

September 29, 2020

Sue Deigaard, Board President
Houston Independent School District
4400 West 18th Street
Houston, Texas 77092-8501

Dr. Grenita Lathan, Interim Superintendent
Houston Independent School District
4400 West 18th Street
Houston, Texas 77092-8501

Dear President Deigaard and Interim Superintendent Lathan:

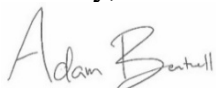
The enclosed final report presents the findings resulting from a Special Accreditation Investigation (SAI) conducted by the Texas Education Agency's (TEA) Special Investigations Unit (SIU). This investigation relates to allegations involving violations of federal and state special education laws and the implementation of regulations pertaining to the Individuals with Disabilities Education Act (IDEA), Texas Education Code (TEC), and/or the Texas Administrative Code (TAC).

The final report addresses only the allegations described herein. The findings may not address all allegations raised before, during, or after the investigation. Additional investigative work may be conducted to address any remaining allegations. Furthermore, other TEA divisions may be in the process of investigating the Houston Independent School District (HISD). These divisions may issue additional investigative reports.

TEA issued a preliminary report on July 3, 2020. In accordance with the TEC §39.058 and 19 TAC §157.1123, TEA provided HISD and any person identified in the preliminary report as having violated a law, rule, or policy the opportunity to request an Informal Review.

HISD provided TEA with a written request for an Informal Review. Having fully considered HISD's response to the preliminary report in its Informal Review, TEA issues this final report in accordance with 19 TAC §152.1123. Please contact me at (512) 463-9141 or email adam.benthall@tea.texas.gov should you have any questions.

Sincerely,



Adam Benthall, Director of Special Investigations
Division of Governance and Accountability
Texas Education Agency

Final Investigative Report
Houston Independent School District

Introduction

There is no serious dispute concerning the historical failure on the part of the Houston Independent School District (hereinafter referred to as “HISD” or “District”) to fulfill its obligations to provide appropriate, and legally required, specialized services to its students with disabilities. A series of previous investigations and reports describe a ten-year pattern of deficiencies illuminating the troubling nature of the state of affairs in Houston as it relates to HISD’s responsibility to its disabled students. The District’s own September 2018 Ad Hoc Report – a report from a committee comprised of four school board members and a large cross section of employees and community members – formally found that “The state of special education in HISD is grave.” This final investigative report concludes the same.

Perhaps more troubling than these historical findings concerns the District’s lack of serious initiative, rather yet success, in attempting to take corrective action to reform its systems. The previous independent reports, and the District’s Ad Hoc Report, provide for a series of corrective actions and required data collection to monitor success. However, this investigation reveals that these reports remain largely ignored. Not until June of 2020 - nearly 21 months after the District’s own Ad Hoc Report was released and immediately following agency investigators questioning high ranking district officials about HISD’s response to the report – did the District begin to take serious note of the findings of the commissioned report.

Indeed, not at any time during the investigation, nor in its response, did HISD provide any relevant measurable, data-driven evidence demonstrating the success of any efforts on the part of HISD to improve its systems. One district employee and witness charged with tracking data related to special education services indicated that, after investigators questioned a high-ranking official about the reports in June of 2020, the witness was approached by the high-ranking official and asked to assemble data necessary to follow through on the American Institute of Research (AIR) and Ad Hoc Report. The witness stated that she was unable to assemble the data because there were none.

The findings found herein show that systematic failure in special education has become institutionalized. For at least a decade, HISD has been fully aware of its deficiencies, and while anecdotes of progress appear in places, the same deficiencies repeatedly appear for at least the last generation of students served by the District.

On August 14 and 30, 2018, the Texas Education Agency (hereinafter referred to as “TEA” or “Agency”) received a systemwide complaint and a referral from the U.S. Department of Education (ED) Office of Special Education Programs (OSEP) alleging that the Houston Independent School District did not ensure it met all requirements related to Child Find; that it failed to meet timelines for initial evaluations and reevaluations; and that it manipulated and falsified data in order to hide these failures.

The complaint further alleges that the District did not properly develop and implement individualized education programs (IEPs); did not properly follow admission, review, and dismissal (ARD) committee requirements; did not ensure that students who received special education services were eligible for said services; and did not ensure that it met requirements when students underwent a disciplinary change of placement. Lastly, the complaint states that HISD administrators declined to hear or act on individual violations when presented with the information indicating noncompliance.

In response to this information, TEA issued a notice of Special Accreditation Investigation (hereinafter referred to as “SAI”) to HISD on October 16, 2019. During the week of November 18-22, 2019, TEA’s Special Investigations Unit (hereinafter referred to as “SIU”) and other agency staff members conducted an on-site investigation and interviewed HISD staff on both district and campus levels. District-level staff were interviewed at the Hattie Mae White Educational Support Center. Because it represented a cross-section of the District, campus-level staff were interviewed at T.H. Rogers School, Roland P. Harris Elementary School, Ortiz Middle School, and Furr High School.

Information provided during these on-site interviews identified an additional concern regarding educational placement determinations. On February 12, 2020, TEA issued an amended notice of SAI to HISD that included the alleged violations of 34 Code of Federal Regulations (CFR) §300.116¹ and 34 CFR §300.501(c)².

After review of the previous reports describing the state of affairs of special education services generally, and in response to the campus-level evidence gathered in its first round of on-site interviews, SIU conducted additional interviews with District staff and HISD trustees on May 21, 2020, May 22, 2020, and June 5, 2020. The intent of these interviews was to gain information regarding the District’s progress toward implementation of recommendations from three systemwide reports generated by third parties, a report generated by an ad hoc committee established by the District, and the District’s strategic plan related to special education.

SIU findings described in this report are the result of the investigation, extensive document analysis, and interviews of current and former HISD employees. In response to the evidence gathered during its investigation, SIU delivers this report, and further makes certain recommendations to the Commissioner of Education.

Background Information

The Houston Independent School District is the largest public school system in Texas and the seventh largest in the United States. Comprised of over 280 campuses, the District serves more than 200,000 students, 79.14 percent of whom are economically disadvantaged. Students receiving special education services from HISD total approximately 16,923, or 8.06 percent of the student

¹ Appendix A

² Appendix B

population.³ The District governance team is comprised of an interim superintendent and nine trustees who serve on the board.

HISD has documented significant and systemic concerns relating to a lack of effective and compliant special education programming dating back at least ten years. These reservations have been expressed by district leadership, the board, and stakeholders. Due to these concerns, HISD commissioned two separate studies: one in 2011 and a second in 2017, the second of which was published in 2018. In February 2017, the superintendent at the time launched a special education ad hoc committee (hereinafter referred to as “Ad Hoc Committee”) led by Board of Education Trustee Anne Sung and tasked with conducting an internal review of special education.

As demonstrated by this investigative report, as well as by the reports conducted by other parties, the District has long been aware of problems with its special education program but has been unable to adequately implement improvements.

Historical Findings (Previous Reports)

Thomas Hehir and Associates Report (Published January 2011)

In the fall of 2010, the HISD superintendent commissioned a study by Thomas Hehir and Associates (hereinafter referred to as “Hehir Report”). The Hehir team was tasked with the following:

1. Provide an overview of special education identification and service delivery in Houston.
2. Conduct an overview of management of special education, which would delineate central functions as well as school-based responsibilities and authority.
3. Provide a Critical Issues Document that would identify the major challenges facing HISD in improving educational outcomes for students with disabilities.
4. Provide a comprehensive set of recommendations for improving the education of students with disabilities in HISD.⁴

The resulting report includes an analysis of HISD’s special education program. Similar to the current TEA complaint investigation into HISD’s special education program, the Hehir team visited elementary, middle, and high school campuses. The Hehir Report was a snapshot of the special education program based on district data, observations, and interviews of district and special education leaders in HISD.⁵

The Hehir Report noted that special education services were insufficient; segregated classrooms were observed where students were doing low-level work; and that there were co-taught classes in which special education teachers served in the role of paraprofessional. The report also noted other

³ Exhibit 1,

(<https://www.houstonisd.org/site/handlers/filedownload.ashx?moduleinstanceid=48525&dataid=273232&FileName=2019-2020FactsFigures.pdf>), accessed April 22, 2020

⁴ Exhibit 2, page 5 of Hehir Report 2011

⁵ Exhibit 2, page 5 of Hehir Report 2011

systemic issues, specifically that “the over placement of African American Students and English Learners is largely due to ineffective programs and supports in general education.”⁶

The Hehir Report identified ten areas as needing improvement:

- Over representation of African American students in Mental Retardation (Intellectual Disabilities) and Emotional Disturbance (5a and 5c)
- Under identification of students with dyslexia being supported in Special Education (5e)
- Under representation of students who are also Limited English Proficient in Special Education (5b)
- Over representation of Hispanic students in the categories of Mental Retardation and Emotional Disturbance in schools with overall low populations of Hispanic students (5d)
- Students with learning disabilities are overrepresented for taking modified (TAKS-M) state exams. (6a)
- African American and Hispanic students with learning disabilities are more likely to be taking modified TAKS-M tests than white students with learning disabilities (6b)
- A relatively low percentage of students with disabilities spend all or most of their day in the mainstream setting (7a and 7b)
- Students with disabilities lack access to technology (8b)
- Staff at higher- and lower-performing schools expressed confusion about special education paperwork (9b)
- Parents of students with disabilities do not feel they have access to “choice schools” (10)⁷

The Hehir Report further detailed six recommendations to improve special education services for HISD students:

1. Develop outcome-based school monitoring systems for students with disabilities.
2. Hold principals accountable for the issues identified in this report.
3. Develop effective models of special education service delivery emphasizing effective universal design principles.
4. Develop specialized inclusive schools for students with significant disabilities.
5. Develop policies, procedures, and practices for effective services for students with dyslexia.
6. Develop and distribute a comprehensive easily accessible manual of special education policies and procedures.⁸

⁶ Exhibit 2, page 28 of Hehir Report 2011

⁷ Exhibit 2, pages 2-3 of Hehir Report 2011

⁸ Exhibit 2, pages 3-4 of Hehir Report 2011

Despite findings of the Hehir Report, problems with special education services persisted. Based on feedback from the community, HISD commissioned a subsequent report in 2017 to be completed by the AIR to assess progress regarding the findings and recommendations from the Hehir Report. The study sampled 27 schools in the District and took 10 months to complete. The report was conducted by a team of eight researchers with backgrounds in special education policy and practice.⁹ HISD published a communication note that AIR was selected as the vendor to complete the comprehensive Special Education Program Review with the following purpose:

In preparation for the 2017-18 school year, and in response to feedback from the community and HISD staff, HISD is re-evaluating how it delivers special education services to students and families. The Special Education Program Review will help the District's efforts to improve special education services. The review will identify how the District is providing proactive intervention for struggling students, offer suggestions on the evaluation referral process, and examine the process for identifying students with disabilities. The review will also evaluate the development of the IEP.¹⁰

HISD leadership further clarified and tasked AIR to look at eight specific areas of concern: (1) prevention and identification; (2) IEP development; (3) equitable access; (4) instructional supports/accommodations; (5) staff collaboration and professional development; (6) data-driven decision making; (7) systems and organizational structures for providing coordinated districtwide supports; and (8) family engagement.¹¹

In its study, AIR conducted surveys, reviewed documentation, interviewed staff, and engaged stakeholder groups to gather information for analysis. The results of the AIR Report were published on February 22, 2018. Throughout its report, AIR cites similar findings to the 2011 Hehir Report. AIR gathered substantial information and feedback from parents and families regarding HISD's special education program, which is a procedure that Hehir did not perform.

The AIR Report details ten areas as needing improvement:

1. There is confusion about, and inconsistent implementation of, processes related to intervention and special education identification.
2. IEPs lack sufficient individualization in accordance with the intention of IDEA.
3. Equitable access is lacking for students with disabilities to the full continuum of special education service options.
4. The focus on ensuring that students with disabilities have access to high-quality instruction is insufficient.
5. HISD staff express a need for professional development that is sustained and focused on in-person coaching and mentoring rather than one-time or online trainings.

⁹ Exhibit 3, page v of AIR Report 2018

¹⁰ Exhibit 4, <https://blogs.houstonisd.org/news/2017/04/13/hisd-board-of-education-approves-special-education-program-review/>

¹¹ Exhibit 3, page 2 of AIR Report 2018

6. The current staffing allocation in HISD is insufficient to meet the needs of its population of students with disabilities.
7. Tension and division persist between general education and special education that impedes effective implementation of practices and procedures that target the needs of students with disabilities.
8. The process for communicating about and rolling out new policies and procedures appears to be uncoordinated, inefficient, and rushed.
9. There is a systematic underutilization of data to drive programmatic decision making and monitoring.
10. HISD lacks a systematic process for ensuring that families are appropriately involved in decision making regarding intervention and special education for their children.¹²

The AIR Report further conducted extensive stakeholder surveys. When parents were asked about the actions taken by schools when concerns about their child were brought forward, 40.4 percent of respondents (224/555) reported that the school did nothing. For families with students aged 14 and over, nearly 62 percent of respondents reported that neither the quality of services, nor the quality of staff, was similar across campuses.

Almost 1,500 staff responded to the staff survey.

- 52.2 percent disagreed or strongly disagreed that there are sufficient special education teachers and staff available to meet the needs of students with disabilities.
- 57.7 percent disagreed or strongly disagreed that there are sufficient resources, interventions, or programs to support students with emotional/behavioral disabilities.
- 50.9 percent disagreed or strongly disagreed that there are sufficient resources, interventions, or programs to support students with Autism.
- 48.6 percent disagreed or strongly disagreed that there are sufficient resources, interventions, or programs to support students with Dyslexia.
- 29.7 percent disagreed or strongly disagreed that they were knowledgeable of HISD policies related to dyslexia for identification or services.¹³

The AIR Report noted progress had been made on some of the Hehir Report findings and recommendations. However, the AIR Report went on not only to detail new and additional concerns reported across stakeholder groups, but also to detail how the District was not tracking data on Hehir findings correctly and how the District was failing to address the root causes to the concerns found.

The AIR Report provided HISD with five recommendations:

1. All schools should provide proactive, preventative services for struggling students through implementation of a schoolwide, tiered system of support.

