that reside in their jurisdiction.
- Child Find is not a passive activity, but rather an active process.

Technical Assistance: Child Find & Evaluation from TEA

Child Find

Between 2000 and 2015, special education enrollment plunged from 12.1% to 8.6%.
### Child Find

**What happened during this time?**

<table>
<thead>
<tr>
<th>Year</th>
<th>Event Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>2003</td>
<td>Legislature challenged the state to control spending</td>
</tr>
<tr>
<td>2016</td>
<td>Series of articles in the Houston Chronicle</td>
</tr>
<tr>
<td>January 11, 2018</td>
<td>US Dept of Ed released their findings</td>
</tr>
<tr>
<td>April 23, 2018</td>
<td>Corrective Action Plan released by TEA</td>
</tr>
<tr>
<td>2004</td>
<td>Performance Based Monitoring (PBM) target of 8.5% set</td>
</tr>
<tr>
<td>2017</td>
<td>US Dept of Ed visited Texas twice to investigate allegations</td>
</tr>
<tr>
<td>January-April 2018</td>
<td>TEA collected information statewide in response</td>
</tr>
<tr>
<td>2020</td>
<td>Work underway across the state aligned to Corrective Action Plan</td>
</tr>
</tbody>
</table>

**US Dept of Ed Findings (2018)**

Texas systematically denied students with disabilities the federally required services and supports as required by the Individuals with Disability Education Act (IDEA)
Child Find


- TEA failed to ensure that all children with disabilities residing in the state who are in need of special education and related services were identified, located, and evaluated, regardless of the severity of their disability.
- TEA failed to ensure that a free appropriate public education (FAPE) was made available to all children with disabilities residing in the state in Texas’s mandated age ranges (ages 3 through 21).
- TEA failed to fulfill its general supervisory and monitoring responsibilities and implementing regulations to ensure that ISDs throughout the state properly implemented the IDEA child find and FAPE requirements.

Child Find

- Between 2000 and 2015, special education enrollment plunged from 12.1% to 8.6%.
- Between 2017 and 2019, enrollment has increased to 9.8%.
Legal Framework Outline

• CHILD FIND DUTY
• DISTRICT AND CAMPUS IMPROVEMENT PLANS
• PARENT NOTIFICATION AND PERSONAL GRADUATION PLAN
• CLOSING THE GAP
• DYSLEXIA SERVICES
• REFERRAL FOR POSSIBLE SPECIAL EDUCATION SERVICES
• AGES 0-5
• CHILDREN WHO TRANSFER
• CHILDREN WHO ARE INCARCERATED
• CHILDREN IN PRIVATE SCHOOLS
• PARENT
• ADULT STUDENT AND TRANSFER OF RIGHTS

Evaluation
Evaluation

34 C.F.R. §§ 300.304, 300.305.

• Whether it is a full and individual initial evaluation (FIIE) or a reevaluation, evaluation is a data-gathering process.
• The evaluation must be comprehensive and use a variety of assessment tools, sources of information, and strategies.
• The evaluation is completed by a multi-disciplinary team.

Technical Assistance: Child Find & Evaluation from TEA

Evaluation

Initial evaluations have increased between 2016-17 and 2018-19 by 13%.

- 2016-2017: 88,210
- 2017-2018: 100,535
# Evaluation

- Evaluation provides information to assist in determining:
  - whether the student has a disability
  - the need for specially designed instruction and related services
  - the need for evidence-based interventions and how to monitor the student’s progress

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## Evaluation

- Evaluation provides much of the information for drafting present levels of academic achievement and functional performance (PLAAFP), goals, objectives, modifications, and accommodations in the Admission, Review, and Dismissal (ARD) committee meeting.

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Technical Assistance: Child Find & Evaluation from TEA
Some Circumstances that May Indicate the Need for Evaluation

- Lack of expected gains during intervention progress monitoring
- Hospitalization
- Attendance issues
- More substantial supports needed as general education curriculum becomes more difficult
- Interfering behaviors and/or discipline referrals

Technical Assistance: Child Find & Evaluation from TEA
Evaluation

Some Circumstances that May Indicate the Need for Evaluation
- Outside evaluation/diagnosis provided by a parent
- Parental concerns regarding child’s struggles
- Outside therapeutic services or tutoring
- Gap between expected academic growth and actual growth

Technical Assistance: Child Find & Evaluation from TEA

Disability Categories under IDEA

- Auditory Impairment
- Autism Spectrum Disorder
- Deaf-Blind
- Emotional Disturbance
- Intellectual Disability
- Multiple Disabilities
- Noncategorical Early Childhood
- Orthopedic Impairment
- Other Health Impaired
- Specific Learning Disability
- Speech Impairment
- Traumatic Brain Injury
- Visual Impairment
## Legal Framework Outline

- REVIEW OF EXISTING EVALUATION DATA
- EVALUATION PROCEDURES
- SUMMARY OF PERFORMANCE
- AUTISM
- DEAF-BLINDNESS
- DEAF OR HARD OF HEARING
- EMOTIONAL DISTURBANCE
- INTELLECTUAL DISABILITY
- MULTIPLE DISABILITIES

