

# Residential Facility Monitoring (RFM) Manual

**Program Monitoring and Interventions  
Texas Education Agency**

**Version 2.0  
August 2011**

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## **Section A: Introduction / Overview**

### **Residential Facility Monitoring (RFM) Background Information**

On April 15, 2004, the United States District Court issued a decision in the *Angel G. vs. Texas Education Agency* lawsuit and found that the Texas Education Agency (TEA) must develop a new monitoring system to ensure that students with disabilities residing in residential facilities (RFs) received a free, appropriate public education (FAPE). On May 17, 2004, TEA filed a Notice of Appeal in the United States Court of Appeals for the Fifth Circuit. During the pendency of the appeal, the parties agreed to the entry of a consent decree to resolve the disputes and to achieve a common goal of developing and implementing an effective monitoring system. The consent decree was filed with the District Court on August 8, 2005, with an automatic expiration date of December 31, 2010, unless either party requested that the District Court extend the term of the consent decree. Neither party requested an extension.

As a result of the findings identified in the implementation of the consent decree, the agency has identified an ongoing need to oversee and monitor the programs provided to students with disabilities who reside in RFs. Accordingly, the commissioner of education established the RF Monitoring (RFM) system, through which the TEA will meet its federal and state special education monitoring obligations for this population. In accordance with 19 Texas Administrative Code (TAC) §97.1072, the RFM system will be aligned to the greatest extent possible with existing systems of program monitoring, and provides for standards and procedures for monitoring the special education programs provided to students with disabilities residing in RFs. Additionally, the RFM system provides for the implementation of continuous improvement strategies, interventions, and sanctions to improve local education agency (LEA) performance and compliance with federal and state special education requirements for a unique and vulnerable population of students who often have limited access to family members who can advocate for their educational needs.

The RFM system is a component of a data-driven, results-based system of coordinated and aligned agency monitoring activities. Targeted and graduated interventions are implemented based on areas of risk as evidenced in historical monitoring data, longitudinal LEA performance, and LEA data submitted or available to the TEA. The system is designed to focus on program performance and effectiveness and program compliance with federal and state requirements and includes an annual analysis of data for each RF LEA in the state.

The results of the TEA's annual data analysis determine the type and extent of intervention activities in which an RF LEA must engage and the related level of TEA involvement. Intervention activities will focus on data analysis and disaggregation by RF LEAs and the TEA to determine and address causal factors for program ineffectiveness or noncompliance. At higher stages of intervention, the agency will conduct on-site visits to review a broad array of program effectiveness and compliance issues. The result of all intervention activities will be the development and implementation of a continuous improvement plan (CIP), with corrective actions, if needed. RF LEAs are responsible for improving program effectiveness and correcting noncompliance, with agency oversight to promote success and additional interventions and sanctions as necessary to secure program improvement and compliance.

### **Local Education Agencies (LEAs) Subject to the RFM System**

LEAs serving students with disabilities residing in RFs located within the LEAs' geographic boundaries and/or jurisdictions will be subject to the RFM system. LEAs subject to the RFM system are referenced as RF LEAs. Other state agencies that provide special education and related services to students with disabilities will not be subject to the RFM system. The definition of an RF for the purposes of the RFM system is a facility that provides 24-hour custody or care of students who reside in the facility for detention, treatment, foster care, or any non-educational purpose. An RF does not include traditional foster homes licensed by the Texas Department of Family and Protective Services (DFPS) as Foster Family Homes (Independent).

## **RFM Data Collection System**

The agency has adopted the *RF Tracker* data collection system as the method for collecting data regarding RF LEAs and students. This system is accessible through the TEA secure website. Information related to the provision of services to RF students is collected through the automated *RF Tracker* data collection system for each RF LEA that serves students with disabilities who reside in RFs within the geographic boundaries and/or jurisdiction of the LEA. Information concerning each RF, and students with disabilities who reside in the RF, is entered in the *RF Tracker* database. After the initial submission of data, RF LEAs will maintain the *RF Tracker* database with current information upon the enrollment and withdrawal of RF students in the LEA. Data from the *RF Tracker* system will be used to assist in the selection of RF LEAs for intervention activities. If selected for interventions, an RF LEA may be required to update *RF Tracker* data at certain intervals. Separate guidance documents will be developed by the TEA to support RF LEAs in their use of the *RF Tracker* data collection system.

## **Section B: Monitoring and Intervention Activities**

### **Introduction**

The Special Education Monitoring Unit of the Division of Program Monitoring and Interventions at the TEA is responsible for the implementation of integrated program review processes for special education programs that promote program effectiveness and ensure that state supervision and oversight requirements for special education programs are met as required by state and federal law.

RF monitoring and intervention activities occur in a continuous improvement model that is designed to promote the proactive and ongoing analysis of program and student data by RF LEAs. All RF LEAs will submit data to the agency through the *RF Tracker* system and will have available to them monitoring tools that will support the analysis of student and program data as the LEAs work toward continuous program improvement. While all RF LEAs will be subject to the RF monitoring system, not all RF LEAs will be required to engage in intervention activities during a given monitoring year.

RF LEAs that are selected for interventions will be assigned to graduated stages of intervention based on the results of TEA's data analysis. Required RF intervention activities will vary based on the stage of intervention to which an LEA is assigned. However, the activities at any stage of intervention will result in the development of a continuous improvement plan, with corrective actions, as appropriate, to promote improved program effectiveness for students with disabilities who reside in an RF.

At the lower stages of intervention, RF LEAs will be required to engage in local student-level data reviews, focused data analyses, and system analyses that will support the development and implementation of a CIP, including corrective actions. Specific areas of analysis will be defined for each stage of intervention. At the higher stages of intervention, RF LEAs will be required to engage in, or will be subject to, a detailed review of LEA compliance with certain investigatory topics that are aligned to the unique circumstances of RF students. Those investigatory topics include: the development of individualized education programs (IEPs) by a properly constituted admission, review, and dismissal (ARD) committee, including trained surrogate parents; the use of current evaluation data in the development of IEPs; IEP implementation; least restrictive environment (LRE); educational benefit; certified and qualified staff; commensurate school day; timely and sufficient provision of related services; implementation of behavior plans and disciplinary practices; transition services; extended school year (ESY) services; and participation in the state assessment program. RF intervention activities and improvement planning will occur in a team environment, with required and recommended participants. This group of individuals, or core analysis team, will be involved in the required intervention activities, including the data analysis, the determination of areas for improvement and/or correction, the development of the CIP, and the evaluation of the results of the monitoring process.

The TEA will conduct follow-up activities related to RF interventions, including a review of RF LEAs' submissions, approval of CIPs with corrective actions, verification of corrective action implementation subsequent to approval of an RF LEA's CIP, and verification of correction of any identified noncompliance. If verification indicates that an RF LEA has not implemented RFM requirements in accordance with 19 TAC §97.1072 and this manual and/or corrected identified noncompliance within one calendar year from the date of notification of findings, the RF LEA will be subject to interventions and sanctions as referenced in 19 TAC §97.1072 and Section E of this manual.

## **RFM Intervention Activities**

The basic intervention activities that comprise the RFM system include student-level data reviews, focused data analyses, system analyses, LEA program compliance reviews, on-site compliance reviews, on-site corrective action reviews, and on-site continuing compliance verification visits. A brief description of each activity is provided below.

### **Student-Level Review**

The student-level review will require an RF LEA to collect and analyze specific data for a defined sample of RF students. The TEA will provide specific sampling guidelines to determine which student folders will be reviewed in the defined areas of analysis for each stage of intervention. The guidelines will include the review of students across all grade levels, campuses, RFs, areas of disability, and other related factors. The scope of sampling may be determined by the stage of intervention. The data to be collected as part of the student-level review may include items such as, but not limited to, RF name, date of most current evaluation, teachers' names, surrogate parent assignment and training, participation in the state assessments program, student retention/promotion, student attendance, student credit accrual, discipline determinations and assignments, least restrictive environment, length of school day, transition, and parent participation in ARD committee meetings. The data collected will be recorded in the applicable student-level review template.

### **Focused Data Analysis**

Through the focused data analysis (FDA), the LEA will work with the core analysis team to examine the data collected in the student-level review to formulate discussions around defined analysis topics related to the provision of services to RF students and determine any factors that might contribute to program ineffectiveness or noncompliance. Certain probes for consideration will be included as part of the focused data analysis, with a goal of gathering information necessary to address identified issues in the CIP.

### **System Analysis**

The system analysis is designed to evaluate and summarize the results of the student-level review and FDA to identify data trends and systemic program issues related to areas for improvement and noncompliance with program requirements.

### **LEA Program Compliance Review**

An LEA program compliance review (PCR) will include a comprehensive compliance review conducted by the core analysis team to identify LEA performance on the defined investigatory topics included in Section C of this manual. An RF LEA conducting a program compliance review will analyze all investigatory topics in the manner detailed in Section C. The purpose of the review will be to complete a comprehensive evaluation of the effectiveness of the program for RF students and determine compliance with federal and state requirements.

### **On-Site Program Compliance Review**

An on-site program compliance review will include a comprehensive compliance review conducted by the TEA to identify LEA performance on the defined investigatory topics included in Section C of this manual. In conducting a program compliance review, the TEA will analyze all investigatory topics in the manner detailed in Section C. The purpose of the review will be to complete a comprehensive evaluation of the effectiveness of the program for RF students and determine compliance with federal and state requirements.

### **Corrective Action Review**

A corrective action review will include a targeted on-site review by the TEA to selected RF LEAs who are currently implementing a CIP with corrective actions to verify timely and substantial progress toward implementation of corrective action activities to ensure that activities are leading to improved program effectiveness and correction of identified noncompliance.

### **Continuing Compliance Verification Visit**

A continuing compliance verification visit will include a targeted on-site review by the TEA to selected RF LEAs who have previously completed a CIP with corrective actions to verify that correction of noncompliance has been sustained after completion of the CIP.

## **RFM Stages of Intervention**

**Stage 1 Intervention:** *Student-Level Review, Focused Data Analysis, and System Analysis.* At this level of intervention, the RF LEA will conduct a student-level data review and focused data analysis related to the areas of least restrictive environment, commensurate school day, surrogate parent, and educational benefit. Additionally, the LEA will conduct a system analysis related to certain overarching program requirements. The purpose of the student-level data review, focused data analysis, and system analysis is to analyze probes and/or data sets to identify data trends, systemic program issues, and/or areas of noncompliance with program requirements and address identified issues in the CIP, with corrective actions if noncompliance is identified. The RF LEA will complete all intervention activities by a specified completion date and retain all documentation and resource materials, subject to a random and/or stratified request for submission to the TEA for review and verification. If the LEA identifies areas of noncompliance with federal and state requirements, the corrective action portion of the CIP must be submitted to the agency by a specified due date.

**Stage 2 Intervention:** *Student-Level Review, Focused Data Analysis, and System Analysis.* At this level of intervention, the RF LEA will conduct a student-level data review and focused data analysis related to the areas of least restrictive environment, commensurate school day, surrogate parent, educational benefit, individualized education program (IEP) implementation, certified/qualified staff, and participation in state assessments. The purpose of the student-level data review, focused data analysis, and system analysis is to analyze probes and/or data sets to identify data trends, systemic program issues, and/or areas of noncompliance with program requirements and address identified issues in the CIP, with corrective actions if noncompliance is identified. Documentation of all required activities will be submitted to the TEA by a specified due date.

**Stage 3 Intervention:** *Student-Level Review, Focused Data Analysis, System Analysis, and LEA Program Compliance Review (PCR).* An RF LEA identified at this level of intervention will conduct the activities in Stage 2 Intervention in addition to a comprehensive program compliance review related to each investigatory topic referenced in Section C of this manual. The purpose of the LEA-conducted PCR is to complete a comprehensive evaluation of the effectiveness of the program for RF students and determine compliance with federal and state requirements. Identified issues will be addressed in the CIP, with corrective actions if noncompliance is identified. Documentation of all required activities will be submitted to the TEA by a specified due date.

**Stage 4 Intervention:** *Program Compliance Review (PCR).* A comprehensive on-site review by the TEA will be conducted to review each investigatory topic referenced in Section C of this manual and to determine the accuracy of the data submitted by the LEA in *RF Tracker* and other reporting systems. The TEA will complete a comprehensive evaluation of the effectiveness of the program for RF students and determine compliance with federal and state special education requirements for students with disabilities residing in RFs. Prior to the on-site review, the LEA will be required to conduct a student-level review and submit the results of the review to the TEA. Subsequent to the on-site review, the TEA will issue a written report of findings to the RF LEA, and the LEA will be required to develop and submit to the TEA a CIP, with corrective actions if noncompliance is identified by a specified due date.

**Stage 4A Intervention:** *Corrective Action Review (CAR).* A targeted on-site review by the TEA will be conducted with selected LEAs currently implementing a CIP with corrective actions to verify timely and substantial progress toward implementation of corrective action activities to ensure that activities are leading to improved program effectiveness and correction of identified noncompliance. If the TEA determines that an RF LEA is not completing activities outlined in CIP and/or correcting identified noncompliance, or if new noncompliance is identified, the TEA will issue correspondence related to its findings. The LEA will be required to modify its CIP and submit the modified plan to the TEA by a specified due date.

**Stage 4B Intervention:** *Continuing Compliance Verification Visit (CCVV).* A targeted on-site review by the TEA will be conducted with selected RF LEAs that previously have completed a CIP with corrective actions to verify that the LEA has sustained the correction of noncompliance. If TEA findings indicate that correction of noncompliance has not been sustained, the TEA will issue a new report of findings. The report also will contain any new areas of noncompliance that are identified during the review. The RF LEA will be required to develop and submit to the TEA a CIP, with corrective actions, by a specified due date.

The guidance documents for each stage of intervention and templates needed to conduct these various activities can be found at [www.tea.state.tx.us/pmi](http://www.tea.state.tx.us/pmi).

### **Continuous Improvement Planning Process**

A core component of virtually all intervention activities is the continuous improvement plan. The CIP is a cohesive document developed by a team of LEA representatives that:

- prioritizes activities to improve program effectiveness for RF students and address program noncompliance;
- describes desired results and goals;
- identifies how progress will be measured;
- determines activities that will be implemented to reach desired results and goals;
- identifies resources that are needed;
- establishes timelines for achieving desired results and goals;
- includes strategies and alternatives in the event initial activities are not as effective as anticipated; and
- can, as appropriate, be integrated into other local improvement planning processes.

### **Corrective Actions**

When noncompliance with state and/or federal statute, regulations, or rules for special education programs is identified, RF LEAs will be required to develop corrective actions to address the noncompliance. Corrective actions will be included within the CIP as part of the continuous improvement planning process and will include specific systems, steps, and initiatives that the RF LEA will put in place to address identified concerns. The RF LEA is required to correct any noncompliance items as soon as possible, but in no case may the correction take longer than one calendar year from the date of identification of noncompliance. Failure to correct noncompliance within required timelines will result in elevated interventions or sanctions as referenced in Section E of this manual.

### **Selection of LEAs for RFM Interventions**

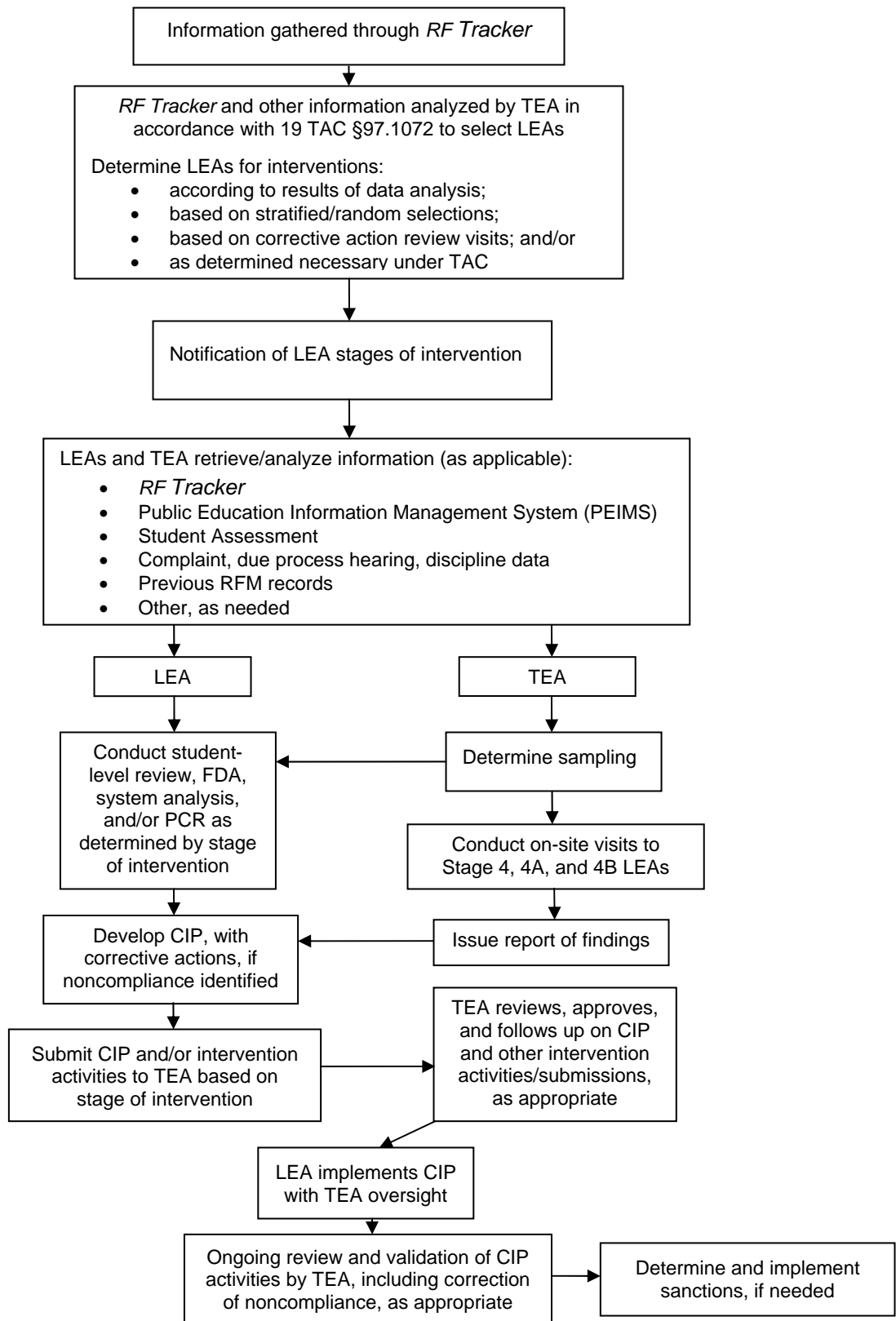
The TEA will select a number of RF LEAs annually for RF monitoring and intervention activities. Selection determinations will be made based upon the criteria referenced in 19 TAC §97.1072(c), (d), and (i), including a review of data reported by RF LEAs and/or random selection. Selected RF LEAs will be assigned to various stages of intervention as referenced above, with interventions ranging from LEA-based analysis and planning activities to on-site visits conducted by the TEA. As noted above, in addition to comprehensive compliance visits, on-site visits will be conducted to a number of LEAs that received RFM visits in the previous school year and were required to implement a CIP with corrective actions and other RF LEAs that received visits in prior years and that have completed a CIP with corrective actions. As a system safeguard, the TEA also may conduct a number of on-site visits to RF LEAs not originally staged for interventions to verify system effectiveness and/or LEA implementation of RFM requirements, including, but not limited to, accuracy of data reported through *RF Tracker* and other data reporting systems, timely and sufficient implementation of monitoring and intervention activities, and/or implementation of CIPs.

### **Additional Information for LEAs Involved in Other Interventions**

LEAs conducting Performance-Based Monitoring (PBM) intervention activities for one or more PBM program areas are required to establish a core analysis team to participate in data analysis and improvement planning. A list of the required core analysis team participants is available in the guidance documents for the PBM program areas. RF LEAs involved in PBM interventions are encouraged to combine and/or consolidate RFM and PBM team members to promote a more comprehensive analysis and enhanced collaboration, which could lead to more integrated strategies for addressing findings across programs.



## Overview of RFM System



## ***Section C: RFM Investigatory Topics***

### **Background Information**

Tools to guide the program compliance review by LEA and TEA teams have been developed to address the investigatory topics listed below.

1. Properly Constituted Admission, Review, and Dismissal (ARD) Committee
2. Surrogate Parents and Foster Parents
3. Current Evaluation
4. Individualized Education Program (IEP) Implementation
5. Least Restrictive Environment (LRE)
6. Educational Benefit
7. Certified/Qualified Staff
8. Commensurate School Day
9. Related Services Provision
10. Behavior/Discipline
11. Transition Services
12. Extended School Year (ESY) Services
13. Participation in State Assessment Program

For each investigatory topic, information has been included to provide additional details regarding specific sampling strategies that will be used in the review, data sources that will be considered, patterns or trends that will result in further investigation, and any other strategies that will be used to facilitate the review. Additionally, for each topic under review, a template is developed to reflect: 1) the statutory or regulatory requirement under review, including the IDEA 2004 as codified in the United States Code (USC), the Code of Federal Regulations (CFR), the Texas Education Code (TEC), and the Texas Administrative Code (TAC); 2) the investigatory questions to be reviewed by the LEA or TEA team; and 3) other investigatory considerations as applicable to the topic.