¹² Exhibit 3, page vi of AIR Report 2018

¹³ Exhibit 3, page B1-5 - B1-6 of AIR Report 2018

2. Simplify and clarify special education procedures for referral, identification, and eligibility determination to ensure meaningful family engagement and data-driven decision making about how to meet the needs of students with disabilities.
3. Ensure students with disabilities have access to high-quality core instruction and specialized instruction and interventions, in accordance with state and federal laws.
4. Develop a comprehensive professional learning framework for ensuring sustained improvement in educator effectiveness to support students with disabilities.
5. Appropriately empower the special education district office to have greater oversight of the special education budget, staff, placement, and resources to ensure efficient and equitable distribution of special education services.¹⁴

AIR Finding 9. Underutilization of Data to Drive Decision Making and Monitoring

The AIR Report found that, while data had been gathered by the District in response to the Hehir report, the data that had been gathered in the creation of district improvement strategies and progress monitoring were rarely used for improvement. The AIR Report includes the four goals listed in the HISD 2017 District Improvement Plan and reads in part:

In some places in the Targeted Improvement Plan (TIP), strategies do not relate to problem statements, root causes, and goals. For example, TIP problem statement 1 is “achievement of students with disabilities is far below the expectations for academic performance.” Note this statement does not include specific achievement data of said students nor does it identify the targeted expectations for performance. Because research shows that the number one impact on student academic achievement is a student’s teacher and the instruction a student receives, we might expect the root cause of continued low academic performance of students with disabilities to be related to (a) systemic low academic expectations for students with disabilities in the district, (b) overall low quality of instruction that students with disabilities receive, or (c) administrative or programmatic processes that interfere with student access to instruction... Instead, root cause 1 is “Placement decisions . . . are often determined by campus ARD/IEP) committees based on disability category rather than student needs” and the associated goal is “Decrease the percentage of students with disabilities placed in general education for 40% or less of the school day by 5%.” Placement setting does not inherently affect the quality of instruction students receive, academic or otherwise, and it is unclear that setting a goal with respect to placement alone will address persistently low academic performance.¹⁵

The inability for HISD to create adequate district improvement goals that could measure student achievement parallels the findings in this investigation and final report. The AIR findings corroborate the findings in this report that HISD failed to successfully implement much needed recommendations for improvement in its special education program.

¹⁴ Exhibit 3, page vi-vii of AIR Report 2018

¹⁵ Exhibit 3, page 41 of AIR Report 2018

HISD Office of Special Education: 3-Year Strategic Plan (Published Summer/Fall 2018)

HISD's Office of Special Education developed a three-year Strategic Plan intended to show improvements with students who receive targeted special education instruction. The Strategic Plan was intended to align with the AIR Report recommendations and includes the following five goals:

1. Ensure that all schools provide proactive, preventive instruction for struggling students through RtI implementation.
2. Ensure that all stakeholders, including parents, campus-based IAT [Intervention Assistance Team] personnel, and special education staff, work collaboratively to identify students with disabilities in an accurate, timely, and efficient manner.
3. Ensure that students with disabilities receive high-quality core instruction, specialized instruction, and intervention, in accordance with state and federal laws
4. Deliver ongoing, differentiated professional development for parents, teachers, campus leaders and other stakeholders designed to increase their effectiveness in providing support for students with disabilities.
5. Implement clear systems of monitoring and evaluating special education services, both at the campus and central office levels, that inform the continuous improvement of academic, behavioral, and social/emotional outcomes for students with disabilities.¹⁶

HISD School Board Ad Hoc Committee Report (Published September 2018)

The HISD board developed an Ad Hoc Committee to study special education in 2017. The committee was comprised of four school board members, five staff members (teachers, campus administrators, and district program specialists), eight parents and parent advocates, as well as a child neuropsychologist, and pediatric neurologist. The committee was initially created to assess the District's special education program. The Ad Hoc Report tracked and measured achievement gaps from the years 2016 to 2018 on the State of Texas Assessments of Academic Readiness (STAAR) reading, writing, and mathematics between students with special education services and those who did not receive those services. The gaps were between 43 and 50 percent.

In September of 2018, the Ad Hoc Committee published its findings. The Ad Hoc Report was noted as a complement to the AIR Report. The Ad Hoc Report expressed concerns that the HISD administration's Three-Year Strategic Plan of the Office of Special Populations was unclear and that the plan may not specifically address the findings and recommendations in the AIR Report.

The Ad Hoc Report opens the findings section with the statement, "The state of Special Education in HISD is grave." The report noted the following major concerns:

1. Universal screening and progress monitoring: Although the District purchased new software, there is no consistent use or plan. The committee fears that "this tool will become siloed and not linked with instruction."
2. Inclusion: In 2016-17, 23% of HISD students with disabilities were placed in general education for 40% or less of the school day. The report also noted "magnet principals discourage enrollment and/or offer inadequate supports for students with disabilities."

¹⁶ Exhibit 5, page 18 of Office of Special Populations: 3 – Year Strategic Plan

3. Principal Accountability: “HISD lacks an effective system to hold all principals accountable for the educational and behavioral outcomes of students with disabilities.” The report further noted that “some principals are unfamiliar with the data of students with disabilities and do not provide campus leadership in appropriate development and implementation of IEPs.”
4. Under Identification: The committee expressed concerns regarding data on under identification for both students needing special education as well as for students identified with dyslexia.
5. Transition supports for students with disabilities: The committee expressed concerns not noted in the AIR Report about long-term outcomes for students with disabilities and the effectiveness of transition supports for students with disabilities across all transitions: elementary to middle school, middle school to high school, and post high school.
6. Communication with families and voice for students with disabilities: The committee noted that HISD does not consistently engage families of students with disabilities or include their voice in decision making. The report reads in part, “When parents of students with disabilities and special education teachers are not included in site-based decision-making committees, bond advisory committees, and other committees engaging community members in important decisions affecting all students, the result is that special education is often an afterthought.”
7. Special education in HISD’s in-district charters: HISD’s in-district charters have startlingly low rates of identified students with disabilities. The report notes that these charters are offered special education services by HISD; however, the committee noted concern as to whether the District’s oversight is sufficient to ensure students with disabilities are evaluated, identified, or serviced and whether staff are appropriately trained.¹⁷

In August 2018, six months after HISD received the AIR Report, SIU received a complaint alleging that HISD had systemic problems throughout the special education program and that HISD’s problems had become an ‘institutional practice.’ The allegations listed in the complaint to TEA relate to Child Find and evaluations, IEP development and implementation, providing instruction in the least restrictive environment (LRE), and the provision of a free appropriate public education (FAPE). These problems directly reflect the areas in need of improvement presented to the District in the AIR Report.

Legislative Budget Board (Published in November 2019)

The HISD school board commissioned a review by the Legislative Budget Board’s School Performance Team in 2019. The Legislative Budget Board (hereinafter referred to as “LBB”) is a permanent joint committee of the Texas Legislature that develops budget and policy recommendations for legislative appropriations, completes fiscal analyses for proposed legislation, and conducts evaluations and reviews to improve the efficiency and performance of state and local operations.

According to a report released by the LBB in November 2019 (hereinafter referred to as “LBB Report”), “the top of HISD’s organizational structure, referring to the superintendent’s supervisory responsibilities and the large number of executive leadership positions, was not effective or

¹⁷ Exhibit 6, pages 5-10 of HISD Ad Hoc Committee Report 2018

efficient.”¹⁸ Extending from the LBB’s finding, TEA investigators interviewed fourteen central office staff in supervisory or managerial positions, seven of which had been in their current roles fewer than five months. One staff member interviewed for this investigation stated that the duties with which she was tasked had just changed because a new assistant superintendent was hired.

The findings and recommendations of the LBB Report address five areas for improvement:

1. Strengthen spending practices and improve financial monitoring
2. Reorganize and realign staff departments and functions
3. Standardize programs and services
4. Improve communication, planning, and procedures
5. Improve board operations¹⁹

The LBB Report stated that HISD manages most of its programs primarily in a decentralized manner. Independent campus decisions result in a student experience that differs across the District, and students may not be served consistently. The District’s School Support Offices do not provide support to campuses and principals in a standard or consistent manner. Houston ISD lacks a unifying framework, strong oversight, and written procedures for school support officers. This lack of structure results in inconsistent supports for campuses, contributing to high turnover among campus principals and limiting the effectiveness of the role of principal supervisors. The District’s campus-level planning process is ineffective, and implementation varies, which is also supported in the findings of the previously mentioned reports.

It is clear from the approximately ten years of historic information noted above that HISD has been aware of the systemic problems related to special education policies and procedures in the District and that it has continually failed to adequately address them. The same significant areas of noncompliance that will be discussed below have appeared repeatedly within the District. As will be seen throughout the investigative report, despite District and campus administrative changes, multiple third-party reviews of its program, numerous external recommendations, and the development of the Strategic Plan for how to address its ongoing issues in special education, HISD has made minimal to no progress in correcting the reoccurring areas of noncompliance.

Texas Education Agency Investigation

In response to the original complaints, and as follow up to the facts uncovered during the initial stages of the investigation, TEA conducted onsite interviews, analyzed thousands of pages of documents, and conducted follow up interviews based upon its initial impressions. TEA’s findings largely mirror those of the previously issued reports commissioned by the District and further finds that, since the release of the AIR report, and the District’s Ad Hoc Report, little to no effective corrective actions have been performed on the part of the District to address its identified shortcomings.

¹⁸ Exhibit 7, page 3 of Legislative Budget Board Report

¹⁹ Exhibit 7, page 1 of Legislative Budget Board Report

TEA conducted an onsite investigation at HISD from November 18 through November 22, 2019. A team of eight investigators with backgrounds in both general and special education conducted interviews with district leaders for two days at HISD central offices. Initially, TEA's investigation focused on campuses against which allegations were alleged in the complaint. These schools further represented a cross section of schools, including an elementary school, a middle school, a high school, and a specialized school. The investigative team conducted these investigatory visits at Roland P. Harris Elementary, Ortiz Middle School, Furr High School, and T.H. Rogers High School.

TEA investigators interviewed campus administrators, special education department heads, and teachers providing special education services to determine uniformity of policies and procedures across campuses, both past and present. As the result of the November 2019 interviews, TEA found inconsistencies in the implementation of HISD's special education program across the District and noted that staff members were generally unaware of HISD policies and procedures. This inconsistency and lack of understanding regarding special education policies and procedures were present at both the campus and district levels.

TEA investigators also reviewed documentation provided by the complainant and HISD. Information regarding HISD's special education program that TEA has collected was also reviewed and considered as part of the investigation. Through this review, TEA found numerous instances of noncompliance with special education statutes, rules, and regulations.

TEA conducted additional interviews with HISD trustees and staff members in May and June of 2020. These interviews were geared toward discovering facts related to district level efforts, if any, to implement system wide corrective actions to address current deficiencies in the area of special education, including those outlined in the various reports.

The results of TEA's investigation are set out below. In the following sections, where there is overlap between this investigation and previous findings from the historical reports, information from those reports has been incorporated into TEA's findings of fact and analyses.

It should be noted at the outset that the deficiencies outlined in this report cannot be laid exclusively at the feet of the central office special education department or at the feet of special education faculty and staff located on campuses. The conclusions found in this report are the descriptions of symptoms of an institution wide problem. Success when providing special education services depends upon institutional buy-in on all levels and further depends on the administrative prioritization of these services far beyond those of individuals possessing special education titles. Absent system wide buy-in – an issue clearly identified by this and previous reports - centralized special education officials may lack the ability to facilitate necessary change. Indeed, there was no shortage of interviewees expressing deep passion about providing for students with disabilities. In many cases, however, these same witnesses described an inability to effectuate success due to structural problems in the District itself. The Agency interventions recommended in this report are intended to address these issues and provide support for these passionate and competent professionals.

HISD General Response

HISD General Position

Amongst the most compelling evidence of the institutional breakdown described in this report, and the lack of remedial efforts to it, may be HISD’s response itself. HISD provides a seventy-five-page response, essentially none of which describes affirmative efforts on the part of the District to correct manifest problems. Indeed, of the seventy-five pages in HISD’s response, *precisely three* describe efforts by HISD to remedy the problems presented by numerous reports spanning a decade.²⁰ That the District is only able to provide three pages of argument in its response, a small number of Power Point presentations, and an excel spreadsheet unsupported by any relevant data, but nonetheless proclaiming that its goals are “on target”, suggests that little more is needed to confirm the preliminary conclusions drawn by SIU.

HISD posits the argument that SIU’s conclusions are “premature, conclusory, and unwarranted” because the Agency failed to wait for the availability of data, the collection of which should have occurred beginning February of 2019.²¹ The implications of this argument are troubling. HISD, apparently, believes that SIU’s conclusions were premature because the Agency should have waited beyond *eighteen months* for the District to begin data collection on its efforts to comply with the recommendations of the AIR report. The opposite is true. The fact that, by its own admission in its response, the District cannot provide any available data to show improvement from manifest deficiencies is itself conclusory evidence that the District continues to fail to take appropriate steps to rectify its shortcomings.

HISD further complains that SIU’s reference to previous third-party reports constitutes “punish[ment]” for the District and further argues that TEA’s use of such reports will deter districts from obtaining and utilizing these reports in the future.²² These concerns are unfounded. Initially, SIU finalized its report approximately two years after the AIR report and nearly a decade since the issues were first reported in the Hehir report. SIU recommends its interventions not solely because of the issues found in the reports, but also because of the District’s failures to respond to them. Any district that reacts appropriately to a third-party report should expect to receive reduced interventions if the district is presently on the correct path to providing appropriate change. Nonetheless, a district utilizing public funds to commission studies for the purposes of providing the mere appearance of action should not expect to later successfully hide behind those studies when to do so necessarily means that future student achievement will suffer.

Further, State intervention does not constitute a punishment, but instead represents a necessary tool intended to allow the Agency to fulfill its legal obligation to ensure that districts comply with relevant laws. Interventions are utilized by the Agency for the purpose of advancing student achievement when those primarily responsible are unable to do so. HISD’s response lacks appropriate perspective, neglecting that the purpose of the institution involved is to take actions that are traceable to student achievement.

²⁰ HISD Response p. 16-18

²¹ HISD Response p. 13-14

²² *Id.*

HISD's attempts to avoid responsibility on these matters is disconcerting. It criticizes the Agency's report for not accounting for HISD's high numbers of economically disadvantaged students and students who are English learners.²³ HISD further labels its ten years of well-documented and catalogued deficiencies as being "outdated, unreliable, and irrelevant."²⁴ This report categorically rejects these arguments out of hand. The responsibility to provide appropriate special education services to HISD's students with disabilities is not less than that owed to their affluent peers found in neighboring districts or to those who are native English speakers. The opposite is true. For those born into economically disadvantaged circumstances, or for those who might be disadvantaged because they are learning English, extra attentiveness is owed to the difficulties bestowed by their disabilities as this attentiveness may be required to ensure that their disabilities do not themselves become an inhibitor preventing them from excelling beyond already challenging circumstances.

Unlike more affluent students, for many of those disadvantaged beyond their disabilities, public schools serve as the first and last opportunity for intervention as economically disadvantaged students' lack of economic resources makes achieving success by reaching out to expensive third-party providers unobtainable. And to the extent that HISD believes its ten-year pattern of deficiencies is irrelevant, this report concludes otherwise not only because this pattern demonstrates the institutionalization and acceptance of the District's failures, but also because the students with disabilities who, for at least a decade, have not received the services they deserve would certainly find the issue to be of the utmost relevance.