- NONCATEGORICAL EARLY CHILDHOOD
- ORTHOPEDIC IMPAIRMENT
- OTHER HEALTH IMPAIRMENT
- SPECIFIC LEARNING DISABILITY
- SPEECH OR LANGUAGE IMPAIRMENT
- TRAUMATIC BRAIN INJURY
- VISUAL IMPAIRMENT
- INDEPENDENT EDUCATIONAL EVALUATION

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**Free and Appropriate Public Education (FAPE)**

*Includes ARD Committee sections of the Legal Framework*
FAPE

Purpose
- guarantee "free appropriate public education" to all children with handicaps
- assure rights of children with handicaps and their parent

Definition of free appropriate education:

"...special education and related services which:
- are provided at the public expense under public supervision without charge
- meet the standards of the state educational agency
- include preschool, elementary, or secondary education in the state involved,
- are provided in conformity with an individualized program"
FAPE

Definition of **special education:**
• “Special education means specially-designed instruction, at no cost to the parents, to meet the unique needs of the child with a disability, including instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and instruction in physical education.”

FAPE

Definition of **special education:**
• “Specially-designed instruction means adapting, as appropriate to the needs of an eligible child under the Individuals with Disabilities Education Act, the content, methodology, or delivery of instruction:
  • To address the unique needs of the child that result from the child's disability; and
  • To ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the local educational agency (LEA) that apply to all students.”
FAPE

**Definition of special education:**
- “Related services means transportation, and such developmental, corrective, and other supportive services as may be required to assist the child with a disability to benefit from special education.”

1982 - Board of Education v. Rowley (458, U.S. 176)
- Child with hearing impairment did not need an interpreter because she was benefiting from her education
- District must comply with procedures of IDEA
- IEP must be **reasonably calculated** to enable child to receive educational benefit
FAPE


- Parents of child with autism sought reimbursement for private school tuition; parents argued that the IEP proposed by the public school was mostly unchanged from his previous IEPs, under which he made “minimal progress”
  - school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.
  - rejected the “merely more than de minimis” (i.e. more than trivial) standard
  - reinforced the requirement that “every child should have the chance to meet challenging objectives.

Legal Framework Outline

- RULE OF CONSTRUCTION
- ADMISSION, REVIEW, AND DISMISSAL COMMITTEE MEMBERSHIP
- PARENT PARTICIPATION
- ADMISSION, REVIEW, AND DISMISSAL COMMITTEE MEETING
- DETERMINATION OF ELIGIBILITY
- TRANSITION SERVICES
- PRESENT LEVELS
- ANNUAL GOALS
- SPECIAL FACTORS
- SUPPLEMENTARY AIDS AND SERVICES, SPECIAL EDUCATION, RELATED SERVICES
- LEAST RESTRICTIVE ENVIRONMENT
- PLACEMENT IN A RESIDENTIAL FACILITY
- STATE AND DISTRICTWIDE ASSESSMENTS
- GRADUATION
- EXTENDED SCHOOL YEAR SERVICES
- AMENDMENT WITHOUT A MEETING
- PRIOR WRITTEN NOTICE
The Submission

Web address: framework.esc18.net
ESC 18 Legal Framework

- Child Find
- Evaluation
- Admission, Review, and Dismissal Committee (FAPE)
- Consent
- Discipline
- Administration
- Records

Total of 98 elements will be uploaded

Operating Procedures Submission

There is no required template for the Operating Procedures document

Districts have three options:
- Create a document on their own
- Use the templates provided in the Legal Framework
- Purchase a product created commercially
Operating Procedures Submission

Each district must assign one administrator.

- They will have an account in Legal Framework and be able to upload required information.
- Most districts already have someone assigned.
- If you are unsure who yours is, contacting your ESC or ESC 18 is the best first step.

Operating Procedures Submission

Additional Legal Framework Elements

- Districts may choose to upload their entire Operating Procedures document.
- Eventually all areas will be required uploads.
- Begin to prepare now.
Resources

Statewide Technical Assistance Networks

- Child Find, Evaluation and ARD Support Network
- School, Family, and Community Engagement Network (SPEDTex)
- Inclusion in Texas Network
- Texas Statewide Leadership for Autism Training (TSLAT)
- Tiered Interventions using Evidence Based Research (TIER) (coming soon)
- Texas Complex Access Network (Texans CAN)
- Texas Sensory Support Network (TxSSN)
- Small and Rural Schools Network
- Student-Centered Transitions Network (SCTN)
- Multiple Exceptionalities and Multiple Need (MEMN)
## Presentation Resources

- **TEA Power Point: Special Education Operating Procedures**

- **The Legal Framework for the Child-Centered Special Education Process**

- **TEA Special Education Operating Procedures Webinar**
  [https://tea.texas.gov/academics/special-student-populations/special-education](https://tea.texas.gov/academics/special-student-populations/special-education)

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## Presentation Resources

- TEA website – [Recent TEA presentations](#) available to provide information given publicly on all these topics and more

- TEA website – Hosting [webinars](#) to provide information regarding special ed in Texas

- TEA website – [Recent TEA guidance](#) on hot topics
Wrap Up

Questions to Consider

- What is your district doing to be prepared? What is your staff doing to be ready for the submission of Special Education Operating Procedures?
- Is your special education Operating Procedures in alignment with regulation and best practice?
- Are your staff trained in alignment with your Operating Procedures?
- How can you be sure your Operating Procedures are being implemented?
- What is your district doing to be prepared?
Questions?

THANK YOU!

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