## Sources of Data for Investigatory Topics

Investigatory Topic	<i>RF Tracker</i>	Student- Level Review	PEIMS	Student Assessment	On-Site Data
Properly Constituted ARD Committee		✓			✓
Surrogate / Foster Parents	✓	✓			✓
Current Evaluation		✓			✓
IEP Implementation					✓
Least Restrictive Environment	✓	✓	✓		✓
Educational Benefit			✓	✓	✓
Certified / Qualified Staff		✓			✓
Commensurate School Day	✓	✓			✓
Related Services Provision	✓	✓	✓		✓
Behavior / Discipline		✓	✓		✓
Transition Services	✓	✓			✓
Extended School Year Services		✓	✓		✓
Participation in State Assessment		✓		✓	✓

<b>Investigatory Topics</b>	<b>Individualized Education Program (IEP) Development by a Properly Constituted ARD Committee, Including Trained Surrogate Parents, and Based upon Current Evaluation Data; Implementation of Same</b>
<b>Sampling</b>	<p>For these investigatory topics, the sample will be focused on students who have reached the age of majority, students with assigned surrogate parents, students with foster parents, and students who were not represented by a parent at the ARD committee meeting. However, folders and programs of other RF students also will be reviewed to verify compliance with requirements. If patterns of a particular practice or evidence of possible systemic noncompliance emerge, the review team will focus its sampling to verify findings. Within the folders selected, consideration will be given to:</p> <ul style="list-style-type: none"> <li>• the instructional arrangement in which RF students receive services;</li> <li>• the residential facility in which RF students reside;</li> <li>• the LEA campus on which RF students receive services;</li> <li>• students to whom a given surrogate parent is assigned; and</li> <li>• the date on which students' most recent full and individual evaluation or reevaluation was completed.</li> </ul>
<b>Data Sources</b>	<p>Data to Review:</p> <ul style="list-style-type: none"> <li>• <b>RF Tracker Data</b></li> <li>• <b>Student-Level Review Data</b></li> <li>• <b>Document Review:</b> ARD/IEP documentation; evaluation schedules; surrogate training documentation; LEA policies, procedures, and guidelines</li> <li>• <b>Interviews:</b> Adult student, parent/guardian, foster parents, surrogate parents, RF staff, teachers, administrators, diagnostic staff, related service personnel</li> </ul>
<b>Further Investigation</b>	<p>As the review of folders is conducted and data are analyzed, the review team may identify possible patterns of practices, trends, and/or indications of individual or systemic noncompliance that may require further investigation to verify the findings. Examples:</p> <ul style="list-style-type: none"> <li>• General education teachers never attend ARD committee meetings for students in certain instructional arrangements;</li> <li>• Most / all RF students are represented by a surrogate parent;</li> <li>• No RF students are represented by a surrogate parent;</li> <li>• RF staff members are serving as surrogate parents and/or signing as parents;</li> <li>• Interviews with parents, students, LEA, or RF staff responses indicate concerns with surrogate parent assignments for RF students;</li> <li>• Most / all RF students residing at an RF are routinely assigned the same special education eligibility upon enrollment; or</li> <li>• Interviews with parents, students, LEA, or RF staff responses indicate concerns with eligibility determinations for RF students.</li> </ul>
<b>Review Strategies</b>	<p>As the review proceeds, the review team may determine a need to gather additional data by conducting specific, individual interviews to verify findings. Additionally, the review team may determine that a review of LEA data in the form of training logs, data management system reports, or additional classroom/student observations is necessary to verify findings on this item.</p>

**Investigatory Topic: Properly Constituted ARD Committee**

Requirement	Investigatory Questions	Investigatory Considerations
<p><b>34 CFR §300.321. IEP team.</b></p> <p>(a) General. The public agency must ensure that the IEP team for each child with a disability includes—</p> <p>(1) The parents of the child;</p> <p>(2) Not less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment);</p> <p>(3) Not less than one special education teacher of the child, or where appropriate, not less than one special education provider of the child;</p> <p>(4) A representative of the public agency who—</p> <p>(i) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;</p> <p>(ii) Is knowledgeable about the general curriculum; and</p> <p>(iii) Is knowledgeable about the availability of resources of the public agency;</p>	<p>I. Is there evidence that the current IEP was developed by a properly constituted ARD committee, including trained surrogate parents when appropriate?</p> <p>Evidence of attendance at an ARD committee meeting generally is documented by the participant's signature on the ARD/IEP document. However, if it is determined that a person not in attendance at the ARD committee meeting signed the document without attending the meeting, noncompliance has been identified for that member of the ARD committee.</p> <p>A. A properly constituted ARD committee is evidenced if the following members of the committee were in attendance (subject to allowable exclusions) and participated in the development of the current IEP:</p> <p>1. The student with a disability 18 years of age or older who retains their rights to represent him- or herself.</p> <p>If YES, skip to I.A.3. pertaining to the regular education teacher.</p> <p>If the student is of age and has not had rights removed legally, the student represents himself or herself. If an individual who has not been granted guardianship or authority under a valid power of attorney signs in place of the adult student or if a surrogate parent is assigned in this situation, noncompliance has been identified.</p> <p>2. The <b>parent</b> of the student with a disability; including:</p> <ul style="list-style-type: none"> <li>• natural or adoptive parent;</li> <li>• guardian; or</li> <li>• person acting in place of the parent.</li> </ul> <p>If a guardian represents a student who is a ward of the state, ensure that the guardian does not also represent the state. If a guardian who also represents the state is serving as the parent in this circumstance, noncompliance has been identified.</p> <p>If any one of the individuals above who meets the requirements to serve as either adult student or parent is present, move on to I.A.3. pertaining to the regular education teacher.</p>	<p>Unless a student's parent or other individual has been granted guardianship of the student under the Probate Code, Chapter XIII, Guardianship, all rights granted to the parent under the IDEA, Part B, other than the right to receive any notice required under IDEA, Part B, will transfer to the student upon reaching age 18.</p> <p>In accordance with 34 CFR §300.520(a)(2), and TEC §29.017(a), all rights accorded to a parent under IDEA, Part B, including the right to receive any notice required by IDEA, Part B, will transfer to an 18-year-old student who is incarcerated in an adult or juvenile, state or local correctional institution, unless the student's parent or other individual has been granted guardianship of the student under the Probate Code, Chapter XIII, Guardianship.</p> <p>Nothing described above prohibits a valid power of attorney from being executed by an individual who holds rights under the IDEA.</p> <p>If the guardian of a student who is a ward of the state also represents the state, the guardian may not serve as the student's parent for the purposes of special education decision-making, except as permitted by 34 CFR §300.300(a)(2)(iii) regarding consent for initial evaluations.</p> <p>A person acting in place of the parent includes individuals such as a grandparent or stepparent with whom the child lives, or a person who is legally responsible for the child's welfare. The term "parent" under IDEA 2004 does not include an RF staff member.</p>

**Investigatory Topic: Properly Constituted ARD Committee**

Requirement	Investigatory Questions	Investigatory Considerations
	<p>However, if it is necessary for the LEA to assign a surrogate parent to the student, topic II. related to <b>surrogate parents</b> and foster parents must be reviewed before compliance with I.A.2. <b>parent</b> can be determined.</p> <p>If the student is represented by a foster parent, topic II. related to surrogate parents and <b>foster parents</b> must be reviewed before compliance with I.A.2. <b>parent</b> can be determined. Items II.G. and II.H. reflect requirements related to foster parents acting as parents.</p> <p>If the adult student, parent, surrogate parent, or foster parent was not present at the ARD committee meeting, review A1.E. to determine compliance with parent participation requirements.</p>	

**Investigatory Topic: Properly Constituted ARD Committee**

Requirement	Investigatory Questions	Investigatory Considerations
<p>(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;</p> <p>(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</p> <p>(7) Whenever appropriate, the child with a disability.</p> <p>(b) Transition services participants.</p> <p>(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)</p>	<p>3. Not less than one <b>regular education teacher</b> of the child (if the child is, or may be, participating in the regular education environment).</p> <p>A regular education teacher of the child, as a member of the ARD committee, shall, to the extent appropriate, participate in the development of the IEP of the child, including the determination of appropriate positive behavioral interventions and supports, and other strategies, and the determination of supplementary aids and services, program modifications, and support for school personnel.</p> <p>4. Not less than one <b>special education teacher</b> of the child, or if appropriate, not less than one special education provider of the child.</p> <p>If the student is identified as having visual impairments, hearing impairment or deaf-blindness, then the following personnel may serve as the special education teacher.</p> <p>a. A teacher who is certified in the education of students with visual impairments must attend each ARD committee meeting or individualized family service plan (IFSP) meeting of a student with a visual impairment, including deaf-blindness.</p> <p>b. A teacher who is certified in the education of students with auditory impairments must attend each ARD committee meeting or IFSP meeting of a student with an auditory impairment, including deaf-blindness.</p>	<p>A member of the ARD committee referenced in I.A.3. through I.A.6. shall not be required to attend an IEP meeting, in whole or in part, if the parent of a child with a disability and the local educational agency agree in writing that the attendance of such member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting.</p> <p>A member of the ARD committee as described above may be excused from attending an IEP meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related services, if the following occurs:</p> <ul style="list-style-type: none"> <li>• the parent, in writing, and the local educational agency consent to the excusal; and</li> <li>• the member submits, in writing to the parent and the ARD committee, input into the development of the IEP prior to the meeting.</li> </ul> <p>If a required member of the ARD committee as identified in I.A.3. through I.A.6. did not attend the meeting, and if the parent did not agree <u>in writing</u> to that member's lack of attendance or excusal from the meeting, noncompliance has been identified.</p>

**Investigatory Topic: Properly Constituted ARD Committee**

<b>Requirement</b>	<b>Investigatory Questions</b>	<b>Investigatory Considerations</b>
<p>(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.</p> <p>(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.</p> <p>(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.</p>	<p>5. A <b>representative of the LEA</b> who is</p> <ol style="list-style-type: none"> <li>a. qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;</li> <li>b. knowledgeable about the general curriculum; and</li> <li>c. knowledgeable about the availability of resources of the LEA.</li> </ol> <p>6. An <b>individual who can interpret the instructional implications of evaluation results</b>, who may be a member of the team described in I.A.3. through I.A.7.</p> <p>7. At the discretion of the parent or the LEA, <b>other individuals who have knowledge or special expertise regarding the child</b>, including related services personnel as appropriate.</p> <p>8. <b>the student</b>, if appropriate.</p> <p>B. If the purpose of the current ARD committee meeting was to consider the student's transition services needs or needed transition services, or if the student is 16 years of age or older, there is evidence of the following:</p> <ol style="list-style-type: none"> <li>1. The student was invited;</li> <li>2. If the student did not attend, the LEA took other steps to ensure that the student's preferences and interests were considered;</li> <li>3. The LEA invited a representative(s) of any other agency that is likely to be responsible for providing or paying for transition services; and</li> </ol>	<p>An LEA may designate another LEA member of the ARD committee to also serve as the agency representative, if the criteria in I.A.5. a.-c. are satisfied.</p> <p>The determination of the knowledge or special expertise of any individual described in I.A.7. must be made by the party (parents or LEA) who invited the individual to be a member of the ARD committee.</p> <p>If the LEA does not have documentation that I.B.1. through I.B.3. were implemented for a student, noncompliance has been identified.</p>



**Investigatory Topic: Properly Constituted ARD Committee**

Requirement	Investigatory Questions	Investigatory Considerations
<p>(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.</p> <p><b>19 TAC §75.1023. Provisions for Individuals Who Are Members of Special Populations. (excerpt)</b></p> <p>(d)(1) The ARD committee shall include a representative from career and technical education, preferably the teacher, when considering initial or continued placement of a student in a career and technical education program.</p> <p><b>19 TAC §89.1230. Eligible Students with Disabilities. (excerpt)</b></p> <p>(b) A professional member of the language proficiency assessment committee shall serve on the admission, review, and dismissal (ARD) committee of each limited English proficient student who qualifies for services in the special education program.</p>	<p>C. If the ARD committee is considering initial or continued placement in the career and technical education (CTE) program, is there evidence that a representative from CTE, preferably the teacher, is included at the ARD committee meeting?</p> <p>D. If the student is limited English proficient, is there evidence that a professional member of the language proficiency assessment committee (LPAC) is included at the ARD committee meeting?</p> <p>E. Is there evidence that, when conducting an ARD committee meeting without the parent’s attendance, the LEA has recorded its attempts to arrange a mutually agreed upon time and place or establish an alternative means for conducting the meeting, and does the evidence of attempts include information such as:</p> <ol style="list-style-type: none"> <li>1. Documented efforts to use alternative means of meeting participation, such as video conferences or conference calls;</li> <li>2. Detailed records of telephone calls made or attempted and the results of those calls;</li> <li>3. Copies of correspondence sent to the parents and any responses received; or</li> <li>4. Detailed records of visits made to the parent’s home or place of employment and the results of those visits?</li> </ol> <p>If parent(s) are not in attendance, and if evidence of the LEA’s attempts to secure parent participation is not available, noncompliance has been identified.</p>	<p>If a required member of the ARD committee as identified in I.C. through I.D. did not attend the meeting, noncompliance has been identified.</p>

**Investigatory Topic: Properly Constituted ARD Committee**

<b>Requirement</b>	<b>Investigatory Questions</b>	<b>Investigatory Considerations</b>
<p><b>34 CFR §300.322. Parent participation. (excerpt)</b></p> <p>(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—</p> <p>(1) Detailed records of telephone calls made or attempted and the results of those calls;</p> <p>(2) Copies of correspondence sent to the parents and any responses received; and</p> <p>(3) Detailed records of visits made to the parent's home or place of employment and the results of those visits.</p>		

**Investigatory Topic: Properly Constituted ARD Committee**

**Other Requirements**

**34 CFR §300.321. IEP Team. (excerpt)**

- (e) IEP Team attendance.
  - (1) A member of the IEP Team described in paragraph (a)(2) through (a)(5) of this section is not required to attend an IEP Team meeting, in whole or 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 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.

**34 CFR §300.520. Transfer of parental rights at age of majority. (excerpt)**

- (a) General. A State may provide that, when a child with a disability reaches the age of majority under State law that applies to all children (except for a child with a disability who has been determined to be incompetent under State law)—
  - (1) (i) The public agency must provide any notice required by this part to both the child and the parents; and
  - (ii) All other rights accorded to parents under Part B of the Act transfer to the child;
  - (2) All rights accorded to parents under Part B of the Act transfer to children who are incarcerated in an adult or juvenile, State or local correctional institution; and
  - (3) Whenever a State provides for the transfer of rights under this part pursuant to paragraph (a)(1) or (a)(2) of this section, the agency must notify the child and the parents of the transfer of rights.

**TEC §29.017. Transfer of Parental Rights at Age of Majority.**

- (a) A student with a disability who is 18 years of age or older or whose disabilities of minority have been removed for general purposes under Chapter 31, Family Code, shall have the same right to make educational decisions as a student without a disability, except that the school district shall provide any notice required by this subchapter or 20 U.S.C. Section 1415 to both the student and the parents. All other rights accorded to parents under this subchapter or 20 U.S.C. Section 1415 transfer to the student.
- (b) All rights accorded to parents under this subchapter or 20 U.S.C. Section 1415 transfer to students who are incarcerated in an adult or juvenile, state or local correctional institution.
- (c) In accordance with 34 C.F.R. Section 300.517, the school district shall notify the student and the parents of the transfer of rights under this section.
- (d) The commissioner shall adopt rules implementing the provisions of 34 C.F.R. Section 300.517(b).

## Investigatory Topic: Properly Constituted ARD Committee

### Other Requirements (continued)

#### 19 TAC §89.1049. Parental Rights Regarding Adult Students.

- (a) In accordance with 34 Code of Federal Regulations (CFR), §300.320(c) and §300.520, and Texas Education Code (TEC), §29.017, beginning at least one year before a student reaches 18 years of age, the student's individualized education program (IEP) must include a statement that the student has been informed that, unless the student's parent or other individual has been granted guardianship of the student under the Probate Code, Chapter XIII, Guardianship, all rights granted to the parent under the Individuals with Disabilities Education Act (IDEA), Part B, other than the right to receive any notice required under IDEA, Part B, will transfer to the student upon reaching age 18. After the student reaches the age of 18, except as provided by subsection (b) of this section, the school district shall provide any notice required under IDEA, Part B, to both the adult student and the parent.
- (b) In accordance with 34 CFR, §300.520(a)(2), and TEC, §29.017(a), all rights accorded to a parent under IDEA, Part B, including the right to receive any notice required by IDEA, Part B, will transfer to an 18-year-old student who is incarcerated in an adult or juvenile, state or local correctional institution unless the student's parent or other individual has been granted guardianship of the student under the Probate Code, Chapter XIII, Guardianship.
- (c) In accordance with 34 CFR, §300.520(a)(3), a school district must notify in writing the adult student and parent of the transfer of parental rights, as described in subsections (a) and (b) of this section, at the time the student reaches the age of 18. This notification is separate and distinct from the requirement that the student's IEP include a statement relating to the transfer of parental rights beginning at least one year before the student reaches the age of 18. This notification is not required to contain the elements of notice referenced in 34 CFR, §300.503, but must include a statement that parental rights have transferred to the adult student and provide contact information for the parties to use in obtaining additional information.
- (d) A notice under IDEA, Part B, which is required to be given to an adult student and parent does not create a right for the parent to consent to or participate in the proposal or refusal to which the notice relates. For example, a notice of an admission, review, and dismissal (ARD) committee meeting does not constitute invitation to, or create a right for, the parent to attend the meeting. However, in accordance with 34 CFR, §300.321(a)(6), the adult student or the school district may invite individuals who have knowledge or special expertise regarding the student, including the parent.
- (e) Nothing in this section prohibits a valid power of attorney from being executed by an individual who holds rights under IDEA, Part B.

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

- (c) ARD committee membership.
  - (1) ARD committees shall include those persons identified in 34 CFR, §300.321(a), as follows:
    - (A) the parent(s) of the child;
    - (B) not less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment);
    - (C) not less than one special education teacher of the child, or where appropriate, not less than one special education provider of the child;
    - (D) a representative of the school district who:

**Investigatory Topic: Properly Constituted ARD Committee**

**Other Requirements (continued)**

- (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 school district;
- (E) an individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in subparagraphs (B)-(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 child, including related services personnel, as appropriate; and
- (G) whenever appropriate, the child with a disability.
- (2) The regular education teacher who serves as a member of a student's ARD committee should be a regular education teacher who is responsible for implementing a portion of the student's IEP.
- (3) The special education teacher or special education provider that participates in the ARD committee meeting in accordance with 34 CFR, §300.321(a)(3), must be appropriately certified or licensed as required by 34 CFR, §300.18 and §300.156.
- (4) If the student is:
- (A) a student with a suspected or documented visual impairment, the ARD committee shall 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 shall 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 shall 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.
- (5) An ARD committee member, including a member described in subsection (c)(4) of this section, 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.

**Investigatory Topic: Surrogate Parents and Foster Parents**

Requirement	Investigatory Questions	Investigatory Considerations
<p><b>34 CFR §300.519. Surrogate parents.</b></p> <p>(a) General. Each public agency must ensure that the rights of a child are protected when—</p> <p>(1) No parent (as defined in §300.30) can be identified;</p> <p>(2) The public agency, after reasonable efforts, cannot locate a parent;</p> <p>(3) The child is a ward of the State under the laws of that State; or</p> <p>(4) The child is an unaccompanied homeless youth as defined in section 725(6) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(6)).</p> <p>(b) Duties of public agency. The duties of a public agency under paragraph (a) of this section include the assignment of an individual to act as a surrogate for the parents. This must include a method—</p> <p>(1) For determining whether a child needs a surrogate parent; and</p> <p>(2) For assigning a surrogate parent to the child.</p>	<p>II. Is there evidence that when a surrogate parent is required to be assigned, the LEA does the following:</p> <p>A. Before assigning a surrogate parent, the LEA determines that one of the following is true:</p> <ol style="list-style-type: none"> <li>1. no parent can be identified;</li> <li>2. the LEA, after reasonable efforts, cannot discover the whereabouts of a parent;</li> <li>3. the student is a ward of the State; or</li> <li>4. the student is an unaccompanied homeless youth as defined in section 725(6) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(6)).</li> </ol> <p>If the LEA assigned a surrogate parent to an adult student who has retained rights to represent him- or herself, noncompliance has been identified for item II.A. and I.A.1. If the LEA has assigned a surrogate parent to a student with parents who retain parental rights, noncompliance has been identified for item II.A. and I.A.2.</p> <p>B. When selecting and assigning a surrogate parent to represent a student with disabilities, the LEA must have evidence of the following:</p> <ol style="list-style-type: none"> <li>1. the individual is not an employee of the TEA, the LEA, or any other agency that is involved in the education or care of the child;</li> <li>2. the individual has no personal or professional interest that conflicts with the interest of the child he or she represents; and</li> <li>3. the individual has knowledge and skills that ensure adequate representation of the child.</li> </ol> <p>If the LEA has assigned a surrogate parent who does not meet the requirements of II.B., noncompliance has been identified.</p>	<p>Each LEA shall develop and implement procedures for conducting an analysis of whether a potential surrogate parent has a personal or professional interest that conflicts with the interests of his/her child.</p> <p>Prior to October 13, 2006, an LEA had the option to select as a surrogate parent a person who was an employee of a nonpublic agency that provided only non-educational care for the child and who met the standards in II.B.1 through II.B.3. Effective October 13, 2006, the new federal regulation concerning surrogate parents, 34 CFR §300.519, eliminated this option. At 70 Federal Register 35809, the U.S. Department of Education indicated that this option was being eliminated “to ensure that surrogates do not have interests that conflict with the interest of the child.” Therefore, an employee of an RF cannot serve as the surrogate parent for students residing within that RF.</p> <p>A person who otherwise qualifies to be a surrogate is not an employee of the LEA solely because he or she receives payment from the LEA for rendering services as a surrogate parent (e.g., travel costs are reimbursed, etc.)</p>