General Objections and Whistleblower Attacks

HISD complains this report does not include identifying information of witnesses. It cites to SIU's procedures.²⁵ However, HISD ignores provisions of the Texas Education Code stating that the Agency may create procedures to limit screening of the information by the investigated.²⁶ It further ignores that the procedures cited also indicate that identities will be withheld when necessary to protect the witness.²⁷

Need for protecting the identities of witnesses is not only confirmed by the overwhelming sentiment of the witnesses interviewed who voiced concern for the safety of their jobs but is further confirmed by HISD's response itself. In the instant case, the complaining witness whose concerns opened the door to this investigation provided permission for her identity to be disclosed. Though permission was provided, SIU's preliminary report withheld the name. Nevertheless, HISD extrapolated the whistleblower's identity through documents provided.

Consequently, though the whistleblower's information bore no measurably greater relevance than that of many of the other dozens of witnesses interviewed, HISD spent more effort indicting her than it did advancing its position that it had taken necessary steps to correct a decade's long systemic failure. As a result, concerns raised by witnesses are proven credible through HISD's failure to demonstrate that these concerns are unfounded.

²³ HISD Response p.11

²⁴ Id. at 4

²⁵ HISD Response Cover Letter, Aug. 14, 2020

²⁶ Appendix X

²⁷ SIU Procedures

Attacking a whistleblower to distract from the underlying issues of an investigation is not a new tactic. The complaining witness was treated as a material witness, but the witness's testimony was corroborated many times over by other witnesses, data analysis, and HISD's own response, which lacks credible data to demonstrate its efforts to improve special education services. TEA takes no position on the issues presented by HISD as it relates to the whistleblower's credibility, if for no other reason than because these issues are outside the scope of the investigation. Nevertheless, the overwhelming evidence of a history of systemic issues brought to light in part by the complaining witness, and the bravery of the witness to allow her identity to be disclosed, make the witness's actions, in this case, commendable.

Finally, the allegations made by witnesses are identified throughout the report, and HISD had every opportunity to investigate and respond to each allegation. The identity of a District employee reporting concerns is not necessary for the District to demonstrate that the concerns are not valid. As a result, the probative value of providing identifying information is outweighed by the need to promote witness candor through witness protection and to otherwise protect the overall integrity of the investigation.

Allegations and Findings of Fact

Allegation One: Child Find and Evaluation Requirements

The District did not ensure that it met all requirements at 34 CFR §300.111²⁸, related to Child Find, 34 CFR §300.502²⁹, related to independent educational evaluations (IEE), 34 CFR §300.303³⁰, related to reevaluations, and 19 TAC §89.1011³¹, related to full individual and initial evaluations (FIIE) requirements and timelines.

The following findings of fact substantiating this allegation are a result of interviews conducted by TEA staff members and an examination of documents from the complainant, HISD, and TEA.

Child Find Findings of Fact

1. The 2011 Hehir Report noted issues related to the over identification of minority students for special education. For students who are African American, this overidentification was especially notable in the eligibility areas of emotional disturbance and intellectual disability.³²
2. In its 2018 report, AIR identified issues surrounding the use of the intervention assistance team (IAT). HISD staff members at the time provided varying degrees of understanding of

²⁸ Appendix C

²⁹ Appendix D

³⁰ Appendix E

³¹ Appendix F

³² Exhibit 2, pages 11-17 of Hehir Report 2011

the process. The AIR study found that the use of the IAT process differed across campuses.³³

3. The 2018 Strategic Plan recognized the District’s need to improve its referral and eligibility determination processes. HISD updated its related policies, created new documents, provided training, and updated resources for educators.³⁴
4. The 2018 Ad Hoc Committee studied HISD’s IAT process and found that its implementation remained inconsistent. The report reads in part:

However, as noted in the AIR Report, many instructional services in HISD exist in silos with tension among different departments. A key component of progress towards enhanced student outcomes is to continue to integrate instructional services across departments and to develop a district-wide plan for enhanced student outcomes. Although the focus of this committee is on students identified for special education, we concur with the AIR Report in noting the need for an integrated approach to instructional service delivery that begins in the general education classroom.³⁵

5. Per the Ad Hoc Report, HISD was to provide training to “campus department leads and program specialists” regarding initial evaluations and Child Find beginning with the 2018-2019 school year.³⁶
6. Investigators reviewed TEA special education complaint investigations conducted since April 2018 that resulted in findings of noncompliance against HISD regarding ChildFind. These investigations found related noncompliance in three different HISD campuses and in two psychiatric facilities located in the District’s geographic jurisdiction: Whidby Elementary, Sugar Grove Academy, West Oaks Hospital, Harris County Psychiatric Center, and Wainwright Elementary. Two of the complaints for which noncompliance was determined were filed on behalf of multiple students.³⁷
7. Investigators examined a district-generated document titled “Issues/Concerns or Positive Comments,” that documented concerns expressed by parents from the 2017-2018 school year relating to their inability to have their children evaluated for special education eligibility. The parents reported that they had made written and verbal requests for evaluations and that HISD had not responded to said requests.³⁸

Independent Educational Evaluations Findings of Fact

8. The complainant provided an internal email dated October 18, 2017, in which the writer of the email expresses concerns regarding IEEs that had not been completed from the previous school year (2016-2017).³⁹

³³ Exhibit 3, pages 9-15 of AIR Report 2018

³⁴ Exhibit 5, pages 21-22 of Office of Special Populations: 3 – Year Strategic Plan

³⁵ Exhibit 6, page 6 of HISD Ad Hoc Committee Report 2018

³⁶ Exhibit 6, Appendix Two, page 1 of HISD Ad Hoc Committee Report 2018,

³⁷ Exhibit 8, Special Education Complaint Numbers 201914230, 201914199, 201914076, 201813854, 201813850, 201813528

³⁸ Exhibit 9, pages 200, 202, and 205 of Complainant’s Documents

³⁹ Exhibit 9, page 292 of Complainant’s Documents

9. The District provided a spreadsheet titled “Houston ISD IEE 2018-2019.” The document shows when IEEs were requested and the date that each requested IEE was completed. If the IEE was not completed, the reason is noted. One notation reads, “IEE closed-parent paid for outside evaluation.”⁴⁰
10. The same IEE spreadsheet also shows that some IEEs took almost a year to complete, and others took more than a year to complete. The delays are not explained.⁴¹
11. When questioned, some HISD personnel explained that, when a parent requests an IEE and it is granted, if the parent then obtains an IEE at his/her own expense, the District stops the IEE process to review the evaluation provided by the parent. If the parent-provided evaluation does not meet the District’s criteria for an IEE, then the IEE process starts over. Other HISD personnel denied that this occurred and explained that the IEE process does not stop if parents provide their own evaluation report for consideration.
12. HISD personnel were frequently unable to explain whether parents can select their own IEE providers or if parents are required to use IEE providers that appear on a list of providers given to parents by HISD.

Reevaluations Findings of Fact

13. The complainant provided a table titled, “FIE Compliance” dated October 17, 2017. The table includes redacted names of students, campus names, students’ grade eligibilities, and the date that the student’s reevaluations should have taken place. The table shows that student evaluations were out of date, meaning the students were not evaluated at least every three years.⁴²
14. The complainant provided a table titled, “Report of Out-of-Date Re-evaluations” dated June 15, 2018. The table includes redacted names of students, campus names, students’ grade levels, and the date that the student’s reevaluation should have taken place. The table shows that student evaluations were out of date.⁴³
15. The District provided a table titled “Allegation Seven: Reevaluation completion snapshot of September 10, 2019.” The table notes whether there were any three-year reevaluations that were overdue. The table shows that two evaluations were overdue: one was because the student left the District before the reevaluation was completed and then later returned, and the other was because the parent requested additional evaluations. These examples confirm the allegation that HISD did not meet all reevaluation requirements.⁴⁴
16. HISD personnel reported that notice and consent for reevaluations were sent home by case managers, without an ARD committee or reevaluation planning, bypassing requirements outlined in 34 CFR §300.305⁴⁵, including a review of existing evaluation data on the child and all embedded requirements under this regulation.
17. HISD personnel confirmed during interviews that reevaluation timelines had been missed.

⁴⁰ Exhibit 10, page 990 (evidence) of District Response Documents

⁴¹ Exhibit 10, page 990 (evidence) of District Response Documents

⁴² Exhibit 9, pages 225-226 of Complainant’s Documents

⁴³ Exhibit 9, pages 140-141 of Complainant’s Documents

⁴⁴ Exhibit 10, page 3936 (evidence) of District Response Documents

⁴⁵ Appendix G

18. TEA conducted a special education complaint investigation, dated May 2019, that resulted in a finding of noncompliance against HISD regarding reevaluation timelines.⁴⁶

Full Individual and Initial Evaluations Findings of Fact

19. TEA has conducted special education complaint investigations since April 2018 that have resulted in findings of noncompliance against HISD regarding timelines for full individual evaluations (FIE). These investigations have found related noncompliance in four different HISD campuses: Yates High School, The Rise School of Houston, Fonwood Early Childhood Center, and Wainwright Elementary.⁴⁷
20. The complainant submitted a spreadsheet showing campus names and the number, by campus, of FIE reports that were completed outside the timeline set out at 19 TAC §89.1011. The spreadsheet shows that, during the 2016-2017 school year, 345 full individual and initial evaluations were completed outside the required timelines.⁴⁸
 - a. State Performance Plan, Indicator 11 data shows that in 2016-2017 school year that post corrections made by HISD, that 43, not 345, initial evaluations failed to be completed within established state timelines.⁴⁹
21. HISD has reported noncompliance through the State Performance Plan, Indicator 11 data, related to the percentage of children ages 3-21 with parental consent to evaluate who are evaluated within the state established timeline, for the school years of 2016-2017 and 2018-2019. For example, 2.1 percent of initial evaluations were not completed on time during the 2016-2017 school year.⁵⁰
22. The District submitted a spreadsheet titled SPP11 2018-2019 showing that students' initial eligibility determinations for special education did not always take place within 30 calendar days from the date of the initial FIE report.⁵¹
23. The complainant submitted an April 25, 2018 internal email in which it is noted that HISD personnel were not to obtain parental consent to conduct FIE's after May 1 of the school year⁵².
24. The District reviewed the allegation and provided a response that reads in part, "The [April 15, 2018 email submitted by the complainant] does not reflect the practice of HISD. Information regarding acceptance of evaluation consents after May 1 was inaccurate. . . the District continued to accept referrals and obtain consents for initial evaluations from May 1, 2018 to June 15, 2018."⁵³
25. The District provided a table titled, "#15-Referral Request and Consent" that shows the date that a parent requested a special education evaluation, the response due date, and the date that consent was received. The table shows that referrals were made after May 1, 2018.⁵⁴

⁴⁶ Exhibit 8, Special Education Complaint Number 202015123

⁴⁷ Exhibit 8, Special Education Complaint Numbers 201915163, 201915066, 201914046, 201813528

⁴⁸ Exhibit 9, page 144 of Complainant's Documents

⁴⁹ Exhibit 11, SPP 11 Reports

⁵⁰ Exhibit 11, SPP 11 Reports

⁵¹ Exhibit 10, pages 5-96 (evidence) of District Response Documents

⁵² Exhibit 9, page 711 of Complainant's Documents

⁵³ Exhibit 10, page 13 (letter) of District Response Documents

⁵⁴ Exhibit 10, pages 6967-6968 (evidence) of District Response Documents

26. TEA staff interviewed HISD personnel regarding timelines for completing initial evaluations, and HISD personnel reported the following.
 - a. The District often does not meet timelines for initial evaluations.
 - b. There have been instances in which the IAT prevented students from being initially evaluated because of a lack of evaluation staff in the District. This process was changed during the 2019-2020 school year to help ensure that students' IATs were not preventing initial evaluations.
 - c. During the 2019-2020 school year campuses often did not provide prior written notices in response to parents' written requests for FIEs.
 - d. Students frequently were not initially evaluated in all areas of suspected disability. This resulted in students not having complete evaluation reports for their initial ARD committee meetings. These students were again evaluated following the initial ARD committee meeting to address other areas of possible eligibility.
 - e. There have been instances in which the District asked the parent to sign a second consent for evaluation to manipulate the evaluation timeline.
 - f. HISD personnel reported that, in the past, there were cut-off dates after which parents could not provide consent or make a referral for an initial special education evaluation. HISD personnel reported that this was no longer a practice in the District.
27. HISD personnel indicated that concerns raised about additional suspected disabilities during the initial evaluation process were not addressed in a timely manner. Rather, evaluation staff suggested to parents that the District complete the initial evaluation and then get new consent from the parents to evaluate the student in the additional areas of concern. In effect, this meant that the District failed to complete initial evaluations within the required timelines by not evaluating students in all areas of suspected disability during the initial evaluation timeline.

Analysis of Records Regarding Allegation One

The allegation that the District did not ensure that it met all requirements at 34 CFR §300.111, related to Child Find, 34 CFR §300.502, related to independent educational evaluations, 34 CFR §300.303, related to reevaluations, and 19 TAC §89.1011, related to FIE requirements and timelines is substantiated, withstanding the aspect of 19 TAC §89.1011 regarding whether parents could make referrals for initial evaluations after May 1, which was not substantiated.

Child Find

34 CFR §300.111 requires that school districts identify, locate, and evaluate students who may require special education and related services. 19 TAC §89.1011 requires that school districts refer students for a special education evaluation if the students are not responding to interventions. Data from the record, including the findings from the Hehir, AIR, and Ad Hoc Report and information from the Strategic Plan show that the District has historically not met its obligations related to child find. As noted in the findings of fact for the allegation, despite HISD knowing that its Child Find process, its referral process, and its process for eligibility determinations were problematic, the findings from this investigation confirm that HISD has systematically failed to comply with these requirements, and continues to fail to remedy this noncompliance.

TEA has previously found numerous instances across different campuses and facilities since April 2018 of when the District did not identify, locate, and evaluate students for special education and related services in accordance with its regulatory obligations.⁵⁵ Further, documentation in the record shows that parents expressed concerns regarding their inability to have their students evaluated for special education eligibility despite submitting both written and verbal requests to the District for an evaluation.⁵⁶

IEE Compliance

34 CFR §300.502 requires that districts, without unnecessary delay, either provide parents with an IEE each time the parent requests an IEE in response to an evaluation conducted by the District with which the parent disagrees or provide the opportunity for a due process hearing in response to the parent's request. Data from the record show that the District violated this requirement.⁵⁷ The record shows that the District has historically delayed the provision of IEEs, sometimes taking more than a year to have them completed. Further, the record shows that, if a parent pays for an outside evaluation during the IEE process, the IEE process stops. Nothing in law or regulation states that a parent waives her right to an IEE when she obtains her own private evaluation – the opposite is true. Data from the record supports the district staff members who reported that the IEE process stops if parents obtain their own outside evaluation.⁵⁸

Reevaluation

34 CFR §300.303 requires that students be reevaluated for special education eligibility at least once every three years unless a student's parent and the District agree otherwise. Data from the record show the district violated this requirement by failing to complete evaluations within the three-calendar-year deadline. The record does not indicate that, in any of these instances, the respective students' parents and the District had agreed that a three-year reevaluation was not necessary. District personnel provided information in support of the allegation during the interviews. Staff members reported that reevaluations were not conducted in a timely manner. Staff also reported that reevaluations did not always include the review of existing evaluation data process as required by 34 CFR §300.305.