**Investigatory Topic: Surrogate Parents and Foster Parents**

Requirement	Investigatory Questions	Investigatory Considerations
<p>(c) Wards of the State. In the case of a child who is a ward of the State, the surrogate parent alternatively may be appointed by the judge overseeing the child's case, provided that the surrogate meets the requirements in paragraphs (d)(2)(i) and (e) of this section.</p> <p>(d) Criteria for selection of surrogate parents.</p> <p>(1) The public agency may select a surrogate parent in any way permitted under State law.</p> <p>(2) Public agencies must ensure that a person selected as a surrogate parent—</p> <p>(i) Is not an employee of the SEA, the LEA, or any other agency that is involved in the education or care of the child;</p> <p>(ii) Has no personal or professional interest that conflicts with the interest of the child the surrogate parent represents; and</p> <p>(iii) Has knowledge and skills that ensure adequate representation of the child.</p>	<p>C. Is there evidence that the LEA assigned a surrogate parent within 30 days after determination that the student needed a surrogate parent?</p> <p>D. Is there evidence that the individual selected to serve as a surrogate parent has:</p> <ol style="list-style-type: none"> <li>1. Visited the student and the student's school.</li> <li>2. Consulted with persons involved in the student's education, including teachers, caseworkers, court-appointed volunteers, guardians ad litem, attorneys ad litem, foster parents, and caretakers.</li> <li>3. Reviewed the child's educational records.</li> <li>4. Attended meetings of the child's ARD committee.</li> <li>5. Exercised independent judgment in pursuing the child's interests.</li> <li>6. Exercised the child's due process rights under applicable state and federal law.</li> </ol> <p>The individual assigned must satisfy the requirements listed in II.D.1.-5., and may have implemented II.D.6., when appropriate. If a surrogate has not implemented a required responsibility, noncompliance has been identified.</p> <p>If the number of students assigned to an individual surrogate parent impacts the ability of the surrogate to adequately represent the interests of the student as referenced in II.D. above, noncompliance has been identified.</p>	<p>The individual assigned must implement the responsibilities listed in II.D.1.-5., and may have implemented II.D.6., when appropriate.</p> <p>Timing of assignment in relationship to a review may impact the surrogate's ability to implement certain responsibilities. If 30 days have not yet elapsed as referenced in II.C., a surrogate parent may not have had the opportunity to implement the requirements reflected in II.D.</p> <p>If documentation is not available, the review team may be required to interview the individual assigned to serve as the surrogate parent to determine if responsibilities have been implemented.</p> <p>If the individual assigned to serve as a surrogate parent represents four (4) or more RF students with disabilities at the same time, the review team must interview the individual and determine the extent to which the individual has fulfilled their required responsibilities before determining compliance with II.D. and I.A.2.</p>

**Investigatory Topic: Surrogate Parents and Foster Parents**

Requirement	Investigatory Questions	Investigatory Considerations
<p>(e) Non-employee requirement; compensation. A person otherwise qualified to be a surrogate parent under paragraph (d) of this section is not an employee of the agency solely because he or she is paid by the agency to serve as a surrogate parent.</p> <p>(f) Unaccompanied homeless youth. In the case of a child who is an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary surrogate parents without regard to paragraph (d)(2)(i) of this section, until a surrogate parent can be appointed that meets all of the requirements of paragraph (d) of this section.</p> <p>(g) Surrogate parent responsibilities. The surrogate parent may represent the child in all matters relating to—</p> <p>(1) The identification, evaluation, and educational placement of the child; and</p> <p>(2) The provision of FAPE to the child.</p>	<p>F. Is there evidence that the individual selected to serve as a surrogate parent has completed the following:</p> <ol style="list-style-type: none"> <li>1. A training program, within 90 days of assignment as a surrogate parent.</li> <li>2. The training program includes an explanation of the provisions of federal and state laws, rules, and regulations relating to:               <ol style="list-style-type: none"> <li>a. The identification of a student with a disability;</li> <li>b. The collection of evaluation and reevaluation data relating to a student with a disability;</li> <li>c. The ARD committee process;</li> <li>d. The development of an IEP and, for a student who is at least 16 years of age, the inclusion of transition planning activities in the IEP;</li> <li>e. The determination of least restrictive environment;</li> <li>f. The implementation of an IEP;</li> <li>g. The Procedural Safeguards; and</li> <li>h. The sources that the surrogate parent may contact to obtain assistance in understanding the provisions of federal and state laws, rules, and regulations relating to students with disabilities.</li> </ol> </li> <li>3. The training program was provided in the native language or other mode of communication used by the individual who is to serve as a surrogate parent, when appropriate.</li> </ol> <p>If a surrogate has not received training as required in II.F., noncompliance has been identified. If, after 90 days have elapsed as referenced in II.F.1., a surrogate parent has not been trained, noncompliance has been identified not only in II.F. but also in I.A.2. related to parent attendance at ARD.</p>	<p>All training components listed must be included in the training and the training must be completed within the timeline. It is expected that the training program will provide an opportunity for interaction between the LEA and the person trained to serve in the role.</p>



**Investigatory Topic: Surrogate Parents and Foster Parents**

Requirement	Investigatory Questions	Investigatory Considerations
(h) SEA responsibility. The SEA must make reasonable efforts to ensure the assignment of a surrogate parent not more than 30 days after a public agency determines that the child needs a surrogate parent.		

**Other Requirements**

**TEC §29.001. Statewide Plan. (excerpt)**

The agency shall develop, and modify as necessary, a statewide design, consistent with federal law, for the delivery of services to children with disabilities in this state that includes rules for the administration and funding of the special education program so that a free appropriate public education is available to all of those children between the ages of three and 21. The statewide design shall include the provision of services primarily through school districts and shared services arrangements, supplemented by regional education service centers. The agency shall also develop and implement a statewide plan with programmatic content that includes procedures designed to:

- (10) ensure that an individual assigned to act as a surrogate parent for a child with a disability, as provided by 20 U.S.C. Section 1415(b) and its subsequent amendments, is required to:
  - (A) complete a training program that complies with minimum standards established by agency rule;
  - (B) visit the child and the child's school;
  - (C) consult with persons involved in the child's education, including teachers, caseworkers, court-appointed volunteers, guardians ad litem, attorneys ad litem, foster parents, and caretakers;
  - (D) review the child's educational records;
  - (E) attend meetings of the child's admission, review, and dismissal committee;
  - (F) exercise independent judgment in pursuing the child's interests; and
  - (G) exercise the child's due process rights under applicable state and federal law.

**Investigatory Topic: Surrogate Parents and Foster Parents**

Requirement	Investigatory Questions	Investigatory Considerations
<p><b>34 CFR §300.30 Parent</b></p> <p>(a) Parent means—</p> <p>(1) A biological or adoptive parent of a child;</p> <p>(2) A foster parent, unless State law, regulations, or contractual obligations with a State or local entity prohibit a foster parent from acting as a parent;</p> <p>(3) A guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child (but not the State if the child is a ward of the State);</p> <p>(4) An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or</p> <p>(5) A surrogate parent who has been appointed in accordance with §300.519 or section 639(a)(5) of the Act.</p>	<p>G. Is there evidence that, when the student with a disability is represented by a foster parent, the LEA does one of the following:</p> <ol style="list-style-type: none"> <li>1. assigns the foster parent as the student's <b>parent</b>. If YES, skip to II.H. and complete II.H. and II.I. If NO, go to II.G.2.</li> <li>2. assigns the foster parent as the <b>surrogate parent</b>. If YES, skip to II.I. If NO, review II.G.3 below.</li> <li>3. denies the foster parent the right to serve as parent or surrogate parent and assigns another individual to serve as the surrogate parent. If YES, skip to II.J., and go back to II.A. and conduct a surrogate parent analysis for the appointed surrogate parent.</li> </ol> <p>H. Is there evidence that the foster parent selected to represent the student as the <b>parent</b> meets the following requirements:</p> <ol style="list-style-type: none"> <li>1. the Department of Family and Protective Services (DFPS) is appointed as the temporary or permanent managing conservator of the student;</li> <li>2. the student has been placed with the foster parent for at least 60 days;</li> <li>3. the foster parent agrees to participate in making educational decisions on the student's behalf;</li> <li>4. the foster parent completes a training program for surrogate parents that complies with minimum standards established by agency rule (go to II.I. to complete compliance review); and</li> <li>5. the foster parent has no interest that conflicts with the student's interests.</li> </ol>	<p>If the requirements of II.H. are not met, the foster parent may not serve as the student's parent for the purposes of special education decision-making. However, in these circumstances, the foster parent still may be chosen as the student's surrogate parent if all applicable requirements for serving as a surrogate parent are met.</p> <p>Each LEA shall develop and implement procedures for conducting an analysis of whether a foster parent or potential surrogate parent has an interest that conflicts with the interests of his/her child. A foster parent in a home which is verified by the DFPS or a child-placing agency shall not be deemed to have a financial conflict of interest by virtue of serving as the foster parent in that home. These homes include, but are not limited to, basic, habilitative, primary medical, or therapeutic foster or foster group homes. In addition, issues concerning quality of care of the child do not constitute a conflict of interest. Concerns regarding quality of care of the child should be communicated, and may be statutorily required to be reported, to the DFPS.</p>

**Investigatory Topic: Surrogate Parents and Foster Parents**

Requirement	Investigatory Questions	Investigatory Considerations
<p>(b) (1) Except as provided in paragraph (b)(2) of this section, the biological or adoptive parent, when attempting to act as the parent under this part and when more than one party is qualified under paragraph (a) of this section to act as a parent, must be presumed to be the parent for purposes of this section unless the biological or adoptive parent does not have legal authority to make educational decisions for the child.</p> <p>(2) If a judicial decree or order identifies a specific person or persons under paragraphs (a)(1) through (4) of this section to act as the “parent” of a child or to make educational decisions on behalf of a child, then such person or persons shall be determined to be the “parent” for purposes of this section.</p>	<p>I. Is there evidence that the foster parent selected to serve as a <b>parent</b> or <b>surrogate parent</b> has completed the following:</p> <ol style="list-style-type: none"> <li>1. A training program, within 90 days of assignment as a surrogate parent?</li> <li>2. The training program includes an explanation of the provisions of federal and state laws, rules, and regulations relating to:               <ol style="list-style-type: none"> <li>a. The identification of a student with a disability;</li> <li>b. The collection of evaluation and reevaluation data relating to a student with a disability;</li> <li>c. The ARD committee process;</li> <li>d. The development of an IEP and, for a student who is at least 16 years of age, the inclusion of transition planning activities in the IEP;</li> <li>e. The determination of least restrictive environment;</li> <li>f. The implementation of an IEP;</li> <li>g. The Procedural Safeguards; and</li> <li>h. The sources that the surrogate parent may contact to obtain assistance in understanding the provisions of federal and state laws, rules, and regulations relating to students with disabilities.</li> </ol> </li> <li>3. The training program was provided in the native language or other mode of communication used by the individual who is to serve as a surrogate parent, when appropriate?</li> </ol> <p>If a foster parent has not received training as required in II.1., noncompliance has been identified. If, after 90 days have elapsed as referenced in II.1.1., a foster parent has not been trained, noncompliance has been identified not only in II.1. but also in I.A.2. related to parent attendance at ARD.</p>	<p>Once an individual has completed a training program conducted or provided by or through the DFPS, an LEA, education service center, or any entity that receives federal funds to provide IDEA training to parents, the individual shall not be required by any LEA to complete additional training in order to continue serving as the student's surrogate parent or to serve as the surrogate parent for other students with disabilities.</p> <p>LEAs may provide ongoing or additional training to surrogate parents and/or parents; however, an LEA cannot deny an individual who has received the required training from serving as a surrogate parent on the grounds that the individual has not been trained.</p>

**Investigatory Topic: Surrogate Parents and Foster Parents**

Requirement	Investigatory Questions	Investigatory Considerations
<p><b>TEC §29.015. Foster Parents.</b></p> <p>(a) The school district shall give preferential consideration to a foster parent of a child with a disability when assigning a surrogate parent for the child.</p> <p>(b) A foster parent may act as a parent of a child with a disability, as authorized under 20 U.S.C. Section 1415(b) and its subsequent amendments, if:</p> <p>(1) the Department of Protective and Regulatory Services is appointed as the temporary or permanent managing conservator of the child;</p> <p>(2) the child has been placed with the foster parent for at least 60 days;</p> <p>(3) the foster parent agrees to:</p> <p>(A) participate in making educational decisions on the child's behalf; and</p> <p>(B) complete a training program for surrogate parents that complies with minimum standards established by agency rule; and</p>	<p>J. If the LEA denied the foster parent the right to serve as the parent or surrogate parent, is there evidence the LEA provided the foster parent with written notice:</p> <ol style="list-style-type: none"> <li>1. within seven calendar days after the date on which the decision is made;</li> <li>2. that specifies the reason(s) the foster parent is being denied the right to serve as the surrogate parent or parent (the notice must specifically explain the interests of the foster parent that conflict with the interests of his/her child); and</li> <li>3. that also informs the foster parent of his/her right to file a complaint with the Texas Education Agency in accordance with 34 CFR, §§300.151–300.153, relating to complaint procedures.</li> </ol>	

**Investigatory Topic: Surrogate Parents and Foster Parents**

Requirement	Investigatory Questions	Investigatory Considerations
<p>(4) the foster parent has no interest that conflicts with the child's interests.</p> <p>(c) A foster parent who is denied the right to act as a surrogate parent or a parent under this section by a school district may file a complaint with the agency in accordance with federal law and regulations.</p>		

Other Requirements
<p><b>19 TAC §89.1047. Procedures for Surrogate and Foster Parents.</b></p> <p>(a) An individual assigned to act as a surrogate parent for a student with a disability, in accordance with 34 Code of Federal Regulations (CFR), §300.519, relating to surrogate parents, must comply with the requirements specified in Texas Education Code (TEC), §29.001(10).</p> <p>(1) Pursuant to TEC, §29.001(10)(A), an individual assigned to act as a surrogate parent must complete a training program in which the individual is provided with an explanation of the provisions of federal and state laws, rules, and regulations relating to:</p> <ul style="list-style-type: none"> <li>(A) the identification of a student with a disability;</li> <li>(B) the collection of evaluation and re-evaluation data relating to a student with a disability;</li> <li>(C) the admission, review, and dismissal (ARD) committee process;</li> <li>(D) the development of an individualized education program (IEP), including the consideration of transition services for a student who is at least 16 years of age;</li> <li>(E) the determination of least restrictive environment;</li> <li>(F) the implementation of an IEP;</li> <li>(G) the procedural rights and safeguards available under 34 CFR, §§300.148, 300.151-300.153, 300.229, 300.300, 300.500-300.520, 300.530-300.537, and 300.610-300.627, relating to the issues described in 34 CFR, §300.504(c); and</li> <li>(H) the sources that the surrogate parent may contact to obtain assistance in understanding the provisions of federal and state laws, rules, and regulations relating to students with disabilities.</li> </ul>

## Investigatory Topic: Surrogate Parents and Foster Parents

### Other Requirements (continued)

- (2) The training program described in subsection (a)(1) of this section must be provided in the native language or other mode of communication used by the individual who is to serve as a surrogate parent.
  - (3) The individual assigned to act as a surrogate parent must complete the training program described in subsection (a)(1) of this section within 90 calendar days after the date of initial assignment as a surrogate parent.. Once an individual has completed a training program conducted or provided by or through the Texas Department of Family and Protective Services (TDFPS), a school district, an education service center, or any entity that receives federal funds to provide Individuals with Disabilities Education Act (IDEA) training to parents, the individual shall not be required by any school district to complete additional training in order to continue serving as the student's surrogate parent or to serve as the surrogate parent for other students with disabilities. School districts may provide ongoing or additional training to surrogate parents and/or parents; however, a district cannot deny an individual who has received the training as described in subsection (a)(1) of this section from serving as a surrogate parent on the grounds that the individual has not been trained.
  - (4) A school district should provide or arrange for the provision of the training program described in subsection(a)(1) of this section prior to assigning an individual to act as a surrogate parent but no later than 90 calendar days after assignment.
- (b) A foster parent may act as a parent of a child with a disability, in accordance with 34 CFR, §300.30, relating to the definition of parent, if he/she complies with the requirements of TEC, §29.015(b), relating to foster parents, including the completion of the training program described in subsection(a)(1) of this section.
- (1) The foster parent must complete the training program described in subsection (a)(1) of this section within 90 calendar days after the date of initial assignment as the parent,. Once a foster parent has completed a training program conducted or provided by the TDFPS, a school district, an education service center, or any entity that receives federal funds to provide IDEA training to parents, the foster parent shall not be required by any school district to complete additional training in order to continue serving as his/her child's surrogate parent or parent or to serve as the surrogate parent or parent for other students with disabilities. School districts may provide ongoing or additional training to foster parents and/or parents; however, a district cannot deny an individual who has received the training as described in subsection (a)(1) of this section from serving as the parent on the grounds that the individual has not been trained.
  - (2) A school district should provide or arrange for the provision of the training program described in subsection (a)(1) of this section prior to assigning a foster parent to act as a parent but no later than 90 calendar days after assignment.
- (c) Each school district or shared services arrangement shall develop and implement procedures for conducting an analysis of whether a foster parent or potential surrogate parent has an interest that conflicts with the interests of his/her child. A foster parent in a home which is verified by the TDFPS or a child-placing agency shall not be deemed to have a financial conflict of interest by virtue of serving as the foster parent in that home. These homes include, but are not limited to, basic, habilitative, primary medical, or therapeutic foster or foster group homes. In addition, issues concerning quality of care of the child do not constitute a conflict of interest. Concerns regarding quality of care of the child should be communicated, and may be statutorily required to be reported, to TDFPS.
- (d) If a school district denies a foster parent the right to serve as a surrogate parent or parent, the school district must provide the foster parent with written notice of such denial within seven calendar days after the date on which the decision is made. The written notice shall:
- (1) specify the reason(s) the foster parent is being denied the right to serve as the surrogate parent or parent (the notice must specifically explain the interests of the foster parent that conflict with the interests of his/her child); and
  - (2) inform the foster parent of his/her right to file a complaint with the Texas Education Agency in accordance with 34CFR, §§300.151–300.153, relating to complaint procedures.

**Investigatory Topic: Current Evaluation**

Requirement	Investigatory Questions	Investigatory Considerations
<p><b>34 CFR §300.303. Reevaluation.</b></p> <p>(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—</p> <p>(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</p> <p>(2) If the child's parent or teacher requests a reevaluation.</p> <p>(b) Limitation. A reevaluation conducted under paragraph (a) of this section—</p> <p>(1) May occur not more than once a year, unless the parent and the public agency agree otherwise; and</p> <p>(2) Must occur at least once every 3 years, unless the parent and the public agency agree that a reevaluation is unnecessary.</p> <p><b>34 CFR §300.324. Development, review, and revision of IEP. (excerpt)</b></p> <p>(a) Development of IEP.</p> <p>(1) General. In developing each child's IEP, the IEP team must consider—</p>	<p>III. Is there evidence that the Individualized Education Program (IEP) was developed based upon current evaluation data?</p> <p>A. Current evaluation data are evidenced if:</p> <p>1. The student with a disability has a full and individual evaluation (FIE) that is not more than 3 years old.</p> <p align="center"><b>OR</b></p> <p>2. Documentation exists in the eligibility folder to support that a group of individuals and other qualified professionals conducted a review of existing data and determined that no additional data were needed and the reasons for it;</p> <p align="center"><b>and</b></p> <p>3. The public agency notified the child's parents of the determination not to test and the reasons for it; and of the right of the parents to request an evaluation.</p> <p>If the eligibility folder of the student has a current evaluation as referenced in III.1. above, the review is complete and compliance has been identified.</p> <p>If there is documentation to support the decision that additional testing was not required and documentation also supports that parents were informed and did not request an evaluation as referenced in III.2. and III.3 above, compliance has been identified.</p> <p>If the LEA does not have documentation related to the decision not to test, noncompliance has been identified.</p> <p>If the LEA does not document that parents were notified of the determination not to test and their right to request an evaluation, noncompliance has been identified.</p>	<p>The determination regarding whether a reevaluation is current must be based on the “anniversary date” of the last evaluation conducted. The anniversary date is defined as the “on or before date” of the last evaluation. For a reevaluation, the documentation must verify that the previous evaluation was conducted not more than three years prior to the reevaluation.</p> <p>An ARD meeting is not required to determine that additional data are not needed in deciding whether a student continues to be a student with a disability with a need for special education services.</p>

**Investigatory Topic: Current Evaluation**

Requirement	Investigatory Questions	Investigatory Considerations
<p>(i) The strengths of the child;</p> <p>(ii) The concerns of the parents for enhancing the education of their child;</p> <p>(iii) The results of the initial or most recent evaluation of the child; and</p> <p>(iv) The academic, developmental, and functional needs of the child.</p> <p><b>34 CFR §300.304. Evaluation procedures. (excerpt)</b></p> <p>(b) Conduct of evaluation. In conducting the evaluation, the public agency must—</p> <p>(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—</p> <p>(i) Whether the child is a child with a disability under §300.8; and</p> <p>(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);</p>	<p>B. Is there evidence that the most current FIE was conducted by appropriately credentialed/certified evaluation personnel?</p> <p>1. Evidence that personnel assigned to conduct the FIE were appropriately credentialed and certified; and</p> <p>2. Evidence that the FIE contains the signatures of multidisciplinary team members.</p> <p>If the student was evaluated by credentialed/certified personnel, compliance has been identified.</p> <p>If student was not evaluated by credentialed/certified personnel, noncompliance has been identified.</p> <p>C. Is there evidence that the evaluation is sufficiently comprehensive to identify all of the student's special education and related services needs?</p> <p>1. Evidence that the student was tested in all academic and nonacademic areas related to the suspected disability, including, if appropriate:</p> <p>a. physical (such as health, vision, hearing, motor abilities etc.);</p> <p>b. communicative status;</p> <p>c. emotional/social status;</p> <p>d. general intelligence;</p> <p>e. academic/functional performance.</p> <p>2. Evidence that the FIE was conducted by required members of the multidisciplinary team and that the report contains the signatures of multidisciplinary team members, as appropriate.</p> <p>If the FIE addresses all areas of suspected disability, compliance has been identified.</p> <p>If the FIE does not address all areas of suspected disability or if not all required team members participated, noncompliance has been identified.</p>	<p>Evaluation personnel may include, but are not limited to, Educational Diagnosticians, Licensed Specialists in School Psychology, Occupational Therapists, Physical Therapists, and Speech Pathologists.</p> <p>The evaluation would include information on the areas listed in III.C.1., if appropriate. For example, an evaluation for a nonverbal student would include an evaluation of the communicative status of the student.</p> <p>Additional team members are necessary when conducting an evaluation to determine the presence of a learning disability. Additional group members include the student's regular teacher, or, if the child does not have a regular teacher, a regular classroom teacher qualified to teach a student of his or her age; or for a child of less than school age, an individual qualified to teach a child of his or her age and at least one person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or remedial reading teacher.</p>



**Investigatory Topic: Current Evaluation**

Requirement	Investigatory Questions	Investigatory Considerations
<p>(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</p> <p>(3) Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.</p> <p>(c) Other evaluation procedures. Each public agency must ensure that—</p> <p>(1) Assessments and other evaluation materials used to assess a child under this part—</p> <p>(iv) Are administered by trained and knowledgeable personnel;</p> <p>(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.</p> <p>(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;</p>	<p>D. Is there evidence that the ARD committee draws upon required information to determine whether the student is a student with a disability and the student’s educational need for special education and related services?</p> <p>1. The ARD committee, in interpreting evaluation data for the purpose of determining eligibility and educational need, draws upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations as well as information about the student’s physical condition, social or cultural background, and adaptive behavior.</p> <p align="center"><b>and</b></p> <p>2. The ARD committee ensures that information obtained from the sources listed above is documented and carefully considered.</p> <p>3. If it is determined by the ARD committee that the student is a student with a disability with an educational need for special education and related services, an IEP must be developed for the student.</p> <p>If the eligibility folder of the student has a current evaluation with recommendations regarding the academic/functional performance and competencies/needs of the student, and they have been addressed by the ARD committee in the development of the IEP, including goals and benchmarks, compliance has been identified.</p> <p>If the eligibility folder of the student has a current evaluation with recommendations regarding the academic/ functional competencies/needs of the student and they have not been addressed by the ARD committee in the development of the IEP, including goals and benchmarks, noncompliance has been identified.</p>	

**Investigatory Topic: Current Evaluation**

<b>Requirement</b>	<b>Investigatory Questions</b>	<b>Investigatory Considerations</b>
<p>(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.</p> <p>(7) Assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided.</p> <p><b>34 CFR §300.305. Additional requirements for evaluations and reevaluations. (excerpt)</b></p> <p>(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-</p> <p>(1) Review existing evaluation data on the child, including—</p> <ul style="list-style-type: none"> <li>(i) Evaluations and information provided by the parents of the child;</li> <li>(ii) Current classroom-based, local, or State assessments, and classroom-based observations; and</li> </ul>		

**Investigatory Topic: Current Evaluation**

<b>Requirement</b>	<b>Investigatory Questions</b>	<b>Investigatory Considerations</b>
<p>(iii) Observations by teachers and related services providers; and</p> <p>(2) On the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine—</p> <p>(i)(A) Whether the child is a child with a disability, as defined in §300.8, and the educational needs of the child; or</p> <p>(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;</p> <p>(ii) The present levels of academic achievement and related developmental needs of the child;</p> <p>(iii)(A) Whether the child needs special education and related services; or</p> <p>(B) In the case of a reevaluation of a child, whether the child continues to need special education and related services; and</p> <p>(iv) Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual</p>		

**Investigatory Topic: Current Evaluation**

<b>Requirement</b>	<b>Investigatory Questions</b>	<b>Investigatory Considerations</b>
<p>goals set out in the IEP of the child and to participate, as appropriate, in the general education curriculum.</p> <p>(b) Conduct of review, The group described in paragraph (a) of this section may conduct its review without a meeting.</p> <p>(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.</p> <p>(d) Requirements if additional data are not needed.</p> <p>(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—</p> <p>(i) That determination and the reasons for the determination; and</p> <p>(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.</p>		

**Investigatory Topic: Current Evaluation**

Requirement	Investigatory Questions	Investigatory Considerations
<p>(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.</p>		

Other Requirements
<p><b>34 CFR §300.301. Initial evaluations. (excerpt)</b></p> <p>(a) General. Each public agency must conduct a full and individual initial evaluation, in accordance with §§300.304 through 300.306, before the initial provision of special education and related services to a child with a disability under this part.</p> <p>(c) Procedures for initial evaluation. The initial evaluation—</p> <p>(1) (i) Must be conducted within 60 days of receiving parental consent for the evaluation; or</p> <p>(2) Must consist of procedures—</p> <p>(i) To determine if the child is a child with a disability under §300.8; and</p> <p>(ii) To determine the educational needs of the child.</p> <p><b>34 CFR §300.306. Determination of eligibility. (excerpt)</b></p> <p>(c) Procedures for determining eligibility and education need.</p> <p>(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—</p> <p>(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</p> <p>(ii) Ensure that information obtained from all of these sources is documented and carefully considered.</p> <p>(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.</p>

Investigatory Topic: Current Evaluation

Other Requirements (continued)

**34 CFR §300.323. When IEPs must be in effect. (excerpt)**

- (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.
- (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.

**34 CFR §300.324. Development, review, and revision of IEP. (excerpt)**

- (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.

**Investigatory Topic: Individualized Education Program (IEP) Implementation**

Requirement	Investigatory Questions	Investigatory Considerations
<p><b>34 CFR §300.323. When IEPs must be in effect. (excerpt)</b></p> <p>(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.</p> <p>(c) Initial IEPs; provision of services, Each public agency must ensure that—</p> <p>(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.</p> <p>(d) Accessibility of child's IEP to teachers and others. Each public agency must ensure that—</p> <p>(1) The child's IEP is accessible to each regular education teacher, special education teacher, related service provider, and other service provider who is responsible for its implementation; and</p> <p>(2) Each teacher and provider described in paragraph (d)(1) of this section is informed of—</p> <p>(i) His or her specific responsibilities related to implementing the child's IEP; and</p>	<p>IV. Is there evidence that the Individualized Education Program (IEP) for the student has been implemented as developed by the ARD committee?</p> <p>1. For a student that has received an initial evaluation and has been determined eligible for special education services, evidence in the student's eligibility folder indicates that special education and related services were provided to the student only after the consent for placement was obtained from the parent.</p> <p align="center"><b>or</b></p> <p>For a student previously determined to be eligible for special education and related services, evidence in the student's most recent IEP indicates that the IEP is still in effect (IEP must be within 1 calendar year of its development to be considered "in effect").</p> <p>2. Evidence in the student's eligibility folder indicates that the IEP was implemented as soon as possible following the development of the IEP.</p> <p>3. Evidence that the student's class schedule matches the schedule of services in the student's most current ARD/IEP documents in the student's eligibility folder.</p> <p>4. Evidence that appropriate personnel have been provided relevant portions of the IEP for its implementation, such as modifications, accommodations, behavior intervention plans, etc.</p> <p>5. Evidence that the IEP is implemented as written, including in settings to which students have been removed for disciplinary reasons.</p>	<p>The LEA must ensure that all services set forth in the student's IEP are provided, consistent with the student's needs as identified in the IEP. The LEA may provide each of those services directly, through its own staff resources; indirectly, by contracting with another public or private agency; or through other arrangements. In providing the services, the LEA may use whatever State, local, Federal, and private sources of support are available for those purposes, but the services must be at no cost to the parents, and the LEA remains responsible for ensuring that the IEP services are provided in a manner that appropriately meets the student's needs as specified in the IEP. The failure of another agency to provide service(s) described in the child's IEP may not deny or delay the provision of FAPE to the student.</p> <p>The review team will verify through classroom observation(s) and teacher and/or parent interviews that the IEP is implemented as written. If the ARD committee has determined that the student requires the use of an assistive technology device, the review team should verify that the student uses the assistive technology device.</p>

**Investigatory Topic: Individualized Education Program (IEP) Implementation**

Requirement	Investigatory Questions	Investigatory Considerations
<p>(ii) The specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.</p> <p><b>34 CFR §300.17. Free appropriate public education. (excerpt)</b></p> <p>Free appropriate public education or FAPE means special education and related services that—</p> <p>(d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of §§300.320 through 300.324.</p>	<p>If there is evidence that the above criteria have been met, the review is complete and compliance has been identified.</p> <p>If evidence does not support any of the items above, noncompliance has been identified.</p>	

**Standard:** The student will have an IEP developed by a properly constituted ARD committee, including a trained surrogate parent as appropriate, and based upon current evaluation data. All required members will be in attendance at the ARD meeting unless proper documentation related to member exclusion/non-attendance or conducting the ARD in the absence of the parent exists, and student evaluations will be current. Additionally, the IEP will be implemented as written. If noncompliance is identified, determine if systemic noncompliance exists. Systemic noncompliance is identified when 25% or more of the sample is found to be out of compliance or when significant trends are identified in specific student subgroups.



Investigatory Topic	Least Restrictive Environment (LRE)
<p><b>Sampling</b></p>	<p>For this investigatory topic, the sample will be focused on students receiving instructional services in settings other than the general education classroom on a regular, age appropriate campus. However, folders and programs of students not reported as removed from the general education classroom and/or regular education campus also may be reviewed to verify LRE requirements for the student(s). If patterns of a particular practice or evidence of possible systemic noncompliance emerge, the review team will focus its sampling to verify findings. Within the folders selected, consideration will be given to:</p> <ul style="list-style-type: none"> <li>• the instructional arrangement in which RF students receive services;</li> <li>• the residential facility in which RF students reside;</li> <li>• the LEA campus on which RF students receive services;</li> <li>• RF students that receive various related services; and</li> <li>• RF students that require special transportation.</li> </ul>
<p><b>Data Sources</b></p>	<p>Data to Review:</p> <ul style="list-style-type: none"> <li>• <b>RF Tracker Data</b></li> <li>• <b>Student-Level Review Data</b></li> <li>• <b>PEIMS Data</b></li> <li>• <b>Document Review:</b> ARD/IEP documentation; LEA policies, procedures, and guidelines</li> <li>• <b>Interviews:</b> Students, parent/guardian, foster parents, surrogate parents, RF staff, teachers, administrators, diagnostic staff, related service personnel</li> </ul>
<p><b>Further Investigation</b></p>	<p>As the review of folders is conducted and data are analyzed, the review team may identify possible patterns of practices, trends, and/or indications of individual or systemic noncompliance that may require further investigation to verify the findings. Examples:</p> <ul style="list-style-type: none"> <li>• Evidence exists that placement is based upon the availability of related services or on program location;</li> <li>• Evidence of patterns of placement by disability category;</li> <li>• No supplementary aids or services or accommodation/modifications were attempted prior to placing students in self-contained settings;</li> <li>• Patterns of justifications for placement in self-contained settings;</li> <li>• Less restrictive settings are not considered or are not available for certain students until the student is deemed "ready" for the program or until the student ages up to next level; or</li> <li>• Students with disabilities are required to perform at the same level as students without disabilities in order to be placed in general education classes.</li> </ul>
<p><b>Review Strategies</b></p>	<p>As the review proceeds, the review team may determine a need to gather additional data by conducting specific, individual interviews to verify findings. Additionally, the review team may determine that a review of LEA data in the form of additional classroom/student observations is necessary to verify findings on this item.</p>

**Investigatory Topic: LRE**

Requirement	Investigatory Questions	Investigatory Considerations
<p><b>34 CFR §300.42. Supplementary aids and services</b></p> <p>Supplementary aids and services means aids, services, and other supports that are provided in regular education classes, other education-related settings, and in extracurricular and nonacademic settings, to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with §§300.114 through 300.116.</p> <p><b>34 CFR §300.114. LRE requirements.</b></p> <p>(a) General.</p> <p>(1) Except as provided in §300.324(d)(2) (regarding children with disabilities in adult prisons), the State must have in effect policies and procedures to ensure that public agencies in the State meet the LRE requirements of this section and §§300.115 through 300.120.</p>	<p>V. Is there evidence that decisions related to LRE are made in accordance with federal and state requirements and that RF students are educated in the regular education classroom / on the regular, age-appropriate campus to the maximum extent appropriate?</p> <p>A. Is there evidence that RF students receive supports and services that result in placement in the general education classroom on a regular, age-appropriate, campus.</p> <ol style="list-style-type: none"> <li>1. Evidence that the ARD/IEP describes supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to support the general education classroom services/placement;</li> <li>2. Evidence that the ARD/IEP describes the program modifications or supports for school personnel that will be provided for the student in the general education classroom services/placement; and</li> <li>3. Evidence that the ARD/IEP describes how the student will be involved in and make progress in the general education curriculum and participate in extracurricular and other nonacademic activities.</li> </ol> <p>If the student receives all instructional services in the general education classroom on a regular, age-appropriate, campus, the review is complete and compliance is identified.</p> <p>If the student does not receive instruction in the general education classroom, continue review.</p>	<p><b>Note:</b> Charter schools, as well as traditional districts, are required to comply with the LRE provisions of the IDEA.</p>

**Investigatory Topic: LRE**

Requirement	Investigatory Questions	Investigatory Considerations
<p>(2) Each public agency must ensure that—</p> <p>(i) To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and</p> <p>(ii) Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.</p> <p><b>34 CFR §300.320. Definition of individualized education program. (excerpt)</b></p> <p>(a) General. As used in this part, the term individualized education program or IEP means a written statement for each child with a disability that is developed, reviewed, and revised in a meeting in accordance with §§300.320 through 300.324, and that must include—</p>	<p>B. If the student was removed from receiving instruction in the general education classroom is there evidence that the LEA made efforts to provide supplementary aids and services, based on peer-reviewed research to the extent practicable, before removing the student from the general education classroom?</p> <p>1. If no supplementary aids and services, based on peer-reviewed research to the extent practicable, were provided prior to removal from the general education classroom, is there documentation of an ARD committee discussion and/or justification regarding why they were not provided prior to removal from the general education classroom? If there is no evidence of a team discussion and/or justification, noncompliance has been identified.</p> <p>2. Is there evidence that the ARD committee determined whether the student would receive educational benefit from the general education classroom? If no, noncompliance has been identified.</p> <p>3. Is there evidence that the ARD committee determined what effect the student’s placement would have on the student or on the quality of services that he or she needs? If no, noncompliance has been identified.</p> <p>4. Is there evidence that the student with a disability was removed from education in age appropriate general classrooms solely because of needed modifications in the general curriculum? If yes, noncompliance has been identified.</p>	<p>IDEA 2004 does not permit LEAs to make mere token gestures to accommodate students with disabilities; its requirement for modifying and supplementing regular education is broad. However, the regulations do not require that a child has to fail in the less restrictive options on the continuum before that child can be placed in a setting that is appropriate to his or her needs. 34 CFR §300.114(a)(2), however, does require that the ARD committee consider whether the child can be educated in less restrictive settings with the use of appropriate supplementary aids and services and make a more restrictive placement only when they conclude that education in the less restrictive setting with appropriate supplementary aids and services cannot be achieved satisfactorily. LEAs need not provide every conceivable supplementary aid or service to assist the child.</p> <p>If the reason the LEA has not provided supplementary aids and services and methods/strategies for modifying the general curriculum for students with disabilities is related to not providing professional development/training to general educators, noncompliance has been identified.</p> <p>If the reason students with disabilities are not placed in the general education classroom is because ARD committees (including general education administrators, general education teachers, and special education teachers) believe that students with disabilities are required to perform on par with students without disabilities in order to be placed in general education classes, noncompliance has been identified.</p> <p>If the reason the LEA has not provided supplementary aids and services or accommodation/modifications to students with disabilities in general education settings is related to the fact that teachers have no experience in providing such services, or the LEA has not provided professional development/training to those teachers, noncompliance has been identified.</p>

**Investigatory Topic: LRE**

Requirement	Investigatory Questions	Investigatory Considerations
<p>(4) A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child—</p> <p>(i) To advance appropriately toward attaining the annual goals;</p> <p>(ii) To be involved in and make progress in the general education curriculum in accordance with paragraph (a)(1) of this section, and to participate in extracurricular and other nonacademic activities; and</p> <p>(iii) To be educated and participate with other children with disabilities and nondisabled children in the activities described in this section;</p>	<p>C. If the student does not participate in extracurricular and other nonacademic activities, is there justification why not? If no justification is provided, noncompliance has been identified.</p> <p>D. If the student does not participate in activities with their non-disabled peers, is there justification why not? If no justification is provided, noncompliance has been identified.</p> <p>E. If the student is not provided instruction in the general education curriculum, is there justification why not? If no justification is provided, noncompliance has been identified.</p> <p>F. If the student does not receive instructional services on a regular, age-appropriate campus, is there justification for removal from a regular campus? Justification would include:</p> <ol style="list-style-type: none"> <li>1. Is there evidence that the ARD committee determined whether the student would receive educational benefit from the general education age appropriate campus? If no, noncompliance has been identified.</li> <li>2. Is there evidence that the ARD committee determined what effect the student’s placement would have on the student or on the quality of services that he or she needs? If no, noncompliance has been identified.</li> <li>3. If the student does not participate in extracurricular and other nonacademic activities, is there justification why not? If no justification is provided, noncompliance has been identified.</li> <li>4. If the student does not participate in activities with his/her non-disabled peers, is there justification why not? If no justification is provided, noncompliance has been identified.</li> <li>5. If the student is not provided instruction in the general education curriculum, is there justification why not? If no justification is provided, noncompliance has been identified.</li> </ol>	<p>For items V.C. through V.E., if patterns of similar justifications exist across RF students or subgroups of RF students to reflect decision-making that is not individualized, noncompliance has been identified.</p> <p>If evidence indicates that students have been moved to more restrictive settings after entering the RF despite a lack of change in relevant educational goals, noncompliance has been identified.</p> <p>If evidence indicates that less restrictive settings are not considered or are not available for certain students until the student is deemed "ready" for program or until student ages up to next level, noncompliance has been identified.</p> <p>If evidence exists that placement is based upon the availability of related services at a given location, absent the need to centralize a unique service to address unique student needs, noncompliance has been identified.</p> <p>For items V.F.3. through V.F.5., if patterns of similar justifications exist across RF students or subgroups of RF students to reflect decision-making that is not individualized, noncompliance has been identified.</p>

**Investigatory Topic: LRE**

Requirement	Investigatory Questions	Investigatory Considerations
<p>(5) An explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in paragraph (a)(4) of this section.</p>	<p>G. If the student receives instructional services at the RF, is there justification for such a placement? If no justification is provided, noncompliance has been identified.</p> <ol style="list-style-type: none"> <li>1. Is there evidence that the ARD committee determined whether the student would receive educational benefit from an LEA campus? If no, noncompliance has been identified.</li> <li>2. Is there evidence that the ARD committee determined what effect the student's placement would have on the student or on the quality of services that he or she needs? If no, noncompliance has been identified.</li> <li>3. If the student does not participate in extracurricular and other nonacademic activities, then is there justification why not? If no justification is provided, noncompliance has been identified.</li> <li>4. If the student does not participate in activities with their non-disabled peers, then is there justification why not? If no justification is provided, noncompliance has been identified.</li> <li>5. If the student is not provided instruction in the general education curriculum, then is there justification why not? If no justification is provided, noncompliance has been identified.</li> </ol> <p>If the basis for the student's placement at the RF is determined to be an individualized medical/ therapeutic treatment justification or adjudication order, the LRE review is complete.</p>	<p>If evidence indicates that students have been moved to more restrictive settings after entering the RF despite a lack of change in relevant educational goals, noncompliance has been identified.</p> <p>If evidence indicates that less restrictive settings are not considered or are not available for certain students until the student is deemed "ready" for program or until student ages up to next level, noncompliance has been identified.</p> <p>For items V.G.3. through V.G.5., if patterns of similar justifications exist across RF students or subgroups of RF students to reflect decision-making that is not individualized, noncompliance has been identified.</p> <p>The review team should review the individual circumstances of students and any MOU between the LEA and RF to ensure that a full range of LRE options are available to RF students and that students are served on the site of the RF only when an ARD committee has determined that the placement is the LRE for the student. The ARD committee has the final responsibility for determining the LRE for a student; an RF's preferred practice or policies may not override ARD committee decision-making.</p> <p>The review team should review documentation related to the ARD committee's decision to educate the student at the RF based on a medical/therapeutic justification or an adjudication order. The review team also may be required to interview RF staff who have provided medical/therapeutic or adjudication documentation to the LEA/ARD committee.</p>

## Investigatory Topic: LRE

### Other Requirements

#### **34 CFR §300.115. Continuum of alternative placements.**

- (a) Each public agency shall ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services.
- (b) The continuum required in paragraph (a) of this section must—
  - (1) Include the alternative placements listed in the definition of special education under §300.38 (instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions); and
  - (2) Make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement.

#### **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 §§300.114-300.118;
- (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.

#### **34 CFR §300.117. Nonacademic settings.**

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

Investigatory Topic: LRE

Other Requirements (continued)

**34 CFR §300.118. Children in public or private institutions.**

Except as provided in Sec. 300.149(d) (regarding agency responsibility for general supervision of some individuals in adult prisons), an SEA must ensure that §300.114 is effectively implemented, including, if necessary, making arrangements with public and private institutions (such as a memorandum of agreement or special implementation procedures).

**TEC §42.151. Special Education. (excerpt)**

- (i) The agency shall encourage the placement of students in special education programs, including students in residential instructional arrangements, in the least restrictive environment appropriate for their educational needs.

**Standard:** All RF students will have access to instruction in the LRE in alignment with the statute, code, and regulations and to the same extent as other students with disabilities. If procedures are not implemented according to requirements, noncompliance has been identified. If noncompliance is identified, determine if systemic noncompliance exists. Systemic noncompliance is identified when 25% or more of the sample is found to be out of compliance or when significant trends are identified in specific student subgroups.