Initial Evaluations:

19 TAC §89.1011 sets out specific timelines by when initial evaluations must be completed (under most circumstances, not later than the 45th school day following the date on which the school district receives written consent for the evaluation from a student's parent) and sets out specific timelines by when a student's initial eligibility determination for special education must be made (30 calendar days from the date of the initial FIE report).

⁵⁵ Exhibit 8, Special Education Complaint Numbers 201914230, 201914199, 201914076, 201813854, 201813850, 201813528

⁵⁶ Exhibit 9, pages 200, 202, and 205 of Complainant's Documents

⁵⁷ See finding of facts 8, 9, and 10 (pg. 14-15)

⁵⁸ See finding of fact 11 (pg. 15)

Data from the record show instances of when the District violated 19 TAC §89.1011. Across multiple years, the District did not always ensure that initial FIE reports were completed on time. Additionally, in the 2018-2019 school year alone, there were instances when student’s eligibility determinations did not occur within the 30-calendar day timeline.

Information provided by district staff members confirmed the data included in the record. Staff members admitted that the District did not always meet timelines for initial evaluations and, in some instances, manipulated the initial evaluation timeline either through not evaluating a student in all areas of suspected disability or through obtaining additional parental consents for the initial evaluation. There was no evidence found within this review to substantiate data had been falsified. Further, staff members admitted that some students were prevented from being evaluated due to the lack of evaluation staff. Finally, staff members noted that the District did not always provide prior written notice of refusal when it determined that a student would not be evaluated for special education eligibility in violation of 19 TAC §89.1011.

Regarding whether parents could make referrals for initial evaluations after May 1, 19 TAC §89.1011 sets out requirements related to parent and district referrals of a student for an initial evaluation for special education. The cited rule does not allow for or assume a “cut off” date by when referrals during the school year can no longer be made. Data from the record show that this part of allegation is not supported. While district staff members reported that there had been cut off dates in the past after which the District would no longer accept referrals for initial evaluations, that practice had ended. The District continued to receive and accept referrals from parents after May 1, 2018. The District followed up with those referral requests and obtained parental consent to conduct the initial evaluations.

The Hehir, AIR, Ad Hoc Reports, the Strategic Plan, and the documents and information provided by the complainant and the District for this investigation affirm that HISD was aware that the noncompliance noted in Allegation One was present throughout the District over a number years, yet HISD failed to remedy them in any meaningful way.

TEA’s Analysis of HISD’s Response to Allegation One

What the District fails to acknowledge in its response regarding Child Find is that the record shows a continuing history of noncompliance related to 34 CFR §300.111. The District also fails to acknowledge or respond to the fact that the noncompliance has been found across multiple years, across multiple campuses, and has been identified through various sources, including the historic reviews discussed in TEA’s report and special education complaints. The District notes that multiple related trainings have been provided to staff. However, the District provides no information or supporting documentation to show whether the information in the trainings was utilized across the District with fidelity or whether students across the district were appropriately identified, located, and evaluated because of the trainings.

TEA notes that the District does not dispute the noncompliance determined regarding IEEs when responding to the investigation. The District fails to recognize that, if a parent requests an independent educational evaluation at public expense, it has the burden under 34 CFR §300.502(b)(2) to, “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.” (*emphasis added*) The record clearly shows that the District failed on multiple occasions to ensure that IEEs were provided at public expense without delay as required by the cited regulation.

The District attacks the investigation’s conclusion that it failed to complete all necessary re-evaluations by anecdotally claiming that certain students listed as being out of compliance allegedly were not. Nonetheless, a number of examples showing lack of compliance remains, and the District thus concedes the lack of compliance and the resulting substantiated finding stemming from it.

TEA is not inclined to alter its findings in response to the District’s assertion that training was provided in August 2018 and August 2019 to all evaluation staff. While training was provided, District staff provided information via interviews with TEA in November 2019 showing that REED procedures and requirements are not consistently followed. In short, while training might have been provided, the District provides no evidence that this training was effective in making change.

Regarding reevaluations, TEA notes that the District’s correction of one instance of noncompliance does not demonstrate that the District has corrected or prevented all other related noncompliance given the preponderance of information in the record.

Although the District contends that the FIIE complaints cited as findings of fact in the preliminary report presented by TEA have been addressed with corrective action plans and only involve single cases out of all initial evaluations conducted during a school year, as noted immediately above, the District’s correction of a few instances of noncompliance does not demonstrate that the District has corrected or prevented all other related noncompliance given the preponderance of information in the record. It remains the stance of TEA that HISD has a historic and systemic failure with special services and the need for multiple corrective action plans is clear evidence of this assertion.

The District points to updated data relating to FIIE timeline compliance for the 2017-2018 school year. Finding of fact 21 for Allegation One has been amended to reflect this update. However, the record shows that the District did not meet the compliance target for 2016-2017 or 2018-2019. The District contends that there were issues with reporting clarification data for the 2018-2019 school year and that the percent of FIIEs completed on time was 98.3%. The District also notes that “SPP Indicator 11 data submitted for the 2019-2020 school year shows a compliance rate of 98.72%.”⁵⁹ This fact further supports the historical narrative set out in the preliminary report demonstrating that the District is consistently noncompliant with related regulatory requirements. TEA acknowledges that the District is correct in that it met 100 percent compliance with FIIE timelines for the 2017-2018 school year.

⁵⁹ HISD Response p.35

The District's response regarding students' initial eligibility determinations states several reasons that delays might take place.⁶⁰ However, the 30-calendar-day timeline set out in 19 TAC §89.1011(d) for making eligibility determinations cannot be waived or ignored. Regardless of the reasons, the District failed to meet its regulatory obligation in this concern on multiple occasions.

The District's rebuttal to Allegation One has no merit and does not warrant a change in the analysis or conclusion set out in the investigative report.

Allegation Two: IEP Development and Implementation

The District did not ensure that students' IEPs were developed in accordance with 34 CFR §300.324⁶¹ and 19 TAC §89.1050(d) and (g)⁶², did not ensure that students' IEPs were implemented in accordance with 34 CFR §300.323⁶³, did not ensure that student's ARD committees followed requirements at 34 CFR 300.322⁶⁴ and 19 TAC §89.1050, did not ensure that students received dyslexia services in accordance with 34 CFR §300.39⁶⁵ and 19 TAC §74.28⁶⁶, and did not ensure that extended school year (ESY) determinations were made in accordance with 19 TAC §89.1065⁶⁷.

The following findings of fact and conclusions that substantiate this allegation are a result of interviews conducted by TEA staff members and an examination of documents from the record.

IEP Development Findings of Fact

1. The Hehir Report notes that district staff members reported that they had a general lack of understanding regarding how to complete IEPs. This was particularly problematic when it came to IEP "supplements," such as those for autism, transportation, etc.⁶⁸
2. The AIR team reviewed 300 random IEPs, the team found "a systemic lack of individualization in multiple sections of the IEP: (a) PLAAFPs; (b) measurable annual goals; (c) supplementary aids and accommodations; (d) instructional arrangements and settings; and (e) ARD participants."⁶⁹ While the AIR Report found systemic violations in this area it also noted that district staff, including district leaders, reported that students' IEPs were developed appropriately.

⁶⁰ Id.

⁶¹ Appendix H

⁶² Appendix I

⁶³ Appendix J

⁶⁴ Appendix K

⁶⁵ Appendix L

⁶⁶ Appendix M

⁶⁷ Appendix N

⁶⁸ Exhibit 2, page 26 of Hehir Report 2011

⁶⁹ Exhibit 3, page 15 of AIR Report 2018

3. As noted in the Strategic Plan, HISD recognized it had deficiencies in IEP development. Consequently, HISD updated its related policies, created new documents, provided training, and updated resources for educators.⁷⁰
4. In its Ad Hoc Report, HISD indicates that it had created trainings for general and special education teachers that focused on writing IEPs.⁷¹
5. Despite having known of the issues surrounding IEP development and providing training related to the issue, when the District conducted its own review of the allegation, it found that, between January 1, 2019 and December 12, 2019, there were 539 IEPs were out of compliance with the annual review requirement at 34 CFR §300.324.⁷²
6. The complainant submitted a March 28, 2018 email from the EasyIEP team to district staff members showing that five students who attend Ashford Elementary School had IEPs that were not reviewed and revised at least annually.⁷³
7. The complainant submitted a March 28, 2018 email from the EasyIEP team to the District staff members showing that five students who attend Northside High School had IEPs that were not reviewed and revised at least annually.⁷⁴
8. The complainant submitted a compliance report titled “IEP New Compliance Report February 2018” showing that the District does not review and revise student’s IEPs at least annually.⁷⁵
9. The complainant submitted a compliance report titled “IEP New Compliance Report June 2018” that demonstrates that across the District that the District does not review and revise student’s IEPs at least annually.⁷⁶
10. The complainant noted discussion on September 25, 2017, of an internal report showing that students receiving transportation as a related service did not always have the service included in their IEPs, that students who needed transportation as a related service did not always have it included in their IEPs, and that students with IEPs that required transportation as a related service did not always receive said service.⁷⁷
11. As part of its response to this investigation, the District reviewed the files of 15 random students who are eligible for special education. Of the 15 students, three students were “receiving special transportation that is not addressed in their IEP.”⁷⁸
12. An onsite folder review by TEA staff at Ortiz Middle School on November 20, 2019, found noncompliant IEPs. Specifically, students with an instructional setting code of 40 (meaning all instruction and services were provided in the general education setting) did not have an individualized schedule of instructional services, related services, or service minutes.⁷⁹
13. The complainant provided charts showing that changes were made to 27 students’ IEPs after students’ ARD committee meetings had ended. There is no indication of what these changes were or that the students’ parents had agreed to them. These changes took place

⁷⁰ Exhibit 5, pages 23-24 of Office of Special Populations: 3 – Year Strategic Plan

⁷¹ Exhibit 6, Appendix Two, page 3 of HISD Ad Hoc Committee Report 2018

⁷² Exhibit 10, page 12 (letter) of District Response Documents

⁷³ Exhibit 9, page 354-355 of Complainant’s Documents

⁷⁴ Exhibit 9, page 356-357 of Complainant’s Documents

⁷⁵ Exhibit 9, pages 358-438 of Complainant’s Documents

⁷⁶ Exhibit 9, pages 520-607 of Complainant’s Documents

⁷⁷ Exhibit 9, page 8 of Complainant’s Documents

⁷⁸ Exhibit 10, page 10 (letter) of District Response Documents

⁷⁹ Exhibit 12, pages 1-24 of Onsite IEPs

within a two-week period of May 28-June 11. The year in which the changes were made is not recorded on the charts.⁸⁰

14. HISD personnel reported that, once IEPs were “locked” (i.e., finalized) in the EasyIEP system, they could not be changed by anyone.
15. TEA investigators questioned HISD personnel about how changes were made to students’ IEPs following their ARD committee meetings using charts provided by the complainant as evidence of these changes. HISD staff could not provide an answer.
16. HISD personnel reported that IEPs remain unlocked and open for edit for extended periods of time. This allows the ability for IEPs to be changed after the ARD committee meeting had ended.
17. A November 6, 2019 email from the developers of EasyIEP to HISD staff explains that, once an IEP is locked, it cannot be unlocked or amended.⁸¹

IEP Implementation Findings of Fact

18. TEA has conducted six special education complaint investigations since August 2018 resulting in a finding of noncompliance against HISD regarding IEP implementation. These investigations have found related compliance in six different HISD campuses: Westbury High School, Crespo Elementary, Sterling High School, Shadowbriar Elementary, Heights High School, Fleming Middle School, and at the Harris County Department of Education at which HISD had placed a student.⁸²
19. The District reviewed the records of students as a result of this investigation and provided tables showing whether, based on the review, there was documentation demonstrating the implementation of students’ IEP accommodations, testing accommodations, related services, and goals. The District determined that in some instances, students’ IEPs had not been implemented.⁸³
20. Regarding IEP implementation, HISD personnel reported the following.
 - a. The implementation of students’ IEP accommodations can be tracked using an online program.
 - b. There is no standard process in place across the District through which to document IEP implementation.
 - c. HISD personnel confirmed that students’ IEPs are not always implemented.
 - d. HISD personnel could not explain how students’ progress toward mastery of their annual IEP goals was tracked or recorded.
 - e. HISD instructional personnel responsible for IEP implementation do not always receive copies of students’ IEPs in a timely manner.
 - f. HISD personnel are not always notified of their responsibilities as they relate to implementation of students’ IEPs.
21. HISD personnel confirmed that the District’s transportation department did not always receive information about students who required transportation as a related service. HISD

⁸⁰ Exhibit 9, pages 350-352 of Complainant’s Documents

⁸¹ Exhibit 10, page 98 (evidence) of District Response Documents

⁸² Exhibit 8, Special Education Complaint Number 202015344, 201914831, 201914606, 201914194, 201813975, 201913719

⁸³ Exhibit 10, pages 3944-5577 (evidence) of District Response Documents (see page 3944)

personnel confirmed that this resulted in students' IEPs not always being implemented regarding transportation as a related service.

22. Campus administrators also do not implement student's behavior intervention plans. In one example reviewed with HISD personnel, the campus administrator prevented a student from attending classes noted on his/her IEP because of his/her behavior. Upon review of the student's IEP during the interview, his/her Behavior Intervention Plan (BIP) did not permit his/her removal from class as a behavior consequence.

ARD Committee Requirements and Parent Participation Findings of Fact

23. The District provided ten examples of IEPs from across multiple grade levels for review for the investigation. The examples show that students' parents either attended the ARD committee meetings, gave permission to hold the meetings without them, or did not attend after being contacted multiple times.⁸⁴
24. The ten examples from the District include instances of when the parents disagreed with the IEP and the ARD committee agreed to reconvene later to address the disagreement.⁸⁵
25. The ten examples from the District include documentation of the District's notifications to students' parents of the upcoming ARD committee meetings.⁸⁶
26. HISD personnel interviewed reported that they had not been in ARD committee meetings within the past few years that had ended in disagreement.
27. HISD personnel did not report instances of parents not attending ARD committee meetings.