Investigatory Topic	Educational Benefit
<p><b>Sampling</b></p>	<p>For this investigatory topic, the sample will be focused on students receiving educational and related services from the LEA for more than one year. If patterns of a particular practice or evidence of possible systemic noncompliance emerge, the review team will focus its sampling to verify findings. Within the folders selected, consideration will be given to:</p> <ul style="list-style-type: none"> <li>• the instructional arrangement in which RF students receive services;</li> <li>• the residential facility in which RF students reside;</li> <li>• the length of time the RF student has resided within the LEA;</li> <li>• the LEA campus in which RF students receive services;</li> <li>• RF students who were retained during the previous school year;</li> <li>• RF students with patterns of disciplinary removals; and</li> <li>• RF students with lack of attendance.</li> </ul>
<p><b>Data Sources</b></p>	<p>Data to Review:</p> <ul style="list-style-type: none"> <li>• <b>PEIMS Data</b></li> <li>• <b>Student Assessment Information, as available</b></li> <li>• <b>Document Review:</b> ARD/IEP documentation; student grade reports; current student evaluations; AAR (as appropriate); disciplinary reports; student assessment results; LEA policies, procedures, and guidelines</li> <li>• <b>Interviews:</b> Student, parent/guardian, foster parents, surrogate parents, RF staff, teachers, administrators, diagnostic staff, related service personnel</li> </ul>
<p><b>Further Investigation</b></p>	<p>As the review of folders is conducted and data are analyzed, the review team may identify possible patterns of practices, trends, and/or indications of individual or systemic noncompliance that may require further investigation to verify the findings. Examples:</p> <ul style="list-style-type: none"> <li>• Most / all RF students educated at the site of the facility make minimal academic progress;</li> <li>• Most / all RF students educated at an LEA campus make minimal academic progress;</li> <li>• Most / all RF students have increased behavioral or disciplinary referrals;</li> <li>• Most / all RF students of certain disabilities have increased behavioral or disciplinary referrals;</li> <li>• RF students moving to a more restrictive environment; or</li> <li>• Interviews with parents, students, LEA staff, or RF staff responses indicate concerns with lack of progress in academic, behavioral, and/or related service area(s).</li> </ul>
<p><b>Review Strategies</b></p>	<p>As the review proceeds, the review team may determine a need to gather additional data by conducting specific, individual interviews to verify findings. Additionally, the review team may determine that a review of LEA data in the form of related services progress reports or additional classroom/student observations is necessary to verify findings on this item.</p>



**Investigatory Topic: Educational Benefit**

Requirement	Investigatory Questions	Investigatory Considerations
<p><b>34 CFR §300.17. Free appropriate public education.</b></p> <p>Free appropriate public education or FAPE means special education and related services that—</p> <p>(a) Are provided at public expense, under public supervision and direction, and without charge;</p> <p>(b) Meet the standards of the SEA, including the requirements of this part;</p> <p>(c) Include an appropriate preschool, elementary school, or secondary school education in the State involved; and</p> <p>(d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of §§300.320 through 300.324.</p>	<p>VI. Is there evidence that a student is benefiting educationally from the special education services provided to meet the goals contained in the student's IEP?</p> <p>A. Is there evidence that the student has attained mastery on the grade level Texas Essential Knowledge and Skills (TEKS) appropriate to the student's age and grade assignment?</p> <p>Evidence may be documented through student assessment results and/or grading reports related to instruction in and mastery of grade-level general curriculum at grade-level mastery expectations.</p> <p>If YES, the review is complete, and compliance has been determined.</p> <p>If NO, proceed to item VI.B.</p> <p>B. Is there evidence that the gap between the student's academic performance level and the student's assigned grade level has decreased over the past year?</p> <p>Evidence may be documented through student assessment results and/or grading reports related to instruction in and mastery of the general curriculum at the student's assigned grade level. This question cannot be answered yes for a student who was retained in the most recent academic year.</p> <p>If YES, the review is complete, and compliance has been determined.</p> <p>If NO, proceed to item VI.C.</p>	

**Investigatory Topic: Educational Benefit**

Requirement	Investigatory Questions	Investigatory Considerations
<p><b>34 CFR §300.320. Definition of Individualized education program.</b></p> <p>(a) General. As used in this part, the term individualized education program or IEP means a written statement for each child with a disability that is developed, reviewed, and revised in a meeting in accordance with §§300.320 through 300.324, and that must include—</p> <p>(1) A statement of the child's present levels of academic achievement and functional performance, including—</p> <p>(i) How the child's disability affects the child's involvement and progress in the general education curriculum (i.e., the same curriculum as for nondisabled children; or</p> <p>(ii) For preschool children, as appropriate, how the disability affects the child's participation in appropriate activities;</p> <p>(2) (i) A statement of measurable annual goals, including academic and functional goals designed to—</p>	<p>C. Is there evidence that the student has made at least one year of academic progress over the past year?</p> <p>Evidence may be documented through student assessment results and/or grading reports related to instruction in and mastery of the general curriculum at the student's assigned grade level.</p> <p>If YES, the review is complete, and compliance has been determined.</p> <p>If NO, proceed to item VI.D.</p> <p>D. Is there evidence that the student has moved to a less restrictive environment over the course of the past year while achieving goals established by the ARD committee of at least six months of academic gain?</p> <p>Evidence may be documented through ARD/IEP documentation, student assessment results, and/or grading reports related to instruction in and mastery of the general curriculum at the student's assigned grade-level. This question cannot be answered yes for a student who was retained in the most recent academic year.</p> <p>If YES, the review is complete, and compliance has been determined.</p> <p>If NO, proceed to item VI.E.</p> <p>E. Is there evidence that the gap between the student's academic performance level and the student's assigned grade level is equal to or less than one academic year and is not increasing as the student advances from grade to grade?</p> <p>Evidence may be documented through student assessment results and/or grading reports related to instruction in and mastery of the general curriculum at the student's assigned grade-level. This question cannot be answered yes for a student who was retained in the most recent academic year.</p>	

**Investigatory Topic: Educational Benefit**

Requirement	Investigatory Questions	Investigatory Considerations
<p>(A) Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and</p> <p>(B) Meet each of the child's other educational needs that result from the child's disability;</p> <p>(ii) For children with disabilities who take alternate assessments aligned to alternate academic achievement standards, a description of benchmarks or short-term objectives;</p> <p>(3) A description of—</p> <p>(i) How the child's progress toward meeting the annual goals described in paragraph (2) of this section will be measured; and</p> <p>(ii) When periodic reports on the progress the child is making toward meeting the annual</p>	<p>If YES, the review is complete, and compliance has been determined.</p> <p>If NO, proceed to item VI.F.</p> <p>F. For a student of average intelligence or greater who does not meet a standard defined in VI.A. through VI.E. above:</p> <p>1. To address the discrepancy between the student's academic performance level and the assigned grade level appropriate to the student's age—</p> <p>a. Have IEP goals been revised over the most recent two annual ARDs to reflect an advance in skills based on scope and mastery of the TEKS-based curriculum?</p> <p>b. Does the student's placement along the continuum of instructional arrangements reflect services in the general education setting for at least 50% of the school day <u>or</u> has the student's placement changed to reflect a less restrictive placement over the past year?</p> <p>c. Has the student made at least three (3) months of academic progress over the past year?</p> <p>d. Are the student's patterns of behavior within the range of campus and LEA expectations, or, for a student whose behavior is an educational issue, does evidence indicate that the student's behavior is improving?</p> <p>Evidence may be documented through ARD/IEP documentation, student assessment results, grading reports related to instruction in and mastery of the general curriculum, and/or disciplinary reports. Question VI.F.1.a. or VI.F.1.c. cannot be answered yes for a student who was retained in the most recent academic year.</p>	

**Investigatory Topic: Educational Benefit**

Requirement	Investigatory Questions	Investigatory Considerations
<p>goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided;</p> <p>(4) A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child—</p> <p>(i) To advance appropriately toward attaining the annual goals;</p> <p>(ii) To be involved in and make progress in the general education curriculum in accordance with paragraph (a)(1) of this section, and to participate in extracurricular and other nonacademic activities; and</p>	<p>If YES to at least 3 issues in VI.F.1.a. through VI.F.1.d. above, the review is complete, and compliance has been determined.</p> <p>If NO, proceed to item VI.F.2.</p> <p>2. Is there evidence that a significant change in the student's life external to the school setting, within the past 6 months, such as the progression of a medical condition or a death in the student's immediate family, has significantly contributed to the lack of progress on the applicable items of VI.F.1.a. – VI.F.1.d. above?</p> <p>Evidence may take the form of medical/social history reports.</p> <p>If YES, the review is complete.</p> <p>If NO, proceed to item VI.F.3.</p> <p>3. Is there evidence that the ARD committee met and addressed the lack of expected progress?</p> <p>If YES, proceed to item VI.F.4.</p> <p>If NO, noncompliance has been identified.</p> <p>4. Is there evidence of meaningful academic or nonacademic progress within one grading period of the ARD held to consider lack of progress?</p> <p>Evidence may be documented through ARD/IEP documentation, student assessment results, grading reports related to instruction in and mastery of the general curriculum, and/or disciplinary reports.</p> <p>If YES, the review is complete, and compliance has been determined.</p> <p>If NO, noncompliance has been identified.</p>	

**Investigatory Topic: Educational Benefit**

Requirement	Investigatory Questions	Investigatory Considerations
<p>(iii) To be educated and participate with other children with disabilities and nondisabled children in the activities described in this section;</p> <p>(5) An explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in paragraph (a)(4) of this section;</p> <p>(6) (i) A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and districtwide assessments consistent with section 612(a)(16) of the Act; and</p> <p>(ii) If the IEP Team determines that the child must take an alternate assessment instead of a particular regular State or districtwide assessment of</p>	<p>G. For a student not reviewed under VI.F. above and who does not meet a standard defined in VI.A. through VI.E. above:</p> <p>1. To address the discrepancy between the student's academic performance level and the expected performance level for his/her age and grade level—</p> <p>a. Have IEP goals been revised over the most recent two annual ARDs to reflect an advance in skills based on scope and mastery of the curriculum?</p> <p>b. Does the student's placement along the continuum of instructional arrangements reflect services in the general education setting for at least 50% of the school day <u>or</u> has the student's placement changed to reflect a less restrictive placement over the past year?</p> <p>c. Have decisions related to student assessment participation reflected student progress?</p> <p>d. Are the student's patterns of behavior within the range of campus and LEA expectations, or, for a student whose behavior is an educational issue, does evidence indicate that the student's behavior is improving?</p> <p>Evidence may be documented through ARD/IEP documentation, student assessment results, grading reports related to instruction in and mastery of the curriculum, and/or disciplinary reports. Question VI.G.1.a. or VI.G.1.c. cannot be answered yes for a student who was retained in the most recent academic year.</p> <p>If YES to at least 3 issues in VI.G.1.a. through VI.G.1.d. above, the review is complete, and compliance has been determined.</p> <p>If NO, proceed to item VI.G.2.</p>	

**Investigatory Topic: Educational Benefit**

Requirement	Investigatory Questions	Investigatory Considerations
<p>student achievement, a statement of why—</p> <p>(A) The child cannot participate in the regular assessment; and</p> <p>(B) The particular alternate assessment selected is appropriate for the child; and</p> <p>(7) The projected date for the beginning of the services and modifications described in paragraph (a)(4) of this section, and the anticipated frequency, location, and duration of those services and modifications.</p> <p><b>34 CFR §300.324. Development, review, and revision of IEP. (excerpt)</b></p> <p>(b) Review and revision of IEPs—</p> <p>(1) General. Each public agency must ensure that, subject to paragraphs (b)(2) and (b)(3) of this section, the IEP Team—</p> <p>(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</p>	<p>2. Is there evidence that a significant change in the student's life external to the school setting, within the past 6 months, such as the progression of a medical condition or a death in the student's immediate family, has significantly contributed to the lack of progress on the applicable items of VI.G.1.a.–VI.G.1.d. above?</p> <p>Evidence may take the form of medical/social history reports.</p> <p>If YES, the review is complete.</p> <p>If NO, proceed to item VI.G.3.</p> <p>3. Is there evidence that the ARD committee met and addressed the lack of expected progress?</p> <p>If YES, proceed to item VI.G.4.</p> <p>If NO, noncompliance has been identified.</p> <p>4. Is there evidence of meaningful academic or nonacademic progress within one grading period of the ARD held to consider lack of progress?</p> <p>Evidence may be documented through ARD/IEP documentation, student assessment results, grading reports related to instruction in and mastery of the curriculum, and/or disciplinary reports.</p> <p>If YES, the review is complete, and compliance has been determined.</p> <p>If NO, noncompliance has been identified.</p>	

**Investigatory Topic: Educational Benefit**

Requirement	Investigatory Questions	Investigatory Considerations
<p>(ii) Revises the IEP, as appropriate, to address—</p> <p>(A) Any lack of expected progress toward the annual goals described in §300.320(a)(2), and in the general education curriculum, if appropriate;</p> <p>(B) The results of any reevaluation conducted under §300.303;</p> <p>(C) Information about the child provided to, or by, the parents, as described under §300.305(a)(2);</p> <p>(D) The child's anticipated needs; or</p> <p>(E) Other matters.</p>		

**Standard:** The student will receive educational benefit unless there is documented evidence to justify a lack of educational progress for an individual student. If educational benefit cannot be determined, noncompliance will be identified. If noncompliance is identified, determine if systemic noncompliance exists. Systemic noncompliance is identified when 25% or more of the sample is found to be out of compliance or when significant trends are identified in specific student subgroups.

<b>Investigatory Topic</b>	<b>Certified/Qualified Staff</b>
<b>Sampling</b>	<p>For this investigatory topic, the sample will be focused on staff members providing instructional and related services to RF students. If patterns of a particular practice or evidence of possible systemic noncompliance emerge, the review team will focus its sampling to verify findings. Within the folders selected, consideration will be given to:</p> <ul style="list-style-type: none"> <li>• the instructional arrangement in which RF students are receiving services;</li> <li>• the residential facility in which RF students reside; and</li> <li>• the LEA campus on which RF students are receiving services;</li> </ul>
<b>Data Sources</b>	<p>Data to Review:</p> <ul style="list-style-type: none"> <li>• <b>State Board for Educator Certification (SBEC) certification information</b></li> <li>• <b>Document Review:</b> Personnel files, LEA policies, procedures, and guidelines, and student schedules</li> <li>• <b>Interviews:</b> Parent/guardian, foster parents, surrogate parents, teachers, administrators, human resources staff, diagnostic staff, related service personnel</li> </ul>
<b>Further Investigation</b>	<p>As the review of folders is conducted and data are analyzed, the review team may identify possible patterns of practices, trends, and/or indications of individual or systemic noncompliance that may require further investigation to verify the findings. Examples:</p> <ul style="list-style-type: none"> <li>• Interviews with parents, students, LEA staff, or RF staff responses indicate concerns with certification/qualifications of staff members providing instructional and related services to RF students.</li> </ul>
<b>Review Strategies</b>	<p>As the review of personnel files is completed, the review team may gather additional data by conducting interviews with LEA staff or contracted staff.</p>



**Investigatory Topic: Certified/Qualified Staff**

Requirement	Investigatory Questions	Investigatory Considerations
<p><b>34 CFR §300.156. Personnel qualifications. (excerpt)</b></p> <p>(a) General. The SEA must establish and maintain qualifications to ensure that personnel necessary to carry out the purposes of this part are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities.</p> <p>(b) Related services personnel and paraprofessionals. The qualifications under paragraph (a) of this section must include qualifications for related services personnel and paraprofessionals that—</p> <p>(1) Are consistent with any State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services; and</p> <p>(2) Ensure that related services personnel who deliver services in their discipline or profession—</p> <p>(i) Meet the requirements of paragraph (b)(1) of this section; and</p> <p>(ii) Have not had certification or licensure requirements waived on an emergency, temporary, or provisional basis; and</p> <p>(iii) Allow paraprofessionals and assistants who are appropriately trained and</p>	<p>VII. Is there evidence that RF students are provided instructional and related services by certified/ qualified staff?</p> <p>A. Is there evidence that that staff providing instructional services to RF students are certified/qualified; and</p> <p>B. Is there evidence that staff providing related services to RF students have recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services to RF students; and</p> <p>C. Is there evidence that staff conducting the evaluations for RF students are appropriately certified or credentialed; and</p> <p>D. Is there evidence that paraprofessionals and assistants are certified to assist in the provision of special education and related services to RF students?</p> <p>If all staff providing instructional and/or related services meet the criteria as indicated in VII.A. – VII.D. above, the review is complete and compliance has been identified.</p> <p>If any staff member(s) providing instructional and/or related services does not meet the criteria as indicated in VII.A. – VII.D. above, noncompliance has been identified.</p>	<p>Paraprofessionals who provide instructional services to RF students must have current state certificates, even if the paraprofessionals also are employed by the RF to provide other services to students outside the school day.</p> <p>Paraprofessionals must be under the direct supervision (close and frequent proximity) of a certified/qualified teacher.</p> <p>If related services as specified in the IEP are provided to RF students by RF staff instead of LEA staff, service providers still must meet the qualification standards of the professional discipline(s) in which the providers are engaged.</p>

**Investigatory Topic: Certified/Qualified Staff**

Requirement	Investigatory Questions	Investigatory Considerations
<p>supervised, in accordance with State law, regulation, or written policy, in meeting the requirements of this part to be used to assist in the provision of special education and related services under this part to children with disabilities.</p> <p>(c) Qualifications for special education teachers. The qualifications described in paragraph (a) of this section must ensure that each person employed as a public school special education teacher in the State who teaches in an elementary school, middle school, or secondary school is highly qualified as a special education teacher by the deadline established in section 119(a)(2) of the ESEA.</p>		

**Other Requirements**

**19 TAC §89.1131. Qualifications of Special Education, Related Service, and Paraprofessional Personnel.**

- (a) All special education and related service personnel shall be certified, endorsed, or licensed in the area or areas of assignment in accordance with 34 Code of Federal Regulations (CFR), §300.156; the Texas Education Code (TEC), §§21.002, 21.003, and 29.304; or appropriate state agency credentials.
- (b) A teacher who holds a special education certificate or an endorsement may be assigned to any level of a basic special education instructional program serving eligible students 3-21 years of age, as defined in §89.1035(a) of this title (relating to Age Ranges for Student Eligibility), in accordance with the limitation of their certification, except for the following.
  - (1) Persons assigned to provide speech therapy instructional services must hold a valid Texas Education Agency (TEA) certificate in speech and hearing therapy or speech and language therapy, or a valid state license as a speech/language pathologist.
  - (2) Teachers holding only a special education endorsement for early childhood education for children with disabilities shall be assigned only to programs serving infants through Grade 6.
  - (3) Teachers certified in the education of students with visual impairments must be available to students with visual impairments, including deaf-blindness, through one of the school district's instructional options, a shared services arrangement with other school districts, or an education service center (ESC).

## Investigatory Topic: Certified/Qualified Staff

### Other Requirements (continued)

- (4) Teachers certified in the education of students with auditory impairments must be available to students with auditory impairments, including deaf-blindness, through one of the school district's instructional options, a regional day school program for the deaf, or a shared services arrangement with other school districts.
- (5) The following provisions apply to physical education.
  - (A) When the ARD committee has made the determination and the arrangements are specified in the student's individualized education program (IEP), physical education may be provided by the following personnel:
    - (i) special education instructional or related service personnel who have the necessary skills and knowledge;
    - (ii) physical education teachers;
    - (iii) occupational therapists;
    - (iv) physical therapists; or
    - (v) occupational therapy assistants or physical therapy assistants working under supervision in accordance with the standards of their profession.
  - (B) When these services are provided by special education personnel, the district must document that they have the necessary skills and knowledge. Documentation may include, but need not be limited to, inservice records, evidence of attendance at seminars or workshops, or transcripts of college courses.
- (6) Teachers assigned full-time or part-time to instruction of students from birth through age two with visual impairments, including deaf-blindness, shall be certified in the education of students with visual impairments. Teachers assigned full-time or part-time to instruction of students from birth through age two who are deaf, including deaf-blindness, shall be certified in education for students who are deaf and severely hard of hearing.
- (7) Teachers with secondary certification with the generic delivery system may be assigned to teach Grades 6-12 only.
- (c) Paraprofessional personnel must be certified and may be assigned to work with eligible students, general and special education teachers, and related service personnel. Aides may also be assigned to assist students with special education transportation, serve as a job coach, or serve in support of community-based instruction. Aides paid from state administrative funds may be assigned to the Special Education Resource System (SERS), the Special Education Management System (SEMS), or other special education clerical or administrative duties.
- (d) Interpreting services for students who are deaf shall be provided by an interpreter who is certified in the appropriate language mode(s), if certification in such mode(s) is available. If certification is available, the interpreter must be a certified member of or certified by the Registry of Interpreters for the Deaf (RID) or the Texas Board for Evaluation of Interpreters (BEI), Department of Assistive and Rehabilitative Services (DARS), Office for Deaf and Hard of Hearing Services (DHHS).
- (e) Orientation and mobility instruction must be provided by a certified orientation and mobility specialist (COMS) who is certified by the Academy for Certification of Vision Rehabilitation and Education Professionals.

**Standard:** RF students will receive all educational and related services from certified/qualified staff. Noncompliance is identified when any staff member, contractor, or other provider delivering services to RF students does not meet certified/qualified standards. If noncompliance is identified, determine if systemic noncompliance exists. Systemic noncompliance is identified when 25% or more of the sample is found to be out of compliance or when significant trends are identified in specific student subgroups.

<b>Investigatory Topic</b>	<b>Commensurate School Day</b>
<b>Sampling</b>	<p>For this investigatory topic, the sample will be focused on students receiving a shortened instructional day. However, folders and programs of students not reported as having a shortened school day also will be reviewed to verify length of school day for the student(s). If patterns of a particular practice or evidence of possible systemic noncompliance emerge, the review team will focus its sampling to verify findings. Within the folders selected, consideration will be given to:</p> <ul style="list-style-type: none"> <li>• the instructional arrangement in which RF students receive services;</li> <li>• the RF in which RF students reside;</li> <li>• the LEA campus on which RF students receive services;</li> <li>• RF students who receive special transportation as a related service; and</li> <li>• RF students who are transported by RF staff.</li> </ul>
<b>Data Sources</b>	<p>Data to Review:</p> <ul style="list-style-type: none"> <li>• <b>RF Tracker Data</b></li> <li>• <b>Student-Level Review Data</b></li> <li>• <b>Document Review:</b> ARD/IEP documentation; transportation schedules; student schedules; LEA policies, procedures, and guidelines</li> <li>• <b>Interviews:</b> Student, parent/guardian, foster parents, surrogate parents, RF staff, teachers, administrators, diagnostic staff, related service personnel</li> </ul>
<b>Further Investigation</b>	<p>As the review of folders is conducted and data are analyzed, the review team may identify possible patterns of practices, trends, and/or indications of individual or systemic noncompliance that may require further investigation to verify the findings. Examples:</p> <ul style="list-style-type: none"> <li>• Most / all RF students educated at the site of the facility are provided a shortened school day;</li> <li>• Most / all RF students educated at an LEA campus are provided a shortened school day;</li> <li>• Most / all RF students who receive special transportation as a related service are provided a shortened school day; or</li> <li>• Interviews with parents, students, LEA staff, or RF staff responses indicate concerns with the length of the school day.</li> </ul>
<b>Review Strategies</b>	<p>As the review proceeds, the review team may determine a need to gather additional data by conducting specific, individual interviews to verify findings. Additionally, the review team may determine that a review of LEA data in the form of transportation logs or additional classroom/student observations is necessary to verify findings on this item.</p>

**Investigatory Topic: Commensurate School Day**

Requirement	Investigatory Questions	Investigatory Considerations
<p><b>19 TAC §89.1075. General Program Requirements and Local District Procedures. (excerpt)</b></p> <p>(d) Students with disabilities shall have available an instructional day commensurate with that of students without disabilities. The ARD committee shall determine the appropriate instructional setting and length of day for each student, and these shall be specified in the student's IEP.</p>	<p>VIII. Is there evidence that students with disabilities have available an instructional day commensurate with that of students without disabilities or that a shortened school day is justified based on individualized student need?</p> <p>A. A commensurate school day is evidenced if the student with a disability has the same instructional day as that provided to students without disabilities on the student's home campus.</p> <ol style="list-style-type: none"> <li>1. Evidence that ARD/IEP schedule of services page indicates an instructional day equal in length to the instructional day of nondisabled peers; and</li> <li>2. Evidence that campus/school/class schedule reflects a commensurate school day; and</li> <li>3. Evidence that transportation schedule as written and implemented allows for a commensurate school day; and</li> <li>4. Evidence through on-site observations and/or interviews with school staff, RF staff, and/or parents that a commensurate school day is provided.</li> </ol> <p>If student has a commensurate school day, the review is complete and compliance is identified.</p> <p>If student does not receive a commensurate school day, review item VIII.B.</p> <p>B. If a commensurate school day is not evidenced, is there an individualized, student-based justification for the shortened school day?</p> <ol style="list-style-type: none"> <li>1. Evidence of court documentation ordering a shortened day; or</li> <li>2. Evidence of ARD/IEP documentation verifying a medically-relevant justification for a shortened school day.</li> </ol> <p>If the IEP does not document the justification for shortening the student's instructional day, noncompliance is identified.</p>	<p>Commensurate school day is evidenced if the RF student has the same instructional day as that provided to his or her nondisabled peers who attend a traditional regular campus within the LEA. For an RF student with a disability who is educated at the RF site or at a special education campus within the LEA, a commensurate school day is evidenced if the student has the same instructional day as that provided to his or her nondisabled peers who attend a traditional regular education campus within the LEA.</p> <p>The review team will verify that the schedule of services as documented in the most current IEP matches the actual services provided at the campus. Additionally, the review team will verify the transportation schedule(s) for RF students.</p> <p>If the review team is made aware that an RF student or a group of RF students' instructional day is shortened due to transportation or other administrative issues, the review team will corroborate this through interviews/observations. If this is substantiated, noncompliance has been identified.</p> <p>The review team will analyze justifications for a shortened school day to determine whether the circumstances cited and references used are aligned with individual student needs. If the justification for a shortened school day states only that a given student resides in an RF, noncompliance has been identified. Likewise, if the same justification language is used for shortening the school day of an entire group or subgroup of students, and an externally-mandated reason (for example, a court order of adjudication) cannot be determined by a review team, noncompliance has been identified.</p>

**Standard:** The student will have a school day commensurate with that of students without disabilities unless there is documented evidence of the inappropriateness of such for an individual student. If noncompliance is identified, determine if systemic noncompliance exists. Systemic noncompliance is identified when 25% or more of the sample is found to be out of compliance or when significant trends are identified in specific student subgroups.

Investigatory Topic	Related Services Provision
<p><b>Sampling</b></p>	<p>For this investigatory topic, the sample will focus on students who receive related services and those who do not receive related services but who may have significant deficits in areas often associated with a need for developmental, corrective, or supportive services. If patterns of a particular practice or evidence of possible systemic noncompliance emerge, the review team will focus the sampling to verify findings. Within the folders selected, consideration will be given to:</p> <ul style="list-style-type: none"> <li>• the instructional arrangement in which RF students are receiving services;</li> <li>• the area(s) of disability identified for RF students;</li> <li>• the RF in which RF students reside;</li> <li>• the campus on which RF students are receiving services;</li> <li>• the type of related services RF students are receiving; and</li> <li>• students who may be failing, retained, or receiving reports related to lack of progress during the school year.</li> </ul>
<p><b>Data Sources</b></p>	<p>Data to Review:</p> <ul style="list-style-type: none"> <li>• <b>RF Tracker Data</b></li> <li>• <b>Student-Level Review Data</b></li> <li>• <b>PEIMS Data</b></li> <li>• <b>Document Review:</b> ARD/IEP documentation, evaluation data, progress reports related to IEPs, therapy service logs</li> <li>• <b>Interviews:</b> Student, parent/guardian, foster parents, surrogate parents, RF staff, teachers, administrators, diagnostic staff, related service personnel</li> </ul>
<p><b>Further Investigation</b></p>	<p>As the review of folders is conducted and data area analyzed, the review team may identify possible patterns of practices, trends, and/or indications of individual or systemic noncompliance that may require further investigation to verify the findings. Examples:</p> <ul style="list-style-type: none"> <li>• Few / no RF students educated at the site of the facility receive related services;</li> <li>• Most / all RF students get only consultative related services;</li> <li>• Varying patterns of related services provision for RF and non-RF students with disabilities;</li> <li>• Many RF students do not receive related services after a recommendation for services is made in the evaluation; or</li> <li>• Most / all related service evaluations for RF students do not recommend related services.</li> </ul>
<p><b>Review Strategies</b></p>	<p>As the review proceeds, the review team may determine a need to gather additional data by conducting specific, individual interviews to verify findings. Additionally, the review team may determine that a review of LEA data in the form of related services progress reports or documentation of services rendered is necessary to verify findings on this item.</p>

**Investigatory Topic: Related Services Provision**

<b>Requirement</b>	<b>Investigatory Questions</b>	<b>Investigatory Considerations</b>
<p><b>34 CFR §300.301. Initial evaluations. (excerpt)</b></p> <p>(a) General. Each public agency must conduct a full and individual initial evaluation, in accordance with §§300.304 through 300.306, before the initial provision of special education and related services to a child with a disability under this part.</p> <p><b>34 CFR §300.304. Evaluation procedures. (excerpt)</b></p> <p>(c) Other evaluation procedures. Each public agency must ensure that—</p> <p>(1) Assessments and other evaluation materials used to assess a child under this part—</p> <p>(i) Are selected and administered so as not to be discriminatory on a racial or cultural basis;</p> <p>(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;</p>	<p>IX. Is there evidence of timely and sufficient provision of related services to RF students?</p> <p>A. Is there evidence that evaluations for related services are being conducted according to requirements to meet the needs of the student?</p> <p>1. Is there evidence that related services evaluations are completed within specified timelines?</p> <p>For related services evaluations conducted as part of the student’s full individual and initial evaluation (FIE), a written report must be completed not later than the 60<sup>th</sup> calendar day following the date on which the LEA received written consent for the evaluation, signed by the student’s parent or legal guardian.</p> <p>For other related services evaluations requested by the ARD committee, the ARD committee will establish timelines for completion of the evaluation. Requests for related services evaluations are made under circumstances in which the ARD committee determines that the service may be required to assist the student to benefit from special education services. Therefore, the timelines for completion of the evaluation as established by the ARD committee must take into consideration this potential need.</p> <p>Evidence of evaluation being conducted within the timeline will be documented in the student eligibility folder.</p> <p>If the evaluation has been conducted within specified timelines, compliance has been determined.</p> <p>If the evaluation has been completed beyond specified timelines, or if the timeline specified for completion of the evaluation is not reasonable based on the potential educational needs of the student, noncompliance has been identified.</p>	

**Investigatory Topic: Related Services Provision**

<b>Requirement</b>	<b>Investigatory Questions</b>	<b>Investigatory Considerations</b>
<p>(iii) Are used for the purposes for which the assessments or measures are valid and reliable;</p> <p>(iv) Are administered by trained and knowledgeable personnel; and</p> <p>(v) Are administered in accordance with any instructions provided by the producer of the assessments.</p> <p>(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;</p> <p>(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 as needs, whether or not commonly linked to the disability category in which the child has been classified.</p>	<p>2. Is there evidence that related services evaluations are conducted by qualified staff?</p> <p>Staff qualifications will be documented in personnel records, as well as through interviews with related services evaluation personnel. Evaluator information will be reflected in related services evaluation reports.</p> <p>If YES, compliance is identified.</p> <p>If NO, noncompliance has been identified.</p> <p>3. Is there evidence that the recommendations for services and/or supports contained in related services evaluations are aligned with the findings contained in the evaluation report?</p> <p>Related services evaluation reports will contain findings and determinations resulting from the evaluation. The reports also will make recommendations for the provision of related services or supplementary aids and services to RF students.</p> <p>If recommendations for supports and services are aligned with the findings and determinations contained in the report and are individualized, compliance is identified.</p> <p>If it is determined in the related services reports that significant educational needs exist, but services and/or supports are not recommended to address the educational need, noncompliance has been identified.</p> <p>If it is determined that related services reports recommend uniform supports and services that are not individualized to address the unique educational needs of RF students, noncompliance has been identified.</p>	<p>Required qualifications vary by related services discipline and may be determined by the Texas Education Agency (TEA) / State Board of Educator Certification (SBEC) or by another agency or organization that licenses a particular profession. The review team should ensure that the evaluator holds the appropriate license or certification to conduct the evaluation in question.</p>



**Investigatory Topic: Related Services Provision**

<b>Requirement</b>	<b>Investigatory Questions</b>	<b>Investigatory Considerations</b>
<p>(7) Assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided.</p> <p><b>34 CFR §300.17. Free appropriate public education. (excerpt)</b></p> <p>Free appropriate public education or FAPE means special education and related services that—</p> <p>(d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of §§300.320 through 300.324.</p> <p><b>34 CFR §300.156. Personnel qualifications. (excerpt)</b></p> <p>(b) Related services personnel and paraprofessionals. The qualifications under paragraph (a) of this section must include qualifications for related services personnel and paraprofessionals that—</p> <p>(1) Are consistent with any State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services; and</p>	<p>4. Is there evidence that educationally relevant recommendations contained in related services evaluations are reviewed by the ARD committee and reflected in the IEPs of RF students with disabilities?</p> <p>If recommendations for supports and services result in ARD committee determinations to provide those supports and services, compliance is identified.</p> <p>If recommendations for supports and services do not result in ARD committee determinations to provide those supports and services, but individual, student-based reasons for not providing the supports or services or for providing alternate supports or services are identified by the ARD committee, compliance is identified.</p> <p>If recommendations for supports and services do not result in ARD committee determinations to provide those supports and services, and no individual, student-based justification for the decision is identified by the ARD committee, noncompliance has been identified.</p> <p>B. Is there evidence that related services are being provided as reflected in the IEP to meet unique student needs?</p> <p>1. Is there evidence that related services are individualized based on specific student needs?</p> <p>If YES, compliance is identified.</p> <p>If uniform patterns of service provision exist across RF students or subgroups of RF students to reflect decision-making that is not individualized, noncompliance has been identified.</p> <p>If patterns exist in which certain related services are not made available to RF students, noncompliance has been identified.</p>	

**Investigatory Topic: Related Services Provision**

<b>Requirement</b>	<b>Investigatory Questions</b>	<b>Investigatory Considerations</b>
<p>(ii) Have not had certification or licensure requirements waived on an emergency, temporary, or provisional basis; and</p> <p>(iii) Allow paraprofessionals and assistants who are appropriately trained and supervised, in accordance with State law, regulation, or written policy, in meeting the requirements or this part to be used to assist in the provision of special education and related services under this part to children with disabilities.</p>	<p>If the amount of service provided to students is not indicative of the severity of the students' educational needs (for example, all students receive consultative services / none receive direct service, regardless of individual need, or students with substantial needs are provided no services or fewer services than other students), noncompliance has been identified.</p> <p>If treatment services are provided by the RF in areas aligned with related services that may be provided under the IDEA, and, therefore, the ARD committee does not consider the educational need of the student for a given related service, noncompliance has been identified.</p> <p>2. Is there evidence that related services are being provided as specified in the IEP?</p> <p>Evidence will be documented by reviewing the IEP and the related service provider's documentation of services. Evidence also will be obtained through interviews with related service providers, parents/ surrogate parents, and LEA staff to determine if student is receiving the related services indicated in the RF student's IEP.</p> <p>If YES, compliance is identified.</p> <p>If related services are not being provided or are not being provided according the specifications contained in the IEP (amount, frequency, and duration), noncompliance has been identified.</p> <p>If related services are not being provided by qualified staff, noncompliance has been identified.</p>	<p>If related services as specified in the IEP are provided to RF students by RF staff instead of LEA staff, the LEA must ensure that the service providers meet the qualification standards of the professional discipline(s) in which the providers are engaged.</p>

**Investigatory Topic: Related Services Provision**

Requirement	Investigatory Questions	Investigatory Considerations
	<p>C. Is there evidence that ARD committee determinations related to the provision of related services are reasonably calculated to assist an RF student to benefit from special education?</p> <p>Evidence will be documented in the IEP, including related services goals and objectives. Evidence also will be obtained through interviews with related service providers, parents/surrogate parents, and LEA staff.</p> <p>If YES, compliance is identified.</p> <p>D. Is there evidence that the ARD committee considers progress made on related services goals and revises the IEP as necessary to address a failure to progress?</p> <p>If the ARD committee does not review a lack of progress on related services goals and revise the IEP to address a failure to progress, noncompliance has been identified.</p>	

<b>Other Requirements</b>
<p><b>34 CFR §300.34. Related services.</b></p> <p>(a) General. Related services means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. Related services also include school health services and school nurse services, social work services in schools, and parent counseling and training.</p> <p>(b) Exception; services that apply to children with surgically implanted devices, including cochlear implants.</p> <p>(1) Related services do not include a medical device that is surgically implanted, the optimization of that device’s functioning (e.g., mapping), maintenance of that device, or the replacement of that device.</p> <p>(2) Nothing in paragraph (b)(1) of this section—</p> <p>(i) Limits the right of a child with a surgically implanted device (e.g., cochlear implant) to receive related services (as listed in paragraph (a) of this section ) that are determined by the IEP Team to be necessary for the child to receive FAPE.</p>

**Investigatory Topic: Related Services Provision**

**Other Requirements (continued)**

(ii) Limits the responsibility of a public agency to appropriately monitor and maintain medical devices that are needed to maintain the health and safety of the child, including breathing, nutrition, or operation of other bodily functions, while the child is transported to and from school or is at school; or

(iii) Prevents the routine checking of an external component of a surgically implanted device to make sure it is functioning properly, as required in §300.113(b).

(c) Individual related services terms defined. The terms used in this definition are defined as follows:

(1) Audiology includes—

(i) Identification of children with hearing loss;

(ii) Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing;

(iii) Provision of habilitative activities, such as language habilitation, auditory training, speech reading (lip-reading), hearing evaluation, and speech conservation;

(iv) Creation and administration of programs for prevention of hearing loss;

(v) Counseling and guidance of children, parents, and teachers regarding hearing loss; and

(vi) Determination of children's needs for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.

(2) Counseling services means services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel.

(3) Early identification and assessment of disabilities in children means the implementation of a formal plan for identifying a disability as early as possible in a child's life.

(4) Interpreting services includes—

(i) The following, when used with respect to children who are deaf or hard of hearing: Oral transliteration services, cued language transliteration services, sign language transliteration and interpreting services, and transcription services, such as communication access real-time translation (CART), C-Print, and TypeWell; and

(ii) Special interpreting services for children who are deaf-blind.

(5) Medical services means services provided by a licensed physician to determine a child's medically related disability that results in the child's need for special education and related services.

(6) Occupational therapy—

(i) Means services provided by a qualified occupational therapist; and

(ii) Includes—

(A) Improving, developing or restoring functions impaired or lost through illness, injury, or deprivation;

**Investigatory Topic: Related Services Provision**

**Other Requirements (continued)**

(B) Improving ability to perform tasks for independent functioning if functions are impaired or lost; and

(C) Preventing, through early intervention, initial or further impairment or loss of function.

(7) Orientation and mobility services—

(i) Means services provided to blind or visually impaired students by qualified personnel to enable those students to attain systematic orientation to and safe movement within their environments in school, home, and community; and

(ii) Includes teaching students the following, as appropriate:

(A) Spatial and environmental concepts and use of information received by the senses (such as sound, temperature and vibrations) to establish, maintain, or regain orientation and line of travel (e.g., using sound at a traffic light to cross the street);

(B) To use the long cane or service animal to supplement visual travel skills or as a tool for safely negotiating the environment for children with no available travel vision;

(C) To understand and use remaining vision and distance low vision aids; and

(D) Other concepts, techniques, and tools.

(8) Parent counseling and training means—

(i) Assisting parents in understanding the special needs of their child;

(ii) Providing parents with information about child development; and

(iii) Helping parents to acquire the necessary skills that will allow them to support the implementation of their child's IEP or IFSP.

(9) Physical therapy means services provided by a qualified physical therapist.

(10) Psychological services includes—

(i) Administering psychological and educational tests, and other assessment procedures;

(ii) Interpreting assessment results;

(iii) Obtaining, integrating, and interpreting information about child behavior and conditions relating to learning;

(iv) Consulting with other staff members in planning school programs to meet the special educational needs of children as indicated by psychological tests, interviews, direct observation, and behavioral evaluations;

(v) Planning and managing a program of psychological services, including psychological counseling for children and parents; and

(vi) Assisting in developing positive behavioral intervention strategies.

**Investigatory Topic: Related Services Provision**

**Other Requirements (continued)**

(11) Recreation includes—

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

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

(13) School health services and school nurse services means health services that are designed to enable a child with a disability to receive FAPE as described in the child's IEP. School nurse services are services provided by a qualified school nurse. School health services are services that may be provided by either a qualified school nurse or other qualified person.

(14) Social work services in schools includes—

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

(15) Speech-language pathology services includes—

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

**Investigatory Topic: Related Services Provision**

**Other Requirements (continued)**

(16) Transportation includes—

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

**34 CFR §300.320. Definition of individualized education program. (excerpt)**

(a) General. As used in this part, the term individualized education program or IEP means a written statement for each child with a disability that is developed, reviewed, and revised in a meeting in accordance with §§300.320 through 300.324, and that must include—

(3) A description of—

- (i) How the child's progress toward meeting the annual goals described in paragraph (2) of this section will be measured; and
- (ii) When periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided;

(4) A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child—

- (i) To advance appropriately toward attaining the annual goals;
- (ii) To be involved and make progress in the general education curriculum in accordance with paragraph (a)(1) of this section and to participate in extracurricular and other nonacademic activities; and
- (iii) To be educated and participate with other children with disabilities and nondisabled children in the activities described in this section;

(7) The projected date for the beginning of the services and modifications described in paragraph (a)(4) of this section, and the anticipated frequency, location, and duration of those services and modifications.

**TEC §21.003. Certification Required.**

(a) A person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, or counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by Subchapter B.

(b) A person may not be employed by a school district as an audiologist, occupational therapist, physical therapist, physician, nurse, school psychologist, associate school psychologist, social worker, or speech language pathologist unless the person is licensed by the state agency that licenses that profession. A person may perform specific services within those professions for a school district only if the person holds the appropriate credential from the appropriate state agency.

**Investigatory Topic: Related Services Provision**

**Other Requirements (continued)**

**TEC §29.004. Full Individual and Initial Evaluation.**

- (a) A written report of a full individual and initial evaluation of a student for purposes of special education services shall be completed not later than the 60th calendar day following the date on which the school district, in accordance with 20 U.S.C. Section 1414(a), as amended, receives written consent for the evaluation, signed by the student's parent or legal guardian.
- (b) The evaluation shall be conducted using procedures that are appropriate for the student's most proficient method of communication.

**Standard:** All students with a disability will have access to related services as appropriate and to the same degree as other students with disabilities and will receive all related services that have been determined necessary for the student to benefit from special education. If student does not receive such related services, noncompliance is identified. If noncompliance is identified, determine if systemic noncompliance exists. Systemic noncompliance is identified when 25% or more of the sample is found to be out of compliance or when significant trends are identified in specific student subgroups.