Dyslexia Services Findings of Fact

28. The Hehir Report notes that the team, "identified a relatively large population, students with dyslexia, who may be being inappropriately denied services."⁸⁷
29. The Hehir team recommended that "special education department should develop policies and procedures designed to give students with dyslexia appropriate access to special education services."⁸⁸
30. The Ad Hoc Report notes that, while HISD had made progress in hiring additional dyslexia specialists, the question of whether students were appropriately identified with dyslexia was still a concern.⁸⁹
31. The Ad Hoc Report sets out three areas of improvement that HISD had implemented to address concerns with the identification of students with dyslexia and the provision of dyslexia services.⁹⁰
32. The District provided an explanation of its Standard Dyslexia Protocol Intervention (SPDI) for this investigation and noted that it offers three separate programs that meet the criteria for SPDI set out in the agency's Dyslexia Handbook.⁹¹

⁸⁴ Exhibit 10, pages 2402-3853 (evidence) of District Response Documents

⁸⁵ Exhibit 10, pages 2402-3853 (evidence) of District Response Documents

⁸⁶ Exhibit 10, pages 2402-3853 (evidence) of District Response Documents

⁸⁷ Exhibit 2, page 18 of Hehir Report 2011

⁸⁸ Exhibit 2, page 30 of Hehir Report 2011

⁸⁹ Exhibit 6, page 10 of HISD Ad Hoc Committee Report 2018

⁹⁰ Exhibit 6, Appendix Two, page 7 of HISD Ad Hoc Committee Report 2018

⁹¹ Exhibit 10, pages 3-4 (letter) of District Response Documents

33. The complainant did not provide any supporting documentation to show that the District was not meeting its obligations to provide dyslexia services eligible for special education.
34. Interviews with district staff members did not produce any supporting information for the complainant's allegation regarding dyslexia services.

Extended School Year (ESY) Determinations Findings of Fact

35. HISD personnel confirmed that, since 2001, entire classes of students had been found eligible for ESY services in order to provide district personnel with jobs over the summer.
36. A March 22, 2016 internal email reads in part, "Remember that we are not ARDing whole classes for the entire day. Each teacher needs to look at each student individually and determine which objectives need to be worked on during ESY."⁹² This email confirms that HISD had a practice of placing entire classes in ESY.
37. Regarding how and which students are identified for ESY, HISD staff members informed TEA staff that, prior to ARD committee meetings being held to discuss ESY eligibility, HISD personnel meet to review a student's information and decide whether the student qualifies for ESY. This determination is then presented to the student's ARD committee.
38. When asked about the criteria for how a student should qualify for ESY services, HISD personnel were not able to provide the correct information.

Analysis of the Record Regarding Allegation Two

The allegations that the District did not ensure that students' IEPs were developed in accordance with 34 CFR §300.324 and 19 TAC §89.1050(d) and (g), did not ensure that students' IEPs were implemented in accordance with 34 CFR §300.323, did not ensure that student's ARD committees followed requirements at 34 CFR 300.322 and 19 TAC §89.1050, did not ensure that students received dyslexia services in accordance with 34 CFR §300.39 and 19 TAC §74.28, and did not ensure that extended school year determinations were made in accordance with 19 TAC §89.1065 is substantiated, withstanding two aspects. Regarding 34 CFR §300.321, 34 CFR §300.322, and 19 TAC §89.1050, the allegation that HISD did not provide parent notification and participation on the ARD committee, is not substantiated. Also, 34 CFR §300.39 and 19 TAC §74.28, the allegation that HISD did not provide "each student with dyslexia or a related disorder access to each program under which the student qualifies for services" is not substantiated.

IEP Amendments

34 CFR §300.324 sets out specific requirements for how an IEP is amended outside of an ARD committee meeting, and one of those requirements is for the respective student's parent to agree to the amendment. 19 TAC §89.1050 requires the District to ensure that a student's parents are present during his/her ARD committee meeting or that they were afforded the opportunity to participate in the meeting. Additionally, a student's IEP must be developed collaboratively with his/her parents.

Data from the record show that multiple students' IEPs were amended after the date of their ARD committee meetings. District staff members and the developers of EasyIEP report that, once an

⁹² Exhibit 10, page 5580 (evidence) of District Response Documents

IEP is locked, it cannot be amended. However, district staff members reported that IEPs are not always locked following the conclusion of an ARD committee meeting and, therefore, can be unilaterally amended without parent participation. There is nothing in the record to show that the students' parents agreed to, or were even notified of, said amendments.

Special Education and Related Services, and Accommodations

Additionally, as noted in the Hehir Report, the AIR Report, and the Strategic Plan, IEP development is a long-standing area of noncompliance within HISD, and the record for this investigation shows that student's IEPs continue not to be developed appropriately. ARD committees fail to include students' special education and related services when developing IEPs. ARD committees also continue to fail to include individualized schedule of instructional services, related services (including transportation), and special education service minutes.

34 CFR §300.323 requires that, 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. Data from the record shows a history of the District's failure to implement students' IEPs in violation of this requirement. Additionally, the District's own review of the allegation determined that students' IEPs are not always implemented. Information obtained through interview of district staff members also supported the allegation.

District personnel reported that, while the implementation of IEP accommodations can be tracked, there is no established procedure for doing so. Further, district staff could not explain how, or whether, the implementation of IEP goals was tracked. District personnel reported that they do not always know or understand what is in a student's IEP or know how to implement students' IEPs. During the interviews, it became clear that the failure to implement students' IEPs extends from teachers to campus administrators. In at least one instance, a campus administrator was not following a student's BIP. Finally, it also became clear during the interviews that district personnel do not fully understand how to write IEPs, as staff members reported their belief that, because all mainstream students in co-teach settings have access to push-in services provided by special education staff, there is no need for individualized schedule of services.

Notice and Parent Participation

34 CFR §300.321⁹³ dictates that students' parents are members of the ARD committee. 34 CFR §300.322 requires districts to ensure that parents are notified of their students' ARD committee meeting and requires districts to ensure that they document multiple attempts to convince parents to attend ARD committee meetings. 19 TAC §89.1050 requires districts to offer parents a single opportunity to reconvene an ARD committee meeting if the meeting ends in disagreement.

Information from this investigative record shows that the District provides parents with multiple notices to ARD committee meetings and ensures that parents attend the meetings or that parents give permission for the ARD committee meeting to take place without them. The record also demonstrates that the District offers parents the opportunity to reconvene ARD committee

⁹³ Appendix O

meetings when the committee meeting ends in disagreement. District staff members did not report any concerns regarding parent participation in ARD committee meetings or with ARD committee meetings that ended in disagreement.

34 CFR §300.39 explains that special education is “specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability.” 19 TAC §74.28 requires school districts to provide “each student with dyslexia or a related disorder access to each program under which the student qualifies for services.”

While the Hehir and Ad Hoc Report set out historic concerns with whether students with dyslexia are being appropriately identified and serviced, this investigation did not identify any noncompliance regarding this issue. It should be noted that this report does not find that the District is fully in compliance with these Dyslexia provision – a broader investigation would be necessary to show such – but the cross section analyzed by investigators did not uncover evidence in this case. The complainant provided no information supporting an allegation that students with disabilities did not receive dyslexia programming. Interviews with district staff members did not produce any supporting information for the allegation. The District explained and demonstrated through documentation how it provides dyslexia services to students who are eligible for special education.

Extended School Year Services

19 TAC §89.1065 requires that ESY services be determined by students’ ARD committees. The March 2016 email explains that ESY determinations must be individualized and that whole classes could not receive full-day ESY services. However, during the interviews, district staff members reported that, over multiple years, entire classes were found eligible for ESY services in order to provide staff members with summer jobs. Further, staff members explained that students’ ARD committees are not the decision maker for ESY eligibility. Rather, ESY decisions are made by district personnel outside of the ARD committee process, and those decisions are then presented to the ARD committee members. Finally, when asked about the requirements set out at 19 TAC §89.1065 for how students qualify for ESY, district personnel were not able to answer the question.

Substantiations

Therefore, the allegation that the District did not ensure that students’ IEPs were developed in accordance with 34 CFR §300.324 and 19 TAC §89.1050(d) and (g), did not ensure that students’ IEPs were implemented in accordance with 34 CFR §300.323, did not ensure that student’s ARD committees followed requirements at 34 CFR 300.322 and 19 TAC §89.1050, did not ensure that students received dyslexia services in accordance with 34 CFR §300.39 and 19 TAC §74.28, and did not ensure that extended school year determinations were made in accordance with 19 TAC §89.1065 is substantiated, withstanding two aspects. Regarding 34 CFR §300.321, 34 CFR §300.322, and 19 TAC §89.1050, the allegation that HISD did not provide parent notification and participation on the ARD committee, is not substantiated. Also, 34 CFR §300.39 and 19 TAC 74.28, the allegation that HISD did not provide “each student with dyslexia or a related disorder access to each program under which the student qualifies for services” is not substantiated.

The Hehir, AIR, and Ad Hoc Reports, the Strategic Plan, and the documents and information provided by the complainant and District for this investigation affirm that HISD was aware that the noncompliance noted in Allegation Two was present throughout the District over a number years, yet HISD failed to remedy them.

TEA's Analysis of HISD's Response to Allegation Two

As set out below, the District's response to Allegation Two fails to address the findings of fact and fails to show that the analysis and determined noncompliance within TEA's report are incorrect. On the contrary, the District does little more than state its disagreements and contend that findings of fact should be "struck" rather than warranting its claims with sound reasoning and supporting documentation. The District also fails to contemplate or address the findings of fact in their totality, instead focusing on its disagreements with individual findings of fact and refusing to consider the whole picture described in Allegation Two. Finally, the District continually depends on past trainings and current processes in attempt to respond to the report, but does not consider that TEA's findings and conclusions show that the District continues to have systemic problems with its special education program even with the trainings and processes. While training is an important component of an effort to come into compliance, the District cannot simply provide training with hopes the training alone will completely rectify the problem. The District is responsible for ensuring compliance, rather than harboring an environment where is merely hopes that compliance will occur.

Regarding requirements at 34 CFR §300.324 related to annual IEP review, the District argues that TEA "ignores the actions the last two school years to implement the Strategic Plan to address the issues laid out in the Hehir, Air, and Ad Hoc Committee Reports."⁹⁴ What the District does not acknowledge in its response is that the findings in those named reports go back to 2011, and that it should have taken considerably more robust steps much sooner than two school years ago to address the issues surrounding its special education program and its failure to meet students' needs.

The District then argues that there were only 377 annual IEP reviews that were out of compliance during a year timeframe, which ignores the fact that there were, thus, 377 individual students who were likely denied a free appropriate public education because of the District's failure. The District contends that there are "extensive procedure and alerts in place through the EasyIEP system to address [the issue of annual reviews of IEPs] on any campus where it occurs."⁹⁵ While this may well be the case, the system in place fails to ensure that annual reviews of IEPs occur as shown by the District's own data.

Finally, the District contends that it provided training during the 2019-2020 school year regarding IEP development, implementation, and progress tracking. What is missing from the District's response is any data or information to indicate that these trainings had any impact on reducing noncompliance or improving student outcomes.

⁹⁴ HISD Response p.42

⁹⁵ HISD Response p.43

Regarding requirements at 34 CFR §300.324 related to IEP amendments and ARD committee requirements, the data provided by the complainant show that changes were made to 27 students' IEPs after their respective ARD committee meetings had ended. The District attacks these data and says that they cannot be verified, but what the District does not do is provide any data to the contrary. The District provides nothing to show that students' IEPs were not and are not changed after the ARD committee meeting is over and prior to the IEPs being “locked.”

Regarding the development of IEPs under 34 CFR §300.324, the district argues that TEA's report does not explain the noncompliance found at Ortiz Middle School during a review of students' folders. In response, TEA refers the District to the preliminary report, which reads in part:

An onsite folder review by TEA staff at Ortiz Middle School on November 20, 2019, found noncompliant IEPs. Specifically, students with an instructional setting code of 40 (meaning all instruction and services were provided in the general education setting) did not have an individualized schedule of instructional services, related services, or service minutes.

Consequently, it is unclear why the District would be confused about the noncompliance determined through the folder reviews.

Turning to the issue of IEP implementation, the District discusses a plan and tool for tracking the implementation of students' IEP services that “will be” put into place at Ortiz Middle School, implying that it is not currently, nor has it in the past, been implemented.⁹⁶ While such a tool would undoubtedly be helpful if used and monitored with fidelity, there is no indication that the form is a district-wide requirement or that other campuses are or “will be” doing something similar. Consequently, it is highly likely that, without additional intervention, issues surrounding IEP implementation and monitoring will continue in other campuses districtwide.

The District provides a response to the fact that transportation is not always provided in accordance with students' IEPs. It discusses training and processes it has in place to ensure that transportation as a related service is provided with fidelity, and it sets out disagreements with TEA's findings of fact. What the LEA does not do is provide any documentation to show that the provision of transportation as a related service is not a problem faced by students in the district. On the contrary, District personnel confirmed that the District's transportation department does not always receive information about students who require transportation as a related service and confirmed that this results in students' IEPs not always being implemented regarding transportation as a related service.

HISD argues that evidence provided by TEA regarding HISD's non-compliance with IEP implementation referenced six separate TEA complaints should not be considered in this report. In each of these six complaints, HISD proposed a corrective action that was approved by TEA, the plan was completed, and the complaint was closed by the Agency.⁹⁷ As mentioned before, it is the stance of TEA that HISD has a historic and systemic failure within the office of special education services. These cases further substantiate that additional intervention and sanctions are necessary for systemic change.

⁹⁶ Id. at 45

⁹⁷ Id. at 48

As part of its request for review, the district submitted a frequently asked question (FAQ) document as which focuses on tracking IEP accommodations. Notable is the fact that the FAQ does not require or mention any kind of standard tracking process. There is a template in the record for tracking accommodations that can be used across the District, but there is no indication that use of the template is required. As TEA staff discovered during the interviews, the District has no standard process or expectation for how to documentation implementation of accommodations or other IEP services or for records retention of that documentation.

The District also disagrees with TEA’s finding that campus principals do not always implement student’s behavior intervention plans and goes so far as to state that a behavior intervention plan may be ignored if a student’s behavior warrants doing so. In the case mentioned in the report, TEA notes that the student was not physically aggressive, and the behavior for which she or he was removed from class was not such that required a removal.

Regarding extended school year (ESY) services, the District argues that there are some entire classes that may need ESY services.⁹⁸ What the district does not do is respond to the fact that District staff members who were interviewed confirmed that, for years, ESY services were provided to entire classes so as to provide District staff members with jobs. The district also does not dispute the practice that, prior to ARD committee meetings being held to discuss ESY eligibility, District personnel meet to review a student’s information and decide whether the student qualifies for ESY. This determination is then presented to the student’s ARD committee, which undermines the authority and responsibility of the ARD committee to make ESY determinations under 19 TAC §89.1065.

As noted above, the District’s rebuttal to Allegation Two has no merit, is not based on any data or documentation, and does not warrant a change in the related findings, analysis, or conclusion set out in the preliminary report.