Investigatory Topic	Behavior/Discipline
<p><b>Sampling</b></p>	<p>For this investigatory topic, the sample will focus on students who have been subject to disciplinary action. If patterns of a particular practice or evidence of possible systemic noncompliance emerge, the review team will focus the sampling to verify findings. Within the folders selected, consideration will be given to:</p> <ul style="list-style-type: none"> <li>• the area(s) of disability identified for RF students;</li> <li>• the RF in which RF students reside;</li> <li>• the campus on which RF students are receiving services;</li> <li>• the presence of manifestation determination reviews, functional behavior assessments, and/or behavior intervention plans; and</li> <li>• students who have undergone a change of placement for disciplinary reasons.</li> </ul>
<p><b>Data Sources</b></p>	<p>Data to Review:</p> <ul style="list-style-type: none"> <li>• <b>Student-Level Review Data</b></li> <li>• <b>PEIMS Data</b></li> <li>• <b>Document Review:</b> ARD/IEP documentation, evaluation data, discipline reports, functional behavior assessments and behavior intervention plans; related services progress reports, local code of conduct</li> <li>• <b>Interviews:</b> Student, parent/guardian, foster parents, surrogate parents, RF staff, teachers, administrators, diagnostic staff, related service personnel</li> </ul>
<p><b>Further Investigation</b></p>	<p>As the review of folders is conducted and data area analyzed, the review team may identify possible patterns of practices, trends, and/or indications of individual or systemic noncompliance that may require further investigation to verify the findings. Examples:</p> <ul style="list-style-type: none"> <li>• Disciplinary actions are routinely implemented for RF students without consideration for the use of positive behavioral supports;</li> <li>• Manifestation determination reviews result in routine determinations and/or justifications that are not student specific;</li> <li>• Patterns of students in certain disability categories, such as emotional disturbance, autism, or other health impairment, who undergo a change of placement based on a manifestation determination review that indicates the conduct was not caused by or directly or substantially related to the RF student's disability;</li> <li>• Lack of educational service provision for students who undergo a change of placement for disciplinary reasons;</li> <li>• Varying patterns of disciplinary actions for RF and non-RF students with disabilities; or</li> <li>• Most / all behavior intervention plans for RF students are the same.</li> </ul>
<p><b>Review Strategies</b></p>	<p>As the review proceeds, the review team may determine a need to gather additional data by conducting specific, individual interviews to verify findings. Additionally, the review team may determine that a review of LEA data in the form of discipline records/reports or documentation of services rendered is necessary to verify findings on this item.</p>

**Investigatory Topic: Behavior/Discipline**

Requirement	Investigatory Questions	Investigatory Considerations
<p><b>34 CFR §300.324. Development, review, and revision of IEP. (excerpt)</b></p> <p><b>(a) Development of IEP.</b></p> <p>(2) Consideration of special factors. The IEP team must—</p> <p>(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.</p>	<p>X. Is there evidence that LEAs serving RF students conduct functional behavior assessments (FBAs), develop behavior intervention plans (BIPs), conduct manifestation determination reviews (MDRs), and implement individualized education programs (IEPs), including positive behavioral interventions and BIPs as required?</p> <p>A. Is there evidence that, in the case of a child whose behavior impedes his or her learning or that of others, the ARD committee considers, if appropriate, strategies, including positive behavioral interventions, strategies, and supports to address behavior?</p> <p>If a pattern exists in which, for RF students whose behavior impedes their learning or that of others, the students' IEPs fail to consider the use of positive behavioral interventions and supports, noncompliance has been identified.</p> <p>B. Is there evidence that manifestation determination reviews are conducted as required when a decision is made to change the placement of an RF student with a disability who has engaged in behavior that violated the code of conduct of the LEA that applies to all students?</p> <p>1. Is there evidence that, within 10 school days of any decision to change the placement of an RF student with a disability, a review (MDR) is conducted?</p> <p>2. Is there evidence that the MDR was conducted by the RF student's ARD committee?</p>	<p>Positive behavioral interventions are a range of behavior strategies and prevention-based interventions that help educators establish schoolwide, classroom, and individual student level systems of support to address behavior issues. A student-based strategy could include the provision of counseling as a related service.</p> <p>A change of placement occurs if the removal is for more than 10 consecutive school days or if the RF student is subjected to a series of removals that constitute a pattern based on the factors in 34 CFR §300.536(a)(2).</p> <p>When determining whether the placement of an RF student has been changed, the LEA must account for all removals from the educational placement, including time periods during which the student is returned to the RF due to behavioral issues. Removals to the RF must be included in the change of placement analysis regardless of how they are documented for purposes of discipline under TEC Chapter 37.</p>

**Investigatory Topic: Behavior/Discipline**

Requirement	Investigatory Questions	Investigatory Considerations
<p><b>34 CFR §300.536. Change of placement because of disciplinary removals.</b></p> <p>(a) For purposes of removals of a child with a disability from the child's current educational placement under §§300.530-300.535, a change of placement occurs if—</p> <p>(1) The removal is for more than 10 consecutive school days; or</p> <p>(2) The child has been subjected to a series of removals that constitute a pattern—</p> <p>(i) Because the series of removals total more than 10 school days in a school year;</p> <p>(ii) Because the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and</p> <p>(iii) Because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.</p>	<p>3. Is there evidence that, in conducting the MDR, the ARD committee reviewed all relevant information in the student's file, including—</p> <p>a. the RF student's IEP,</p> <p>b. any teacher observations, and</p> <p>c. any relevant information provided by the parents?</p> <p>4. Is there evidence that, in conducting the MDR, the ARD committee determines—</p> <p>a. if the conduct in question was caused by, or had a direct and substantial relationship to the student's disability; or</p> <p>b. if the conduct in question was the direct result of the LEA's failure to implement the IEP?</p> <p>If the ARD committee determines that either X.B.4.a. or b. apply, the behavior has been determined to be a manifestation of the student's disability.</p> <p>If the ARD committee determines that behavior is not a manifestation of the RF student's disability without considering all relevant information in X.B.3.a.-c. above, noncompliance has been identified.</p> <p>If the ARD committee determines that behavior is not a manifestation of the RF student's disability without ruling out X.B.4.a.-b. above, noncompliance has been identified.</p> <p>If patterns exist where MDR results indicate that uniform decisions are made in which RF student behaviors are determined not to be caused by or directly or substantially related to the student's disability regardless of relevant information related to the student's disability or IEP, noncompliance has been identified.</p>	

**Investigatory Topic: Behavior/Discipline**

Requirement	Investigatory Questions	Investigatory Considerations
<p>(b)(1) The public agency determines on a case-by-case basis whether a pattern of removals constitutes a change of placement.</p> <p>(2) This determination is subject to review through due process and judicial proceedings.</p>	<p>C. If it is determined that the RF student’s conduct was a manifestation of the student’s disability, is there evidence that the ARD committee—</p> <ol style="list-style-type: none"> <li>1. conducted an FBA and implemented a BIP for the student, provided that the LEA had not already conducted the assessment;</li> <li>2. in the situation in which a BIP has been developed, reviewed the BIP and modified it, as necessary, to address the behavior, and</li> <li>3. returned the RF student to the placement from which the student was removed, unless the parent and the LEA agreed to a change of placement as part of the modification of the BIP, or unless the student’s conduct involved drugs, weapons, or serious bodily injury as described in 34 CFR 300.530(g).</li> </ol> <p>If the ARD committee determines that behavior is a manifestation of the RF student’s disability and an FBA has not been conducted and/or a BIP has not been developed or reviewed as required under X.C.1. through X.C.2. above, noncompliance has been identified.</p> <p>If the ARD committee determines that behavior is a manifestation of the RF student’s disability and the student is not returned to the previous placement as required under X.C.3. above, noncompliance has been identified.</p> <p>D. Irrespective of whether the RF student’s conduct was a manifestation of the student’s disability, is there evidence that the RF student who is removed—</p> <ol style="list-style-type: none"> <li>1. continues to receive educational services so as to enable the RF student to continue to participate in the general education curriculum although in another setting and to progress toward meeting the goals set out in the RF student’s IEP; and</li> <li>2. receives, as appropriate, a functional behavioral assessment, behavior intervention services, and modifications that are designed to address the behavior violation so that it does not recur.</li> </ol>	<p>In determining compliance with this item, the review team should review the requirements and exceptions contained in SPECIAL CIRCUMSTANCES, at 34 CFR §300.530(g).</p>

**Investigatory Topic: Behavior/Discipline**

Requirement	Investigatory Questions	Investigatory Considerations
	<p>If the LEA does not continue to provide educational services to the RF student as required under X.D.1. above, noncompliance has been identified.</p> <p>If an FBA has not been conducted and/or behavior intervention services and modifications have not been provided as required under X.D.2. above, noncompliance has been identified.</p> <p>E. Is there evidence that BIPs, when developed, are individualized to address the behavior needs of the RF student?</p> <p>If patterns exist in which the BIPs of RF students or RF students in certain disability categories look identical or substantially the same without regard to individual student behaviors or issues, noncompliance has been identified.</p> <p>F. Is there evidence that a pattern exists involving disciplinary removals for RF students not found with other students with disabilities or with non-disabled students leading to RF students receiving fewer instructional services?</p> <p>If patterns of removal occur for RF students that do not occur for other students, noncompliance has been identified.</p>	<p>In determining compliance with this item, the review team will inquire about any practice of returning RF students to the RF to address behavioral issues and any agreements the LEA and RF have reached about how the behavior of RF students is addressed.</p>

**Investigatory Topic: Behavior/Discipline**

**Other Requirements**

**TEC §37.004. Placement of Students With Disabilities.**

- (a) The placement of a student with a disability who receives special education services may be made only by a duly constituted admission, review, and dismissal committee.
- (b) Any disciplinary action regarding a student with a disability who receives special education services that would constitute a change in placement under federal law may be taken only after the student's admission, review, and dismissal committee conducts a manifestation determination review under 20 U.S.C. Section 1415(k)(4) and its subsequent amendments. Any disciplinary action regarding the student shall be determined in accordance with federal law and regulations, including laws or regulations requiring the provision of:
  - (1) functional behavioral assessments;
  - (2) positive behavioral interventions, strategies, and supports;
  - (3) behavioral intervention plans; and
  - (4) the manifestation determination review.
- (c) A student with a disability who receives special education services may not be placed in alternative education programs solely for educational purposes.
- (d) A teacher in an alternative education program under Section 37.008 who has a special education assignment must hold an appropriate certificate or permit for that assignment.

**TEC §37.005. Suspension.**

- (a) The principal or other appropriate administrator may suspend a student who engages in conduct identified in the student code of conduct adopted under Section 37.001 as conduct for which a student may be suspended.
- (b) A suspension under this section may not exceed three school days.

**Standard:** All RF students will be subject to disciplinary procedures in alignment with the statute, code, and regulations and to the same extent as other students with disabilities. If procedures aren't implemented according to requirements, noncompliance has been identified. If noncompliance is identified, determine if systemic noncompliance exists. Systemic noncompliance is identified when 25% or more of the sample is found to be out of compliance or when significant trends are identified in specific student subgroups.

Investigatory Topic	Transition Services
<p><b>Sampling</b></p>	<p>For this investigatory topic, the sample will be focused on students 16 years of age or older and any younger students for whom transition has been addressed. If patterns of a particular practice or evidence of possible systemic noncompliance emerge, the review team will focus its sampling to verify findings. Within the folders selected, consideration will be given to:</p> <ul style="list-style-type: none"> <li>• the RF in which RF students reside;</li> <li>• the LEA campus on which RF students receive services; and</li> <li>• RF students ages 16 and older.</li> </ul>
<p><b>Data Sources</b></p>	<p>Data to Review:</p> <ul style="list-style-type: none"> <li>• <b>RF Tracker Data</b> (related to student age)</li> <li>• <b>Student-Level Review Data</b></li> <li>• <b>Document Review:</b> ARD/IEP documentation; VAC/OJT teacher logs; student schedules; LEA policies, procedures, and guidelines; documents reflecting coordination with other agencies</li> <li>• <b>Interviews:</b> Student, parent/guardian, foster parents, surrogate parents, RF staff, teachers, administrators, diagnostic staff, related service personnel, other agency personnel/employers (as appropriate)</li> </ul>
<p><b>Further Investigation</b></p>	<p>As the review of folders is conducted and data are analyzed, the review team may identify possible patterns of practices, trends, and/or indications of individual or systemic noncompliance that may require further investigation to verify the findings. Examples:</p> <ul style="list-style-type: none"> <li>• The extent of transition planning reflected in the IEPs of RF students (ages 16 and older) varies from that of students who do not reside in an RF;</li> <li>• Most / all RF students educated at an LEA campus are not provided access to transition related curriculum; or</li> <li>• Interviews with parents, students, LEA staff, or RF staff responses indicate concerns with transition goals for RF students.</li> </ul>
<p><b>Review Strategies</b></p>	<p>As the review proceeds, the review team may determine a need to gather additional data by conducting specific, individual interviews to verify findings. Additionally, the review team may determine that a review of LEA data in the form of teacher logs, class schedules, work schedules, guidance counseling schedules, or additional classroom/student observations is necessary to verify findings on this item.</p>

**Investigatory Topic: Transition Services**

Requirement	Investigatory Questions	Investigatory Considerations
<p><b>34 CFR §300.320. Definition of individualized education program. (excerpt)</b></p> <p>(b) Transition services, Beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team, and updated annually, thereafter, the IEP must include—</p> <p>(1) Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and</p> <p>(2) The transition services (including courses of study) needed to assist the child in reaching those goals.</p> <p>(c) Transfer of rights at age of majority. Beginning not later than one year before the child reaches the age of majority under State law, the IEP must include a statement that the child has been informed of the child's rights under Part B of the Act, if any, that will transfer to the child on reaching the age of majority under §300.520.</p> <p><b>34 CFR §300.324. Development, review, and revision of IEP. (excerpt)</b></p> <p>(c) Failure to meet transition objectives—</p> <p>(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.</p>	<p>XI. Is there evidence that, for a student beginning at age 16, or younger, if determined appropriate by the ARD committee, the IEP reflects transition requirements?</p> <p>A. Is there evidence that the following issues are considered in the development of the IEP, and, if appropriate, integrated into the IEP?</p> <ol style="list-style-type: none"> <li>1. appropriate student involvement in the student's transition to life outside the public school system;</li> <li>2. if the student is younger than 18 years of age, appropriate parental involvement in the student's transition;</li> <li>3. if the student is at least 18 years of age, appropriate parental involvement in the student's transition, if the parent is invited to participate by the student or the LEA in which the student is enrolled;</li> <li>4. any postsecondary education options;</li> <li>5. a functional vocational evaluation;</li> <li>6. employment goals and objectives;</li> <li>7. if the student is at least 18 years of age, the availability of age-appropriate instructional environments;</li> <li>8. independent living goals and objectives; and</li> <li>9. appropriate circumstances for referring a student or the student's parents to a governmental agency for services.</li> </ol> <p>If transition issues are appropriately considered and integrated into the IEP, compliance has been identified.</p> <p>If NO, noncompliance has been identified.</p>	<p>Unless student-specific reasons are detailed in the IEP, RF students should have available to them the broad array of transition services and supports available to other students with disabilities, including, for example, career and technical education (CTE) and modifications necessary for the student to participate in CTE.</p> <p>Students with disabilities may not be excluded from transition services, including CTE settings, based on a need for modifications or accommodations identified in the IEP. Necessary modifications or accommodations must be made available in transition and CTE settings.</p>



**Investigatory Topic: Transition Services**

Requirement	Investigatory Questions	Investigatory Considerations
	<p>B. If an RF student's transition goals require the involvement of other agencies, has the LEA coordinated with the identified outside agencies?</p> <p>If YES, compliance has been identified.</p> <p>If NO, noncompliance has been identified.</p> <p>C. If the LEA has determined that other agencies have failed to provide transition services as stated in the IEP, is there evidence that the ARD committee reconvened and identified alternative strategies to meet the transition objectives for the student set out in the IEP?</p> <p>If YES, compliance has been identified.</p> <p>If NO, noncompliance has been identified.</p> <p>D. Is there evidence that the ARD committee annually addresses transition services needs and/or needed transition services in the IEP?</p> <p>If YES, compliance has been identified.</p> <p>If NO, noncompliance has been identified.</p>	

Other Requirements
<p><b>TEC §29.011. Transition Planning.</b></p> <p>The commissioner shall by rule adopt procedures for compliance with federal requirements relating to transition services for students who are enrolled in special education programs under this subchapter. The procedures must specify the manner in which a student's admission, review, and dismissal committee must consider, and if appropriate, address the following issues in the student's individualized education program:</p> <ol style="list-style-type: none"> <li>(1) appropriate student involvement in the student's transition to life outside the public school system;</li> <li>(2) if the student is younger than 18 years of age, appropriate parental involvement in the student's transition;</li> <li>(3) if the student is at least 18 years of age, appropriate parental involvement in the student's transition, if the parent is invited to participate by the student or the school district in which the student is enrolled;</li> </ol>

**Investigatory Topic: Transition Services**

**Other Requirements (continued)**

- (4) any postsecondary education options;
- (5) a functional vocational evaluation;
- (6) employment goals and objectives;
- (7) if the student is at least 18 years of age, the availability of age-appropriate instructional environments;
- (8) independent living goals and objectives; and
- (9) appropriate circumstances for referring a student or the student's parents to a governmental agency for services.

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

- (g) For each student with a disability, beginning at age 16 (prior to the date on which a student turns 16 years of age) or younger, if determined appropriate by the ARD committee, the following issues must be considered in the development of the IEP, and, if appropriate, integrated into the IEP:
  - (1) appropriate student involvement in the student's transition to life outside the public school system;
  - (2) if the student is younger than 18 years of age, appropriate parental involvement in the student's transition;
  - (3) if the student is at least 18 years of age, appropriate parental involvement in the student's transition, if the parent is invited to participate by the student or the school district in which the student is enrolled;
  - (4) any postsecondary education options;
  - (5) a functional vocational evaluation;
  - (6) employment goals and objectives;
  - (7) if the student is at least 18 years of age, the availability of age-appropriate instructional environments;
  - (8) independent living goals and objectives; and
  - (9) appropriate circumstances for referring a student or the student's parents to a governmental agency for services.

**Standard:** For each student with a disability beginning at age 16 (or younger, if determined appropriate by the ARD committee), the IEP has been updated annually and includes a statement of the transition service needs of the student under the applicable components of the student's IEP. If noncompliance is identified, determine if systemic noncompliance exists. Systemic noncompliance is identified when 25% or more of the sample is found to be out of compliance or when significant trends are identified in specific student subgroups.

Investigatory Topic	Extended School Year (ESY) Services
<b>Sampling</b>	<p>For this investigatory topic, the sample will focus on students who received ESY services and certain students who do not receive ESY services. If patterns of a particular practice or evidence of possible systemic noncompliance emerge, the review team will focus its sampling to verify findings. Within the folders selected, consideration will be given to:</p> <ul style="list-style-type: none"> <li>• the instructional arrangement in which RF students are receiving services;</li> <li>• the RF in which RF students reside;</li> <li>• the campus on which RF students are receiving services;</li> <li>• the type of ESY services RF students are receiving;</li> <li>• students who may be failing, retained, or receiving progress reports reflecting a lack of progress during the school year; and</li> <li>• students whose age is not aligned with assigned grade level.</li> </ul>
<b>Data Sources</b>	<p>Data to Review:</p> <ul style="list-style-type: none"> <li>• <b>PEIMS Data</b></li> <li>• <b>Student-Level Review Data</b></li> <li>• <b>Document Review:</b> ARD/IEP documentation, evaluation data used for ESY purposes, ESY contact hour registers</li> <li>• <b>Interviews:</b> Student, parent/guardian, foster parents, surrogate parents, RF staff, teachers, administrators, diagnostic staff, related service personnel</li> </ul>
<b>Further Investigation</b>	<p>As the review of folders is conducted and data are analyzed, the review team may evidence possible patterns of practices, trends, and/or indications of individual or systemic noncompliance that may require further investigation to verify the findings. Examples:</p> <ul style="list-style-type: none"> <li>• Few / No RF students receive ESY services;</li> <li>• ESY services (instructional and/or related) provided to RF students are substantially similar;</li> <li>• Only students with particular disabilities receive ESY services; or</li> <li>• Interviews with parents, students, LEA staff or RF staff indicate ESY services are not considered for RF students.</li> </ul>
<b>Review Strategies</b>	<p>As the review proceeds, the review team may determine a need to gather additional data by conducting specific, individual interviews to verify findings. Additionally, the review team may determine that a review of LEA data in the form of student progress reports or staff assignment information is necessary to verify findings on this item.</p>

**Investigatory Topic: Extended School Year (ESY) Services**

Requirement	Investigatory Questions	Investigatory Considerations
<p><b>34 CFR §300.106. Extended school year services.</b></p> <p>(a) General.</p> <p>(1) Each public agency must ensure that extended school year services are available as necessary to provide FAPE, consistent with paragraph (a)(2) of this section.</p> <p>(2) Extended school year services must be provided only if a child's IEP team determines, on an individual basis, in accordance with §§300.320-300.324, that the services are necessary for the provision of FAPE to the child.</p> <p>(3) In implementing the requirements of this section, a public agency may not--</p> <p>(i) Limit extended school year services to particular categories of disability; or</p> <p>(ii) Unilaterally limit the type, amount, or duration of those services.</p> <p>(b) Definition. As used in this section, the term extended school year services means special education and related services that--</p>	<p>XII. Is there evidence that decisions related to the provision of ESY services are made in accordance with federal and state requirements and that students with disabilities who reside in RFs receive individualized consideration for ESY services?</p> <p>A. Is there evidence that RF students with disabilities have equal access to ESY services when compared to other students with disabilities in the LEA?</p> <p>If it is determined that RF students with disabilities do not have substantially similar access to ESY services, noncompliance has been identified.</p> <p>B. Is there evidence that the need for ESY services is considered on an individualized basis for RF students and is not limited to particular categories of disabilities?</p> <p>If it is determined that ESY services are made available or not made available based upon particular categories of disability, noncompliance has been identified.</p> <p>C. Is there evidence that ESY is considered for RF students on an individualized basis as it relates to type, amount, duration, and scope of services provided?</p> <p>If it is determined that the ESY services provided to RF students are substantially similar and not varied based on individualized student data and determination of need (for example, all RF students, regardless of individual needs, receive the same types and amounts of ESY service <u>or</u> related services are never provided during ESY), noncompliance has been identified.</p> <p>If it is determined that the amount of related services to be provided as a part of ESY services is routinely reduced based on a reduced instructional day, regardless of individual student need, noncompliance has been identified.</p>	

**Investigatory Topic: Extended School Year (ESY) Services**

<b>Requirement</b>	<b>Investigatory Questions</b>	<b>Investigatory Considerations</b>
<p>(1) Are provided to a child with a disability—</p> <ul style="list-style-type: none"> <li>(i) Beyond the normal school year of the public agency;</li> <li>(ii) In accordance with the child's IEP; and</li> <li>(iii) At no cost to the parents of the child; and</li> </ul> <p>(2) Meet the standards of the SEA.</p>	<p>D. Is there evidence that formal and/or informal evaluations are used to determine the need for ESY services?</p> <p>If it is determined that evaluations were not used to make determinations for ESY services, including data related to regression after breaks in service, noncompliance has been identified.</p> <p>E. Is there evidence that ESY services are provided to RF students in accordance with their IEP goals and objectives?</p> <p>If it is determined that ESY services do not address the current IEP goals and objectives of the student, noncompliance has been identified.</p> <p>F. Is there evidence that ESY services are provided in less restrictive environments and are not segregated from general education activities that occur during school breaks?</p> <p>If it is determined that ESY services are provided to RF students in separate settings when integrated settings are available and would be appropriate, noncompliance has been identified.</p>	<p>The need for ESY services must be documented from formal and/or informal evaluations provided by the LEA or the parents. The documentation shall demonstrate that in one or more critical areas addressed in the current individualized education program (IEP) 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.</p> <p>An example of an integrated setting would be a campus on which general education summer school, remedial, or enrichment services are provided during the school break.</p>

**Other Requirements**

**19 TAC §89.1065. Extended School Year Services (ESY Services).**

Extended school year (ESY) services are defined 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.

## Investigatory Topic: Extended School Year (ESY) Services

### Other Requirements (continued)

- (2) The need for ESY services must be documented from formal and/or informal evaluations provided by the district or the parents. The documentation shall demonstrate that in one or more critical areas addressed in the current individualized education program (IEP) 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 shall 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 shall 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 shall 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 shall 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 shall 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.