Allegation Three: Eligibility, Disciplinary Placements, FAPE, and LRE

The District did not ensure that students who received special education services were eligible for special education services in accordance with 34 CFR §300.8⁹⁹ and 34 CFR §300.306¹⁰⁰, did not ensure that it met requirements at 34 CFR §300.530¹⁰¹ when students underwent a disciplinary change of placement, did not ensure that students who attempted to enroll were allowed to do so and that they were provided with a free appropriate public education (FAPE) in accordance with 34 CFR §300.101¹⁰², and did not ensure that students’ educational placement determinations were made in accordance with 34 CFR §300.116 and 34 CFR §300.501(c).

⁹⁸ Id. at 52

⁹⁹ Appendix P

¹⁰⁰ Appendix Q

¹⁰¹ Appendix R

¹⁰² Appendix S

The following findings of fact and conclusions that substantiate this allegation are a result of interviews conducted by TEA staff members and an examination of documents from the record.

Special Education Eligibility Findings of Fact

1. The AIR Report reads in part:

Some surveyed participants even indicated that eligibility determination was sometimes made before the ARD meeting using data provided by a diagnostician or school psychologist, which not only excludes family input but could be viewed as predetermination of placement and be in violation of federal and state laws.¹⁰³

2. An email dated October 2, 2019 indicates that a student had been placed in a structured learning classroom (SLC) since the first day of school and had yet to be identified as a student with a disability (the student was in the process of being identified).¹⁰⁴
3. A SLC is a centralized, instructional setting designed for students who need an individualized, high level of support and structure to meet academic, social, behavioral and communication needs.
4. HISD personnel confirmed that general education students have been placed in special education settings based on their behavior. This is problematic because it resulted in the provision of instruction in a special education setting and, also likely, the provision of special education services, to students who were not eligible for special education.

Manifestation Determinations Findings of Fact

5. A manifestation determination is a process, required by IDEA, that is followed when a school district or charter school is considering a disciplinary change of placement of a student with a disability.
6. The District reviewed the files of 15 self-selected students for whom manifestation determinations were held and did not find any instances of noncompliance.¹⁰⁵
7. The complainant submitted a table titled, “MDR Summary” dated January 25, 2018. The table provides information about students’ grade levels and instructional setting, the number of days students had been removed from their instructional arrangement, whether a manifestation determination had taken place, and the action that could be taken to address any related noncompliance (i.e., whether students had been out of placement for more than 10 school days without a manifestation determination being held). The report shows instances for when manifestation determinations did not take place. For example, the report shows that one student had been out of his/her instructional setting for 499 school days without a manifestation determination being held.¹⁰⁶
8. HISD personnel confirmed through interviews that manifestation determinations do not always take place when students undergo a disciplinary change of placement. This resulted

¹⁰³ Exhibit 3, page 49 of AIR Report 2018

¹⁰⁴ Exhibit 13, email from district staff member

¹⁰⁵ Exhibit 10, page 10 (letter) of District Response Documents

¹⁰⁶ Exhibit 9, page 297-298 of Complainant’s Documents

in students not being provided the protections and rights they have under the IDEA and may result in improper disciplinary actions taking place against a student with a disability.

Free Appropriate Public Education Findings of Fact

9. The complainant submitted copies of documents titled “Issues/Concerns or Positive Comments.” These documents detail concerns expressed by parents from the 2017-2018 school year related to their inability to enroll their students into campuses and receive special education services.¹⁰⁷
10. HISD staff explained that sometimes parents attempt to enroll their students in the wrong campus and need to be redirected to the campus to which their students are zoned.
11. HISD staff also explained that not every campus provides every instructional setting and that, sometimes, students are placed by the ARD committee in a campus different to that which they are zoned so that the student can get the services and educational setting she/he needs.

Educational Placement Determinations Findings of Fact

12. The AIR Report reads in part,

According to the qualitative data gathered through interviews and focus groups with school staff, staff often reported that placement is determined by existing programs or disability type, rather than IEP needs. Staff also referred to decisions about placement being made by an HISD program specialist or a “placement committee” who often do not know the student. This contradicts IDEA § 300.116, which specifies that placement decisions are “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.”¹⁰⁸

13. When asked during this investigation about educational placement determinations, HISD personnel reported the following:
 - a. Prior to a student’s ARD committee being able to make a change to a student’s educational setting to a placement within the District, the committee must review the proposed placement with the Instructional and Behavioral Consultation Review, or “IBCR.” The IBCR determines the most appropriate setting for the student, not the ARD committee. The ARD committee does not have the authority to make a change of placement unilaterally, and furthermore cannot override the determination of the IBCR.
 - b. Prior to a student’s ARD committee being able to make a change to a student’s educational setting to a placement outside of the District, the committee must review the proposed placement with the Central Case Review, or “CCR.” The process is as follows: 1) the ARD committee reviews the student’s IEP and specific needs to determine if she/he requires an out-of-district placement; 2) the information from the ARD committee is provided to the CCR for review, and the CCR makes recommendations as to facilities in which the student could be placed;

¹⁰⁷ Exhibit 9, Page 312-324 of Complainant’s Documents

¹⁰⁸ Exhibit 3, page 18 of AIR Report 2018

- 3) the student's parents are informed of the recommendations, and the District obtains parental permission to send the student's information to the recommended facilities so that the facilities can notify the family and the District whether the facility can implement the student's IEP; and 4) the ARD committee then makes the placement.
- c. If an ARD committee makes a recommendation to place a student in an out-of-district facility, the CCR can reject the recommendation and require the ARD committee to review the recommendation further. An ARD committee can determine to place a student in an out-of-district facility against the CCR's recommendations, but never has done so. If an ARD committee made the decision to a student in an out-of-district facility against the CCR's recommendations, the placement would not be approved or paid for by the District.
 - d. Secondary campuses do not have a full continuum of special education programming, thus creating placement challenges and potential predetermination for students transitioning from elementary to middle school. HISD personnel reported that elementary students who are transitioning to middle school routinely have their instructional setting changed from resource room/services to mainstream/co-teach to align with services offered at secondary campuses. The change of placement is not student/data driven, nor does the ARD committee have the option to keep the student in a resource setting without the approval of district administration.
14. As an example of the process described immediately above, a student's IEP reads in part, "the committee previously met in June 2019 to discuss placement for student. After holding an IBRC with an approval and a recommendation from the District to place student in a behavior classroom."¹⁰⁹
15. HISD personnel explained that, while students' ARD committees sometimes place them in campuses other than those to which they are zoned in order to receive the services they need, campus administrators have the authority to deny enrollment of students who are placed by their ARD committees at their campus for specialized programming (e.g., behavior unit, autism unit, etc.). When queried for additional information, HISD personnel indicated that these decisions appear arbitrary and within the sole discretion of the campus principal.
16. Concerns related to campus principals permitting students with disabilities to attend their campuses is also noted in the Ad Hoc Report, which reads in part, "Many of HISD's magnet schools have very low rates of students with disabilities; in at least some instances this is because magnet principals discourage enrollment and/or offer inadequate supports for students with disabilities."¹¹⁰
17. HISD staff reported that, as recently as the 2017-2018 school year, ARD committee's determinations to place a student into the homebound setting could be overturned by HISD personnel who were not a part of the ARD committee.

¹⁰⁹ Exhibit 14, pages 1-2 of student IEP

¹¹⁰ Exhibit 6, page 7 of HISD Ad Hoc Committee Report 2018

Analysis of the Record Regarding Allegation Three

The allegation that the District did not ensure that students who received special education services were eligible for special education services in accordance with 34 CFR §300.8 and 34 CFR §300.306, did not ensure that it met requirements at 34 CFR §300.530 when students underwent a disciplinary change of placement, did not ensure that students who attempted to enroll were allowed to do so and that they were provided with a free appropriate public education (FAPE) in accordance with 34 CFR §300.101, and did not ensure that students' educational placement determinations were made in accordance with 34 CFR §300.116 and 34 CFR §300.501(c) is substantiated, withstanding the aspect of 34 CFR §300.101 and 34 CFR §300.501(c) that students were denied FAPE regarding parent's inability to enroll their students in various campuses, which is not substantiated.

Eligibility

34 CFR §300.8 explains that a student with a disability is one who has been evaluated in accordance with 34 CFR §§300.304¹¹¹ through 300.311¹¹² “as having an intellectual disability, 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, and other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services.” 34 CFR §300.306 explains that, following an evaluation, “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 (c) of [that] section and the educational needs of the child.”

As noted in the AIR Report, there is a historic practice in the District of finding students eligible for special education services outside the context of an ARD committee. Information from this investigative record shows that this practice continues, as students are placed in special education settings even though they are not eligible for special education (in effect, “finding” the student eligible for special education outside of an ARD committee). Information obtained through interviews with district staff members further supports the complainant's allegation, as staff members reported that general education students are placed in special education settings based on behavior.

Manifestation Determinations

34 CFR §300.530 requires the following, in part.

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 district, the parent, and relevant members of the child's IEP Team (as determined by the parent and the district) 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

¹¹¹ Appendix T

¹¹² Appendix U

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 district's failure to implement the IEP.

Data from the record shows instances of students being removed from their educational setting due to a disciplinary change of placement for more than 10 school days without a manifestation determination being made. District staff members confirmed that students undergo disciplinary changes of placement without a manifestation determination being made.

Enrollment

34 CFR §300.101 requires that FAPE “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 34 CFR§300.530(d).” While data from the record note concerns from parents about their inability to enroll their students in various campuses, the data do not provide the complete set of circumstances specific to each student. Therefore, it is not possible to use the data to conclude that students were denied FAPE. Additionally, information provided by district personnel indicates that parents sometimes attempt to enroll their students in the wrong campus and that some campuses do not provide the specialized setting or services that some students require as noted in their IEPs. These are valid reasons for parents to be redirected to a different, more appropriate, campus.

However, the historic and current practice of campus principals being able to unilaterally deny a student’s enrollment or transfer from another campus when the student’s ARD committee has determined that the transfer is necessary for the student to receive FAPE is a violation of special education requirements. When a student’s ARD committee has determined that a student’s IEP can be implemented only in certain settings, and those settings are located only on certain campuses, the principals for those campuses do not have the legal authority to override the ARD committee’s decision.

ARD Committee Authority

34 CFR §300.116 requires that a student’s parent participate in the decision-making process related to a student’s educational placement. The cited regulation also requires, in part, that the educational placement be based on the student’s IEP. 34 CFR §300.501(c) requires the district to ensure that parents of students with a disability are members of any group that makes decisions on the educational placement of a parent's child.

Historic information from the AIR Report and information obtained through this investigation show that educational decision making regarding a student’s placement is often not made by the student’s ARD committee. Educational placements are determined by other district personnel, without input and participation of students’ parents, and those determinations are submitted to students’ ARD committees. This practice of using the IBRC and the CCR to make and approve education placement decisions removes the ability of the ARD committee, including parents, to make the educational placement decision for a student and is in direct violation of the cited regulations.

Substantiations

Therefore the allegation that the District did not ensure that students who received special education services were eligible for special education services in accordance with 34 CFR §300.8 and 34 CFR §300.306, did not ensure that it met requirements at 34 CFR §300.530 when students underwent a disciplinary change of placement, did not ensure that students who attempted to enroll were allowed to do so and that they were provided with a free appropriate public education (FAPE) in accordance with 34 CFR §300.101, and did not ensure that students' educational placement determinations were made in accordance with 34 CFR §300.116 and 34 CFR §300.501(c) is substantiated, withstanding the aspect of 34 CFR §300.101 and 34 CFR §300.501(c) that students were denied FAPE regarding parent's inability to enroll their students in various campuses, which is not substantiated.

The Hehir, AIR, Ad Hoc Report, along with the documents and information provided by the complainant and the District for this investigation affirm that HISD was aware that the noncompliance noted in Allegation Three was present throughout the District over a number years, yet HISD failed to remedy them.

TEA's Analysis of HISD's Response to Allegation Three

As before, in the District's response to Allegation Three, it again states its disagreements with the report and contends that findings of fact should be "struck" without sound reasoning and supporting evidence. The District's response fails to address the findings of fact in their totality, instead focusing on its disagreements with individual findings of fact and refusing to consider the whole picture described in Allegation Three. The preliminary report used the AIR Report, which cites the Heir report and the school board's own findings. In totality, these documents reveal similar issues spanning more than 10 years of data. Despite this expanse of time, similar issues were evidenced in each report and supported through this investigation, TEA interviews with District staff, document reviews conducted by TEA, and reviews of historical special education complaints.

Regarding eligibility determinations, TEA's findings and conclusions show that HISD continues to have systemic challenges with adhering to 34 CFR §300.306. The District notes in its response that eligibility is determined pursuant to 34 CFR §300.306.¹¹³ However, the District shows no change in practice, policy, or process to ensure that this is executed across campuses with fidelity. The District focuses on arguing against one instance of violation to 34 CFR §300.306 while negating the longstanding history of similar issues and problems.

The district sets out its disagreements with TEA's findings regarding manifestation determinations. The District provides data regarding said determinations but does not provide data showing that the information and conclusions in the preliminary report regarding untimely manifestation determinations are incorrect.

¹¹³ HISD Response p.54

Regarding the Instructional and Behavioral Consultation Review Committee (IBRC), the District notes that, in December of 2019, which followed the start of the TEA investigation in November of 2019, training was provided in attempt to clarify the role, purpose, and design of the IBRC committee. The district agrees there is confusion and “clear misunderstanding of the IBRC committee’s role.”¹¹⁴ A District staff member provides a table in her response that includes data from November 12, 2019, through May 2020. These data began to be tracked within five days of the SAI onsite interviews in the district. A District senior staff member asserts that the documentation presented for student WC is incorrect but provides no data to support this assertion. There are also no data or supporting documentation refuting TEA’s findings of systemic noncompliance and incorrect practice related to making determinations of students’ educational settings. To the contrary, district personnel confirmed during the interviews that IBRC approval is required prior an ARD committee making an out-of-district placement.

The District sets out its disagreements with TEA’s findings regarding the Central Review Process (CRP) committee process. As part of the District’s response, a District staff member explains the CRP process for providing guidance to ARD committees on out-of-district placement for students. The explanation is not consistent with what multiple district staff members told TEA’s interview teams. Conflicting reports by district special education leadership demonstrates lack of fidelity to processes, policies, or systems that should be ensuring compliance and fidelity of practice.

Additionally, a separate District staff member outlines the CRP process and concludes that it does not determine for an ARD committee what the recommended placement should be or that the CRP is required. This directly conflicts with testimony provided by other member of district leadership who explained that absent of prior approval, an out-of-district placement made by an ARD committee would not be allowed to stand. Though the District staff member details both in her interview and the response that training is provided on the CRP process within the district, she concludes that additional training is warranted, further suggesting this is a systemic issue for the district.

Of further concern is the “Placement Review Request Form” submitted by the District in its response. On face, the form itself provides additional support for TEA’s related findings and conclusions. The form does not show or discuss anywhere the role that the ARD committee has in making educational placement determinations.

The District raises objections to TEA’s findings regarding students who transition from elementary to secondary school and whose educational setting is changed because the campus to which they are transitioning does not have resource classrooms. In its response, the District provides an affidavit from a senior staff member in which she explains that HISD has a continuum of alternative placements available. However, within the response, the staff member confirms what TEA staff were told in prior interviews, which is that student’s IEPs are revised when transitioning from elementary to secondary campuses because not all secondary campuses offer resource classes. As noted in the investigative report, the District’s current practice is not consistent with special education regulations. While not every campus is required in and of itself to offer the continuum of alternative educational settings, a student’s educational setting cannot be changed based on administrative convenience. If a student requires a particular educational setting in order

¹¹⁴ Id. at 63

to receive FAPE, the campus to which the student is assigned must offer that setting. If it cannot, then the student’s ARD committee must change the student’s campus placement to a campus that has the educational setting the student requires.

The district explains that cases of enrollment denial by principals and campuses should be reported to executive leaders.¹¹⁵ The response reviews an instance of a campus principal denying enrollment of a student with a disability that was brought forward to the area superintendent. The District also notes that it has trained principals and assistant principals on the fact that they cannot override an ARD committee’s placement decision. No documentation or evidence was provided by the district on how this is tracked, monitored, or reported, and despite this training, district personnel who were interviewed confirmed this issue remains an area of noncompliance.

The District concludes that the TEA made its findings on insufficient and secret evidence. To the contrary, during interviews held during the Spring 2020 semester, TEA asked multiple District staff members for updates, data, and documentation to show progress on the special education strategic plan that had been implemented in 2018, and no data could be provided.

As detailed above, the District’s response to Allegation Three has no merit, is not based on any data or documentation, relies on “expectations” that do not align with actions, and does not warrant a change in the findings, analysis, or conclusion set out in the preliminary report.

Generalized Findings

During the interviews conducted in May and June 2020, HISD Board of Trustees members and HISD staff confirmed that the 3-Year Strategic Plan was the District’s response to the findings from the AIR Report. The core of the interviews focused on how the 3-Year Strategic Plan was being implemented, measured, and reported to the District. TEA investigators found common themes throughout these interviews:

1. There is a consistent breakdown in communication and leadership between central office and campuses regarding policies, procedures, and expectations for special education.
2. While professional development related to special education is provided to campus personnel, including administrators, there is no established methodology or system for requiring campuses or campus administrators to follow legal requirements, policies, procedures, and district expectations for special education.
3. There is no established data driven methodology or system in the District for determining whether skills, practices, and strategies taught during professional development are implemented by campus administrators and personnel.
4. There is no established methodology or system in the District for determining whether students’ IEPs are being implemented. Because of this, there is also no established methodology or system for ensuring that data collected regarding student progress at the campus level are valid.

¹¹⁵ Id. at 63

Members of the HISD board of trustees confirmed with TEA investigators that the last time the board had been given an update on the 3-Year Strategic Plan from the special education department was September 2018 – nearly simultaneous to the release of the Ad Hoc Report. The lack of communication from special education department leadership regarding policies, procedures, and student progress starts there. HISD staff told investigators that students receive different treatment regarding ARD committee decisions depending on which part of the District the student resides.

Principals have denied students with disabilities placement on their campuses. While this can be over-ridden by district-level administrators, it is often not. Field senior managers are tasked with following up with campus principals to ensure special education requirements are being implemented. However, the efficacy of these managers is questionable. There is inconsistency across campuses regarding special education programming and curriculum. Campus staff previously interviewed by TEA investigators stated they did not receive frequent visits or feedback from the field senior manager. Decentralization makes change hard to implement, along with the added difficulty of ensuring campuses are following federal laws and special education procedures. Turnover in central office has impacted HISD's ability to effect change.

HISD staff confirmed that professional development is central to the 3-Year Strategic Plan. However, per senior leadership, campus administrators must give teachers permission to attend special education trainings, and training is not mandatory. High employee turnover was also expressed as a problem in HISD. Training is provided to employees, and then they leave. The lack of expertise with school leaders relating to special education is a result of turnover and systemic communication breakdown.

There is no system in place, whether data driven or otherwise, to evaluate the effectiveness of professional development. The research department was asked by the special education department to focus on professional development data at the beginning of the 2019-2020 school year and for a survey report to be generated at the end of the year. This seems contradictory to the goal of student progress, as it has been a common theme that the turnover in the District is high and professional development is generally lost because of the turnover.

There is no assurance that accommodations are documented or that documentation is maintained. There is no current district wide system in place for general education teachers to document IEP goal progress, accommodation implementation, or to maintain related documentation. Each region's senior manager uses different rubrics to gather and assess data within his or her assigned area. There is no system in place to ensure the validity of behavior, compliance, and instruction data collected from campuses even though the data are used to determine a campus' tiered intervention level.

In addition to the findings above, it became clear from the interviews that there has been no consistent progress in terms of implementing the recommendations from any of the third-party reports (Hehir and AIR) or the Ad Hoc Committee report. It was also clear that implementation of the special education strategic plan has not been consistent. Interviewees reported that little progress has been made overall regarding the District meeting goals set out in any of the reports or the strategic plan. When asked why this was the case, the primary answer was that it was due to district and campus turnover through the years. Staff reported that they are incidentally

discussing components of the 3-Year Strategic Plan, but not looking at the plan itself. Another reason posed by the interviewees was the decentralization of the District. Because campuses operate on their own for the most part, district-level requirements and expectations are often not met, and special education programs differ from campus to campus in terms of efficacy. This is consistent with the findings of LBB Report.

HISD staff communicated that, after TEA notified the district about this investigation, there has been a significant increase in meeting frequency and discussions surrounding the 3-Year Strategic Plan, with some meetings starting as late as 10pm. These meetings appear to be in response to TEA's presence. Prior to the involvement of TEA, HISD staff reported that meetings regarding the progress measures of the 3-Year Strategic Plan were infrequent. Senior leadership in the special education department requested an updated data report from the Office of Research and Accountability regarding the 3-Year Strategic Plan within the two weeks of being interviewed by TEA. Per HISD staff members, the report should have been requested at the beginning of the year in order to design the proper metrics needed to track progress during the year. The request to immediately generate a progress measurement report for the 3-Year Strategic Plan was denied, and the response was that such a report would take multiple months to generate. These facts further confirm a lack of consistent data gathering for the 3-Year Strategic Plan and shows that urgency to update only came when district management in the HISD special education department was questioned by SIU about the stewardship of the 3-Year Strategic Plan. Although there is significant opportunity for professional development, the training in special education is not mandatory for general education teachers who work with students with disabilities. Staff conveyed that it was not surprising that the problems that appeared in the Heir Report resurfaced in the AIR Report and that they believed the District could do more.

Summary

This report finds that HISD has violated special education requirements. This noncompliance is significant, systemic, and widespread. The findings of this investigation mirror the significant shortcomings documented by the District dating back at least a decade with the release of the Hehir Report. The 2011 Hehir Report, the AIR Report published in 2018, and the 2018 Ad Hoc Committee report were conducted at the request of HISD leadership. The three reports document historic findings of noncompliance in many areas of special education. The 2018 Strategic Plan was designed to guide HISD in remedying the ongoing noncompliance. However, through this investigation, TEA has confirmed that these areas of noncompliance have continued despite HISD's knowledge of the scope and depth of the problem. While there is no one sole person, program, or provider that malignantly influenced the special education program in the District, it is apparent that HISD, in its current state, is unable, and perhaps unwilling, to conform to its obligations related to its students with disabilities. Commissioning studies is not enough. Action must be taken as a result. Therefore, SIU recommends the following corrective interventions to remedy the long lasting and systemic issues recognized, but never addressed, by the District.

Recommendation for Interventions

SIU recommends to the Commissioner of Education the following:

Conservator

After an extensive analysis of the HISD response, except where otherwise noted, TEA sustains the findings in its preliminary report and maintains the recommendation of appointing a conservator who will work with HISD to identify the issues that led to non-compliance and report to the agency on the development and implementation of a plan to address the issue in accordance with TEC §§39.057(d), 39A.001(2), and 39A.002(7).

The ongoing concerns and findings of noncompliance from the Hehir, AIR, and Ad Hoc Reports, the Strategic Plan and from this investigation show that HISD leadership has failed to create and implement systemic changes that correct the long-standing noncompliance in the District's special education program. Consequently, the SIU is recommending to the Commissioner of Education that a conservator be installed in HISD who will make directives, as necessary, to improve special education services in the District.

The Texas Education Code authorizes the Commissioner of Education to appoint a conservator to oversee the operations of the District.¹¹⁶ It should be noted that TEA has previously appointed Dr. Delores Delaney as a conservator for other matters. The appointment of a second conservator creates a management team.

The Texas Education Code further requires the Commissioner of Education "to clearly define the powers and duties of the conservator or management team appointed to oversee the operations of a school district."¹¹⁷ The nature of special education requires that the conservator be provided adequate power to effectuate change in many areas of the District. Special education issues permeate throughout the educational system and are not siloed into one specific system referred to as "special education." Indeed, the siloed approach to special education appears to be a primary cause of the District's deficiencies. Decentralization of power to individual campuses is listed in each report as a major issue in the District preventing central administrative staff from making corrective actions. Area superintendents do not hold principals accountable for special education services, and non-special education administrators often view providing special education services as a burden.

Students receiving special education services, in most cases, receive substantial services in the general education setting. General education teachers provide necessary accommodations. Campus administrators head ARD committees and ultimately hold their respective employees accountable for child find and providing services. District level officials must allow for appropriate campus staffing; transportation leaders must ensure specialized transportation; and the superintendent and area superintendents must ultimately hold campuses accountable for their performance as it relates to these issues. The ability of the conservator to direct these, and other similar areas, is required in order to effectuate necessary change. As a result, the duties and powers

¹¹⁶ Appendix V

¹¹⁷ Appendix V

assigned to the Conservator should be expansive enough to direct all areas affecting, or affected by, special education, even if not made immediately obvious by its name.

Needs and Barriers for Success

SIU identifies the following general needs to be addressed by the Conservator: 1) address the confusion and the inconsistent implementation of processes related to intervention and special education identification; 2) address the communication regarding and the implementation of new policies and procedures; 3) ensure that IEPs are individualized for students; 4) address issues of decentralization; and 5) ensure that parents are involved in making decisions related to their students' services.

The following barriers to success are identified for addressing the previously listed general needs: 1) HISD does not hold principals accountable for special education services or for the education of students with disabilities; 2) principals do not provide leadership regarding special education programs on their campuses; 3) families are often not engaged in the development of students' special education programs¹¹⁸; and 4) there is not sufficient oversight to ensure that students with disabilities are appropriately evaluated and provided the services they need, to ensure that HISD personnel are appropriately trained, or to ensure that training is implemented with fidelity across the district. It is critical that the conservator address these needs and utilize his or her powers to address the relevant barriers of success.

The agency reserves the right to implement all available interventions and sanctions under TEC Chapter 39A, and Title 19 Tex. Admin. Code, Chapter 97, to address the current, or and future, deficiencies identified for HISD.

¹¹⁸TEA's investigation did not substantiate this allegation. However, because deep concern about parent involvement has been identified in other reports and by community members, this report includes this as a matter to be addressed as necessary.

-TEXAS EDUCATION AGENCY-

HOUSTON

INDEPENDENT SCHOOL DISTRICT

SPECIAL ACCREDITATION INVESTIGATION



INV2018-08-031 & ER2019-01-002

Appendix

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Appendix A

34 CFR §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;

(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

(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.

Appendix B

34 CFR §300.501 Opportunity to examine records; parent participation in meetings:

(a) ***Opportunity to examine records.*** The parents of a 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) Each public agency 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 public agency 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 public agency 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) Each public agency 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 public agency 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 public agency 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 public agency is unable to obtain the parent's participation in the decision. In this case, the public agency must have a record of its attempt to ensure their involvement.

Appendix C

34 CFR §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 an LEA to adopt and use the term *developmental delay* for any children within its jurisdiction.

(3) If an LEA uses the term *developmental delay* for children described in § 300.8(b), the LEA 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 a State does not adopt the term *developmental delay*, an LEA 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.

Appendix D

34 CFR §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) Each public agency 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.

(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 public agency responsible for the education of the child in question; and

(ii) **Public expense** means that the public agency 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 public agency, 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 public agency 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.

(3) If the public agency files a due process complaint notice to request a hearing and the final decision is that the agency'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 public agency may ask for the parent's reason why he or she objects to the public evaluation. However, the public agency 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.

(c) Parent-initiated evaluations. If the parent obtains an independent educational evaluation at public expense or shares with the public agency an evaluation obtained at private expense, the results of the evaluation -

(1) Must be considered by the public agency, 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 public agency 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, a public agency may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.

Appendix E

34 CFR §300.303 Reevaluations:

(a) **General.** A public agency must ensure that a reevaluation of each child with a disability is conducted in accordance with §§300.304 through 300.311 -

(1) If the public agency 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 public agency agree otherwise; and

(2) Must occur at least once every 3 years, unless the parent and the public agency agree that a reevaluation is unnecessary.

Appendix F

19 TAC §89.1011. Full Individual and Initial Evaluation:

- (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 evidence-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 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.

Appendix G

34 CFR §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 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;
 - (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.

(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 public agency 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 public agency 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 public agency 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 eligibility.*

(1) Except as provided in paragraph (e)(2) of this section, a public agency 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, a public agency 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.

Appendix H

34 CFR §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 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.

(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).

(4) *Agreement.*

- (i)** In making changes to a child's IEP after the annual IEP Team meeting for a school year, the parent of a child with a disability and the public agency may agree not to convene an IEP Team 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 public agency must ensure that the child's IEP Team is informed of those changes.
-

(5) Consolidation of IEP Team meetings. To the extent possible, the public agency 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.

(b) Review and revision of IEPs -

(1) General. Each public agency must ensure that, subject to paragraphs (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;

(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. In conducting a review of the child's IEP, the IEP Team must consider the special factors described in paragraph (a)(2) of this section.

(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.

(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.

(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 section 612(a)(16) of the Act 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 (d)(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 300.114 (relating to LRE), do not apply with respect to the modifications described in paragraph (d)(2)(i) of this section.
-

Appendix I

19 TAC §89.1050. The Admission, Review, and Dismissal Committee:

(a) Each school 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 and 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 school district 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:

- (1) 34 CFR, §§300.320-300.325, and Texas Education Code (TEC), §29.005 (individualized education programs);
- (2) 34 CFR, §§300.145-300.147 (relating to placement of eligible students in private schools by a school district);
- (3) 34 CFR, §§300.132, 300.138, and 300.139 (relating to the development and implementation of service plans for eligible students placed by parents in private school who have been designated to receive special education and related services);
- (4) 34 CFR, §300.530 and §300.531, and TEC, §37.004 (disciplinary placement of students with disabilities);
- (5) 34 CFR, §§300.302-300.306 (relating to evaluations, re-evaluations, and determination of eligibility);
- (6) 34 CFR, §§300.114-300.117 (relating to least restrictive environment);
- (7) TEC, §28.006 (Reading Diagnosis);
- (8) TEC, §28.0211 (Satisfactory Performance on Assessment Instruments Required; Accelerated Instruction);
- (9) TEC, §28.0212 (Junior High or Middle School Personal Graduation Plan);
- (10) TEC, §28.0213 (Intensive Program of Instruction);
- (11) TEC, Chapter 29, Subchapter I (Programs for Students Who Are Deaf or Hard of Hearing);
- (12) TEC, §30.002 (Education for Children with Visual Impairments);
- (13) TEC, §30.003 (Support of Students Enrolled in the Texas School for the Blind and Visually Impaired or Texas School for the Deaf);
- (14) TEC, §33.081 (Extracurricular Activities);
- (15) TEC, Chapter 39, Subchapter B (Assessment of Academic Skills); and
- (16) TEC, §42.151 (Special Education).

(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.

(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) who must, to the extent practicable, be a teacher who is responsible for implementing a portion of the student's IEP;

(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.

(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.

(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.

(f) If the parent is unable to speak English, the school district must provide the parent with a written notice required under subsection (d) or (e)(2) of this section in the parent's native language, unless it is clearly not feasible to do so. If the parent's native language is not a written language, the school district must take steps to ensure that the notice is translated orally or by other means to the parent in his or her native language or other mode of communication so that the parent understands the content of the notice.

(g) 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) Each member of the ARD committee who disagrees with the IEP developed by the ARD committee is entitled to include a statement of disagreement in the IEP.

(h) 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, including providing the notice in the parent's native language or other mode of

communication. 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.

(i) 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.

(1) For purposes of this subsection, a written copy of the student's IEP translated into Spanish or the parent's native language means that all of the text in the student's IEP in English is accurately translated into the target language in written form. The IEP translated into the target language must be a comparable rendition of the IEP in English and not a partial translation or summary of the IEP in English.

(2) For purposes of this subsection, an audio recording of the student's IEP translated into Spanish or the parent's native language means that all of the content in the student's IEP in English is orally translated into the target language and recorded with an audio device. A school district is not prohibited from providing the parent with an audio recording of an ARD committee meeting at which the parent was assisted by an interpreter as long as the audio recording provided to the parent contains an oral translation into the target language of all of the content in the student's IEP in English.

(3) If a parent's native language is not a written language, the school district must take steps to ensure that the student's IEP is translated orally or by other means to the parent in his or her native language or other mode of communication.

(4) Under 34 CFR, §300.322(f), a school district must give a parent a written copy of the student's IEP at no cost to the parent. A school district meets this requirement by providing a parent with a written copy of the student's IEP in English or by providing a parent with a written translation of the student's IEP in the parent's native language in accordance with paragraph (1) of this subsection.

(j) 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.

(k) 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).

Appendix J

34 CFR §300.323 When IEPs must be in effect:

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

(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 public agency 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.

(c) Initial IEPs; provision of services. Each public agency 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.

(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 any 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.

(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.

(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 (e) 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.

Appendix K

34 CFR §300.322 Parent participation:

(a) *Public agency responsibility - general.* Each public agency 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) Identify 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 public agency 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 Team meeting without a parent in attendance.* A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend. In this case, the public agency 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 public agency 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 public agency must give the parent a copy of the child's IEP at no cost to the parent.

Appendix L

34 CFR §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 public agency 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.

Appendix M

19 TAC §74.28. Students with Dyslexia and Related Disorders:

(a) In order to support and maintain full educational opportunity for students with dyslexia and related disorders and consistent with federal and state law, school districts and open-enrollment charter schools shall provide each student with dyslexia or a related disorder access to each program under which the student qualifies for services.

(b) The board of trustees of a school district or the governing body of an open-enrollment charter school must ensure that procedures for identifying a student with dyslexia or a related disorder and for providing appropriate, evidence-based instructional services to the student are implemented in the district.

(c) A school district's or open-enrollment charter school's procedures must be implemented according to the State Board of Education (SBOE) approved strategies for screening, individualized evaluation, and techniques for treating dyslexia and related disorders. The strategies and techniques are described in the "Dyslexia Handbook: Procedures Concerning Dyslexia and Related Disorders " provided in this subsection. The handbook is a set of guidelines for school districts and open-enrollment charter schools that may be modified by the SBOE only with broad-based dialogue that includes input from educators and professionals in the field of reading and dyslexia and related disorders from across the state.

(d) Screening as described in the "Dyslexia Handbook: Procedures Concerning Dyslexia and Related Disorders" and further evaluation should only be conducted by individuals who are trained in valid, evidence-based assessments and who are trained to appropriately evaluate students for dyslexia and related disorders.

(e) A school district or open-enrollment charter school shall purchase a reading program or develop its own evidence-based reading program for students with dyslexia and related disorders that is aligned with the descriptors found in the "Dyslexia Handbook: Procedures Concerning Dyslexia and Related Disorders." Teachers who screen and treat these students must be trained in instructional strategies that use individualized, intensive, multisensory, phonetic methods and a variety of writing and spelling components described in the "Dyslexia Handbook: Procedures Concerning Dyslexia and Related Disorders. " The professional development activities specified by each open-enrollment charter school and district and/or campus planning and decision-making committee shall include these instructional strategies.

(f) At least five school days before any evaluation or identification procedure is used selectively with an individual student, the school district or open-enrollment charter school must provide written notification to the student's parent or guardian or another person standing in parental relation to the student of the proposed identification or evaluation. The notice must be in English, or to the extent practicable, the individual's native language and must include the following:

- (1) a reasonable description of the evaluation procedure to be used with the individual student;
 - (2) information related to any instructional intervention or strategy used to assist the student prior to evaluation;
 - (3) an estimated time frame within which the evaluation will be completed; and
 - (4) specific contact information for the campus point of contact, relevant Parent Training and Information Projects, and any other appropriate parent resources.
-

(g) Before a full individual and initial evaluation is conducted to determine whether a student has a disability under the Individuals with Disabilities Education Act (IDEA), the school district or open-enrollment charter school must notify the student's parent or guardian or another person standing in parental relation to the student of its proposal to conduct an evaluation consistent with 34 Code of Federal Regulations (CFR), §300.503, provide all information required under subsection (f) of this section, and provide:

- (1)** a copy of the procedural safeguards notice required by 34 CFR, §300.504;
- (2)** an opportunity to give written consent for the evaluation; and
- (3)** a copy of information required under Texas Education Code (TEC), §26.0081.

(h) Parents/guardians of a student with dyslexia or a related disorder must be informed of all services and options available to the student, including general education interventions under response to intervention and multi-tiered systems of support models as required by TEC, §26.0081(d), and options under federal law, including IDEA and the Rehabilitation Act, §504.

(i) Each school or open-enrollment charter school must provide each identified student access at his or her campus to instructional programs required in subsection (e) of this section and to the services of a teacher trained in dyslexia and related disorders. The school district or open-enrollment charter school may, with the approval of each student's parents or guardians, offer additional services at a centralized location. Such centralized services shall not preclude each student from receiving services at his or her campus.

(j) Because early intervention is critical, a process for early identification, intervention, and support for students at risk for dyslexia and related disorders must be available in each district and open-enrollment charter school as outlined in the "Dyslexia Handbook: Procedures Concerning Dyslexia and Related Disorders." School districts and open-enrollment charter schools may not use early intervention strategies, including multi-tiered systems of support, to delay or deny the provision of a full and individual evaluation to a child suspected of having a specific learning disability, including dyslexia or a related disorder.

(k) Each school district and open-enrollment charter school shall report through the Texas Student Data System Public Education Information Management System (TSDS PEIMS) the results of the screening for dyslexia and related disorders required for each student in Kindergarten and each student in Grade 1 in accordance with TEC, §38.003(a).

(l) Each school district and open-enrollment charter school shall provide a parent education program for parents/guardians of students with dyslexia and related disorders. This program must include:

- (1)** awareness and characteristics of dyslexia and related disorders;
 - (2)** information on testing and diagnosis of dyslexia and related disorders;
 - (3)** information on effective strategies for teaching students with dyslexia and related disorders;
 - (4)** information on qualifications of those delivering services to students with dyslexia and related disorders;
 - (5)** awareness of information on accommodations and modifications, especially those allowed for standardized testing;
 - (6)** information on eligibility, evaluation requests, and services available under IDEA and the Rehabilitation Act, §504, and information on the response to intervention process; and
 - (7)** contact information for the relevant regional and/or school district or open-enrollment charter school specialists.
-

(m) School districts and open-enrollment charter schools shall provide to parents of children suspected to have dyslexia or a related disorder a copy or a link to the electronic version of the "Dyslexia Handbook: Procedures Concerning Dyslexia and Related Disorders."

(n) School districts and open-enrollment charter schools will be subject to monitoring for compliance with federal law and regulations in connection with this section. School districts and open-enrollment charter schools will be subject to auditing and monitoring for compliance with state dyslexia laws in accordance with administrative rules adopted by the commissioner of education as required by TEC, §38.003(c-1).

Appendix N

19 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.

Appendix O

34 CFR §300.321 IEP Team:

(a) General. The public agency must ensure that the IEP Team for each child with a disability includes -

- (1)** The parents of the child;
- (2)** Not less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment);
- (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 public agency 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 public agency.
- (5)** An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in paragraphs (a)(2) through (a)(6) of this section;
- (6)** At the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and
- (7)** Whenever appropriate, the child with a disability.

(b) Transition services participants.

- (1)** In accordance with paragraph (a)(7) of this section, the public agency must invite a child with a disability to attend the child's IEP Team 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 public agency 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 public agency 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 public agency) who invited the individual to be a member of the IEP Team.

(d) Designating a public agency representative. A public agency may designate a public agency 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.

- (1)** A member of the IEP Team described in paragraphs (a)(2) through (a)(5) of this section is not required to attend an IEP Team meeting, in whole or in part, if the parent of a child with a disability and the public agency 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 paragraph (e)(1) of this section may be excused from attending an IEP Team 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 public agency 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.

(f) *Initial IEP Team 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 Team 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.

Appendix P

34 CFR §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 an intellectual disability, 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, 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 §300.39(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 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, subject to the conditions described in §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.

(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.

(iii) 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.

(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.

(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.

(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.

(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.

(6) **Intellectual disability** 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. The term "intellectual disability" was formerly termed "mental retardation."

(7) **Multiple disabilities** means concomitant impairments (such as intellectual disability-blindness or intellectual disability-orthopedic impairment), 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.

(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), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures).

(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.

(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 intellectual disability, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

(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.

(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.

(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.

Appendix O

34 CFR §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 (c) of this section and the educational needs of the child; and
 - (2) The public agency 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 as such section was in effect on the day before the date of enactment of the Every Student Succeeds Act (December 9, 2015));
 - (ii) Lack of appropriate 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, each public agency must -
 - (i) Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information 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.
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Appendix R

34 CFR §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.

(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 paragraphs (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 is similarly removed.

(4) After a child with a disability has been removed from his or her 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 LEA, the parent, and relevant members of the child's IEP Team (as determined by the parent and the LEA) 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 LEA's failure to implement the IEP.

(2) The conduct must be determined to be a manifestation of the child's disability if the LEA, 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 LEA, 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 LEA must take immediate steps to remedy those deficiencies.

(f) *Determination that behavior was a manifestation.* If the LEA, 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 LEA 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 LEA 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 a 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 a 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 a 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 LEA 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.

Appendix S

34 CFR §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 shall 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.

Appendix T

§ 300.304 Evaluation procedures:

(a) **Notice.** The public agency must provide notice to the parents of a child with a disability, in accordance with §300.503, that describes any evaluation procedures the agency proposes to conduct.

(b) **Conduct of evaluation.** In conducting the evaluation, the public agency must -

(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.** Each public agency 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 school 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.

Appendix U

34 CFR §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 in §300.306(a)(2), must contain 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, motor disability, or an intellectual disability; 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; and
 - (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.
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Appendix V

TEC §39A.002 Authorized Commissioner actions:

If a school district is subject to commissioner action under Section 39A.001, the commissioner may:

- (1) issue public notice of the deficiency to the board of trustees of the district;
 - (2) order a hearing to be conducted by the board of trustees of the district to notify the public of:
 - (A) the insufficient performance;
 - (B) the improvements in performance expected by the agency; and
 - (C) the interventions and sanctions that may be imposed under this subchapter if the performance does not improve;
 - (3) order the preparation of a student achievement improvement plan that addresses each academic achievement indicator under Section 39.053(c) for which the district's performance is insufficient, the submission of the plan to the commissioner for approval, and the implementation of the plan;
 - (4) order a hearing to be held before the commissioner or the commissioner's designee at which the president of the board of trustees of the district and the district's superintendent shall appear and explain the district's low performance, lack of improvement, and plans for improvement;
 - (5) arrange a monitoring review of the district;
 - (6) appoint an agency monitor to participate in and report to the agency on the activities of the board of trustees of the district or superintendent;
 - (7) appoint a conservator to oversee the operations of the district;
 - (8) appoint a management team to direct the operations of the district in areas of insufficient performance or require the district to obtain certain services under a contract with another person; or
 - (9) authorize the district to enter into a memorandum of understanding with an institution of higher education that provides for the assistance of the institution of higher education in improving the district's performance.
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Appendix W

TEC §39A.003 Powers and duties of a conservator of management team:

- (a)** The commissioner shall clearly define the powers and duties of a conservator or management team appointed to oversee the operations of a school district.
 - (b)** At least every 90 days, the commissioner shall review the need for the conservator or management team and shall remove the conservator or management team unless the commissioner determines that continued appointment is necessary for effective governance of the school district or delivery of instructional services.
 - (c)** A conservator or management team, if directed by the commissioner, shall prepare a plan for the implementation of the appointment of a board of managers under Section 39A.004 or the revocation of accreditation under Section 39A.005. The conservator or management team:
 - (1)** may direct an action to be taken by the principal of a campus, the superintendent of the school district, or the board of trustees of the district;
 - (2)** may approve or disapprove any action of the principal of a campus, the superintendent of the district, or the board of trustees of the district;
 - (3)** may not take any action concerning a district election, including ordering or canceling an election or altering the date of or the polling places for an election;
 - (4)** may not change the number of or method of selecting the board of trustees;
 - (5)** may not set a tax rate for the district; and
 - (6)** may not adopt a budget for the district that provides for spending a different amount, exclusive of required debt service, from that previously adopted by the board of trustees.
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Appendix X

TEC §39.058(a) Conduct of Special Accreditation Investigations:

(a) The agency shall adopt written procedures for conducting special accreditation investigations under this subchapter, including procedures that allow the agency to obtain information from district employees in a manner that prevents a district or campus from screening the information. The agency shall make the procedures available on the agency Internet website. Agency staff must be trained in the procedures and must follow the procedures in conducting the special accreditation investigation.