**Standard:** All RF students will be considered for and provided with ESY services in alignment with the statute, code, and regulations and to the same extent as other students with disabilities. If procedures aren't implemented according to requirements, noncompliance has been identified. If noncompliance is identified, determine if systemic noncompliance exists. Systemic noncompliance is identified when 25% or more of the sample is found to be out of compliance or when significant trends are identified in specific student subgroups.

Investigatory Topic	Participation in State Assessment Program
<p><b>Sampling</b></p>	<p>The sample for this investigatory topic will focus on students in grades 3 through 11 who must participate in the statewide assessment program by taking regular assessments, accommodated assessments, modified assessments or alternate assessments. If patterns of a particular practice or evidence of possible systemic noncompliance emerge, the review team will focus the sampling to verify findings. Within the folders selected, consideration will be given to:</p> <ul style="list-style-type: none"> <li>• RF students who do not participate in the state assessment program;</li> <li>• the RF in which RF students reside;</li> <li>• the LEA campus on which RF students receive services;</li> <li>• RF students enrolled in particular grade levels; and</li> <li>• RF students who participate in modified state assessments or alternate state assessments.</li> </ul> <p>RF students who participate in only the standard state assessments will be excluded from review for this investigatory topic.</p>
<p><b>Data Sources</b></p>	<p>Data to Review:</p> <ul style="list-style-type: none"> <li>• <b>Student-Level Review Data</b></li> <li>• <b>Student Assessment Information</b></li> <li>• <b>Document Review:</b> ARD/IEP documentation, student cumulative folders, current student evaluations, student assessment results</li> <li>• <b>Interviews:</b> Student, parent/guardian, foster parents, surrogate parents, RF staff, teachers, administrators, diagnostic staff, assessment coordinator</li> </ul>
<p><b>Further Investigation</b></p>	<p>As the review of folders is conducted and data are analyzed, the review team may identify possible patterns of practices, trends, and/or indications of individual or systemic noncompliance that may require further investigation to verify the findings. Examples:</p> <ul style="list-style-type: none"> <li>• Most RF students educated at the site of a facility do not participate in the state assessment program;</li> <li>• Most RF students educated at an LEA campus do not participate in the state assessment program;</li> <li>• Most RF students instructed on or near grade level do not participate in the state assessment program;</li> <li>• Most RF students of certain disabilities who are instructed on or near grade level do not participate in the state assessment program; or</li> <li>• Most RF students are absent on test day.</li> </ul>
<p><b>Review Strategies</b></p>	<p>As the review proceeds, the review team may determine a need to gather additional data by conducting specific, individual interviews to verify findings. Additionally, the review team may determine that a review of LEA data in the form of teacher logs, assessment documentation, or classroom/student observations is necessary to verify findings on this item.</p>

**Investigatory Topic: Participation in State Assessment Program**

Requirement	Investigatory Questions	Investigatory Considerations
<p><b>34 CFR §300.324. Development, review, and revision of IEP. (excerpt)</b></p> <p>(a) Development of IEP—</p> <p>(1) General. In developing each child's IEP, the IEP team, must consider—</p> <p>(iv) The academic, developmental, and functional needs of the child.</p> <p><b>34 CFR §300.320. Definition of individualized education program. (excerpt)</b></p> <p>(a) General. As used in this part, the term individualized education program or IEP means a written statement for each child with a disability that is developed, reviewed, and revised in a meeting in accordance with §§300.320 through 300.324, and that must include—</p> <p>(6)(i) A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and districtwide assessments consistent with section 612(a)(16) of the Act; and</p>	<p>XIII. Is there evidence of participation of RF students in the state assessment program?</p> <p>A. Is there evidence that the IEP reflects the ARD committee's decisions concerning the student's participation in the statewide assessment program?</p> <p>The ARD committee must make decisions regarding the assessment in which the student will participate.</p> <p>If YES, compliance has been identified.</p> <p>If NO, noncompliance has been identified.</p> <p>B. Is there evidence that the IEP reflects appropriate decisions concerning the student's participation in the statewide assessment program, taking into account the student's current levels of educational performance as well as information related to accommodations and/or the modifications to the content of the curriculum the student is receiving?</p> <p>Evidence would be documented on the most current full individual evaluation or reevaluation of the student, the IEP present levels of academic achievement and functional performance, goals and objectives, progress notes for IEPs, grades, previous assessments, as well as information from individuals, such as parents, guardians, surrogate parents, teachers, counselors, etc. Other relevant information may include student work, informal teacher assessments, and formal teacher assessments created from or provided with instructional materials, as well as the student's confidential student record, which includes the results from the previous test administrations of the statewide assessment program.</p> <p>In determining compliance, review guidance contained in the <i>Investigatory Considerations</i> column related to various assessment instruments and additional guidelines contained in the <i>Investigatory Questions</i> column on page 84 of this document.</p>	<p>The review team will review information and the decision-making process for each subject area in which the student is required to be assessed.</p> <p>The ARD committee must make all required assessment decisions</p> <p>Reference the <i>Revised ARD Committee Decision-Making Process for the Texas Assessment Program</i> and the <i>Accommodations Manual</i> for more information, including information regarding allowable and nonallowable accommodations for various assessment instruments. Requirements and resources related to ARD committee decision-making, accommodations, and other special education assessment issues are available on the TEA <i>Student Assessment</i> website.</p> <p><b>The Standard State Assessment:</b></p> <p>If the student receives instruction using on- or near-grade-level TEKS curriculum with no accommodations that would invalidate the standard state assessment, the ARD committee should determine the student will take the regular state assessment.</p> <p><b>The Accommodated State Assessment:</b></p> <p>If the student receives instruction using on-or near-grade level TEKS curriculum or modified TEKS curriculum with accommodations documented in the IEP that would invalidate the standard assessment, the ARD should determine that the student will take the accommodated state assessment at his/her enrolled grade level.</p> <p>If the student receives instruction using on- or near-grade-level TEKS curriculum with no accommodations that would invalidate the standard state assessment, but the committee has determined that the student will not take the standard state assessment, noncompliance has been identified.</p>



**Investigatory Topic: Participation in State Assessment Program**

Requirement	Investigatory Questions	Investigatory Considerations
<p>(ii) If the IEP team determines that the child must take an alternate assessment instead of a particular regular State or districtwide assessment of student achievement, a statement of why—</p> <p>(A) The child cannot participate in the regular assessment; and</p> <p>(B) The particular alternate assessment selected is appropriate for the child; and</p> <p><b>19 TAC §89.1055. Content of the Individualized Education Program (IEP). (excerpt)</b></p> <p>(a) The individualized education program (IEP) developed by the admission, review, and dismissal (ARD) committee for each student with a disability shall comply with the requirements of 34 Code of Federal Regulations (CFR), §300.320 and §300.324.</p> <p>(b) The IEP must include a statement of any individual appropriate and allowable accommodations in the administration of assessment instruments developed in accordance with Texas Education Code (TEC),</p>	<p>If there is evidence that the RF student's expectation level for IEP goals/objectives are not consistent with present levels of academic achievement and functional performance, and thus decisions for the state assessment participation are not consistent with present levels of academic achievement and functional performance, noncompliance has been identified.</p> <p>If there is evidence that state assessment participation decisions are based on past history of taking state assessments, but not the student's present levels of performance and instructional level, noncompliance is identified.</p> <p>If there is evidence that a pattern exists in which students with particular disabilities, students from particular RFs, students from particular campuses, etc. are excluded from state assessment participation without appropriate justification, noncompliance has been identified.</p> <p>If there are patterns of modification and accommodation decisions made in relation to statewide assessment determinations that are not supported by student-specific evaluation and IEP information that results in student removal from the state assessment, noncompliance has been identified.</p> <p>If there is evidence that modification and accommodation decisions made in relation to statewide assessment determinations are not in alignment with Texas Assessment Program requirements or that allowable accommodations are not considered in making assessment determinations, resulting in student removal from the standard state assessment, the accommodated assessment, and/or modified assessment, noncompliance has been identified.</p> <p>C. Is there evidence that a pattern of absences on testing days exists for RF students?</p> <p>Evidence would be documented in students' confidential student records, campus and LEA assessment reports, and in student attendance records.</p> <p>If a pattern exists without a reasonable justification (such as a documented flu outbreak affecting individual students during the testing window), noncompliance is identified.</p>	<p><b>The Modified Assessment</b> (when the standard state assessment and the accommodated state assessment are not appropriate):</p> <p>The modified state assessment is an alternate assessment based on modified academic achievement standards and is designed for students receiving special education services who meet participation requirements for the modified assessment and for whom the standard state assessment or the accommodated state assessment is not appropriate. The modified state assessment covers the same grade-level content as the standard assessment, but has been modified in format and test design.</p> <p>If the student receives instruction using modified TEKS curriculum and meets the participation requirements of the modified state assessment, precluding the administration of the standard state assessment, and has no accommodations documented in the IEP that would invalidate the modified assessment, the ARD committee should determine that the student will take the modified state assessment .</p> <p>ARD committees may decide that a student's knowledge and skills in one or more subject areas can best be assessed with the modified state assessment if the student meets <b>all</b> of the following participation criteria.</p> <p>Participation Requirements; The student:</p> <ul style="list-style-type: none"> <li>• Needs <b>extensive</b> modifications and/or accommodations to classroom instruction, assignments, and assessments to access and demonstrate progress in the grade-level TEKS;</li> <li>• Demonstrates academic progress in such a way that even if significant growth occurs during the school year, the ARD committee is reasonably certain that the student will not achieve grade-level proficiency as demonstrated by multiple valid measures of evidence;</li> <li>• Meets some but not all of the participation criteria of the alternate state assessment; and</li> <li>• Requires an alternate form of state assessment which is more closely aligned with instructional modifications to the content of the curriculum in order to demonstrate knowledge of the grade-level TEKS.</li> </ul>

**Investigatory Topic: Participation in State Assessment Program**

Requirement	Investigatory Questions	Investigatory Considerations
<p>§39.023(a)-(c), or district-wide assessments of student achievement (if the district administers such optional assessments) that are necessary to measure the academic achievement and functional performance of the child on the assessments. If the ARD committee determines that the student will not participate in a general state-wide assessment or district-wide assessment of student achievement (or part of an assessment), the IEP must include a statement of:</p> <p>(1) why the child cannot participate in the regular assessment; and</p> <p>(2) why the particular alternate assessment selected is appropriate for the child.</p>		<p>If the student receives instruction using modified TEKS curriculum, precluding the administration of the standard or accommodated state assessment and has no accommodations documented in the IEP that would invalidate modified state assessment but the ARD committee has determined the student will not take the modified state assessment in an area in which the modified state assessment is available, noncompliance has been identified.</p> <p><b>The Alternate State Assessment:</b></p> <p>The alternate state assessment is an alternate assessment based on alternate academic achievement standards and is designed for students with significant cognitive disabilities who meet the participation requirements.</p> <p>If the student receives instruction using modified TEKS curriculum through pre-requisite skills and meets the participation requirements for the alternate state assessment, the ARD committee should determine the student will take the alternate state assessment.</p> <p>ARD committees may decide that a student’s knowledge and skills can best be assessed with the alternate state assessment if the student meets all of the following participation criteria.</p> <p>Participation Requirements: The student:</p> <ul style="list-style-type: none"> <li>• Requires supports to access the general curriculum that may include assistance involving communication, response style, physical access, or daily living skills;</li> <li>• Requires direct, intensive, individualized instruction in a variety of settings to accomplish the acquisition, maintenance and generalization of skills;</li> <li>• Accesses and participates in the grade-level TEKS through activities that focus on prerequisite skills;</li> <li>• Demonstrates knowledge and skills routinely in class by methods other than paper-and-pencil tasks; and</li> <li>• Demonstrates performance objectives that may include real life applications of the grade-level TEKS as appropriate to the student’s abilities and needs.</li> </ul> <p>If the student receives instruction using on- or near-grade-level TEKS curriculum with no accommodations that would invalidate the standard state assessment, but the committee has determined that the student will not take the standard state assessment, noncompliance has been identified.</p>

## Investigatory Topic: Participation in State Assessment Program

### Other Requirements

#### **34 CFR §200.1. State responsibilities for developing challenging academic standards. (excerpt)**

- (f) *State guidelines.* If a State defines alternate or modified academic achievement standards under paragraph (d) or (e) of this section, the State must do the following—
- (2) For students who are assessed based on modified academic achievement standards, the State must—
    - (i) Inform IEP teams that a student may be assessed based on modified academic achievement standards in one or more subjects for which assessments are administered under §200.2;
    - (ii) Establish and monitor implementation of clear and appropriate guidelines for IEP teams to apply in developing and implementing IEPs for students who are assessed based on modified academic achievement standards. These students' IEPs must—
      - (A) Include IEP goals that are based on the academic content standards for the grade in which a student is enrolled; and
      - (B) Be designed to monitor a student's progress in achieving the student's standards-based goals;
    - (iii) Ensure that students who are assessed based on modified academic achievement standards have access to the curriculum, including instruction, for the grade in which the students are enrolled;
    - (iv) Ensure that students who take alternate assessments based on modified academic achievement standards are not precluded from attempting to complete the requirements, as defined by the State, for a regular high school diploma; and
    - (v) Ensure that each IEP team reviews annually for each subject, according to the criteria in paragraph (e)(2) of this section, its decision to assess a student based on modified academic achievement standards to ensure that those standards remain appropriate.

#### **34 CFR §300.160. Participation in assessments. (excerpt)**

- (a) General. A State must ensure that all children with disabilities are included in all general State and district-wide assessment programs, including assessments described under section 1111 of the ESEA, 20 U.S.C. 6311, with appropriate accommodations and alternate assessments, if necessary, as indicated in their respective IEPs.
- (b) Accommodation guidelines.
- (1) A State (or, in the case of a district-wide assessment, an LEA) must develop guidelines for the provision of appropriate accommodations.
  - (2) The State's (or, in the case of a district-wide assessment, the LEA's) guidelines must--
    - (i) Identify only those accommodations for each assessment that do not invalidate the score; and
    - (ii) Instruct IEP Teams to select, for each assessment, only those accommodations that do not invalidate the score.
- (c) Alternate assessments.
- (1) A State (or, in the case of a district-wide assessment, an LEA) must develop and implement alternate assessments and guidelines for the participation of children with disabilities in alternate assessments for those children who cannot participate in regular assessments, even with accommodations, as indicated in their respective IEPs, as provided in paragraph (a) of this section.
  - (2) For assessing the academic progress of students with disabilities under Title I of the ESEA, the alternate assessments and guidelines in paragraph (c)(1) of this section must provide for alternate assessments that--
    - (i) Are aligned with the State's challenging academic content standards and challenging student academic achievement standards;
    - (ii) If the State has adopted modified academic achievement standards permitted in 34 CFR 200.1(e), measure the achievement of children with disabilities meeting the State's criteria under Sec. 200.1(e)(2) against those standards; and
    - (iii) If the State has adopted alternate academic achievement standards permitted in 34 CFR 200.1(d), measure the achievement of children with the most significant cognitive disabilities against those standards.

## Investigatory Topic: Participation in State Assessment Program

### Other Requirements (continued)

#### **TEC §39.023. Adoption and Administration of Instruments. (excerpt)**

- (a) The agency shall adopt or develop appropriate criterion-referenced assessment instruments designed to assess essential knowledge and skills in reading, writing, mathematics, social studies, and science. All students, except students assessed under Subsection (b) or (l) or exempted under Section 39.027, shall be assessed in:
  - (1) mathematics, annually in grades three through seven without the aid of technology and in grade eight with the aid of technology on any assessment instruments that includes algebra;
  - (2) reading, annually in grades three through eight;
  - (3) writing, including spelling and grammar, in grades four and seven;
  - (4) social studies, in grades eight;
  - (5) science, in grades five and eight; and
  - (6) any other subject and grade required by federal law.
- (a-1) The agency shall develop assessment instruments required under Subsection (a) in a manner that allows, to the extent practicable:
  - (1) the score a student receives to provide reliable information relating to a student's satisfactory performance for each performance standard under Section 39.0241; and
  - (2) an appropriate range of performances to serve as a valid indication of growth in student achievement.
- (b) The agency shall develop or adopt appropriate criterion-referenced alternative assessment instruments to be administered to each student in a special education program under Subchapter A, Chapter 29, for whom an assessment instrument adopted under Subsection (a), even with allowable accommodations, would not provide an appropriate measure of student achievement, as determined by the student's admission, review, and dismissal committee.
- (c) The agency shall also adopt end-of-course assessment instruments for secondary-level courses in Algebra I, Algebra II, geometry, biology, chemistry, physics, English I, English II, English III, world geography, world history, and United States history. The Algebra I, Algebra II, and geometry end-of-course assessments instruments must be administered with the aid of technology. A school district shall comply with State Board of Education rules regarding administration of the assessment instruments listed in this subsection and shall adopt a policy that requires a student's performance on an end-of-course assessment instrument for a course listed in this subsection in which the student is enrolled to account for 15 percent of the student's final grade for the course. If a student retakes an end-of-course assessment instrument for a course listed in this subsection, as provided by Section 39.025, a school district is not required to use the student's performance on the subsequent administration or administrations of the assessment instrument to determine the student's final grade for the course. If a student is in a special education program under Subchapter A, Chapter 29, the student's admission, review, and dismissal committee shall determine whether any allowable modification is necessary in administering to the student an assessment instrument required under this subsection. The State Board of Education shall administer the assessment instruments. The State Board of Education shall adopt a schedule for the administration of end-of-course assessment instruments that complies with the requirements of Subsection (c-3).

#### **TEC §39.027. Exemption. (excerpt)**

- (a) A student may be administered an accommodated or alternative assessment instrument or may be granted an exemption from or a postponement of the administration of an assessment instrument under:
  - (1) Section 39.023(a), (b), (c), or (l) for a period of up to one year after initial enrollment in a school in the United States if the student is of limited English proficiency, as defined by Section 29.052, and has not demonstrated proficiency in English as determined by the assessment system under Subsection (e);
  - (2) Section 39.023(a), (b), (c), or (l) for a period of up to two years in addition to the exemption period authorized by Subdivision (1) if the student has received an exemption under Subdivision (1) and:

**Other Requirements (continued)**

- (A) is a recent unschooled immigrant; or
- (B) is in a grade for which no assessment instrument in the primary language of the student is available; or
- (3) Section 39.023(a)(b),(c), or (l) for a period of up to four years, in addition to the exemption period authorized under Subdivision (1), if the student's initial enrollment in a school in the United States was as an unschooled asylee or refugee.

**19 TAC §101.5. Student Testing Requirements. (excerpt)**

- (a) Every student receiving instruction in the essential knowledge and skills shall take the appropriate criterion-referenced assessments, as required by the Texas Education Code (TEC), Chapter 39, Subchapter B.
- (b) A student receiving special education services under the TEC, Chapter 29, Subchapter A, enrolled in Grades 3-11 and who is receiving instruction in the essential knowledge and skills, shall take the assessment of academic skills unless the student's admission, review, and dismissal (ARD) committee determines that it is an inappropriate measure of the student's academic progress as outlined in the student's individualized education program (IEP). If the student's ARD committee determines that the assessment of academic skills is an inappropriate measure of the student's academic progress in one or more subjects, the student shall take the alternate assessment of academic skills in the subject or subjects. Each testing accommodation shall be documented in the student's IEP in accordance with 34 Code of Federal Regulations (CFR) §300.347(a)(5)(i) and (ii), relating to the content of the IEP and participation in statewide or districtwide assessments.

**Standard:** The RF student enrolled in grades 3 through 11 will participate in the statewide assessment system. If it is determined that an RF student has been excluded from assessment or inappropriately included in assessment, noncompliance will be identified. If noncompliance is identified, determine if systemic noncompliance exists. Systemic noncompliance is identified when 25% or more of the sample is found to be out of compliance.

## **Section D. TEA Follow-Up Activities**

### **Continuous Improvement Plans (CIPs)**

The RF LEA must conduct ongoing monitoring to determine the progress of implementation of the CIP. As part of the continuous improvement process, the TEA will follow up with the LEA on an ongoing basis to review data and evidence of change and to verify implementation of the CIP. The LEA is required to maintain appropriate documentation of implementation of the RFM process and implementation of the CIP, and may be subject to verification by the agency of data integrity and appropriate implementation of the RFM system.

### **When Corrective Action Planning is Required**

RF LEAs that identify student-specific or systemic noncompliance as part of Stage 1 through Stage 3 Interventions will reflect their findings and corrective actions within the RFM PCR template and CIP, which will be submitted to the TEA for review and approval. The TEA will verify the LEA's findings and provide official notification detailing areas of noncompliance that must be corrected.

LEAs that receive an on-site RFM visit will be issued a written RFM report, and any area(s) of identified student-specific or systemic noncompliance will be reflected in the report. An RF LEA will be provided an opportunity to request reconsideration of the TEA's original findings in accordance with 19 TAC §97.1033. An LEA that requests reconsideration of the TEA's original findings will be required to do so within a specified timeline. Accompanying the request for reconsideration must be any documentation that the RF LEA wishes the TEA to consider in making a final compliance determination. If noncompliance is identified by the TEA in the RFM report, the LEA is required to complete and submit to the TEA a CIP with corrective actions that incorporates findings of noncompliance identified by the TEA during the on-site visit and reflected in the TEA's RFM report for the LEA.

### **LEA Corrective Action Planning Guidelines**

Comprehensive corrective actions must be developed by the RF LEA in response to any findings of student-specific or systemic noncompliance identified by the LEA or contained in a TEA RFM report. The timeline for submission of corrective actions will be identified in the TEA's written correspondence and/or RFM report.

Corrective actions must include specific information related to:

- the area(s) of identified noncompliance by investigatory topic and specific legal reference from the IDEA 2004, CFR, TEC, and TAC;
- the goal(s) the LEA will establish to correct the noncompliance;
- qualitative and quantitative measures of correction (measurable evidence or benchmarks of change);
- initiatives or activities planned to achieve the required correction, including compensatory services as necessary to address failure to provide a free appropriate public education;
- materials, supplies, fiscal, and personnel resources needed to implement the activities, including names of responsible parties; and
- the timeline(s) established for purposes of evaluating progress in correction.

Initiatives or activities planned to achieve the required corrections must address:

- possible review/revision of the LEA's operating guidelines;
- steps/procedures that will be taken to correct the student-specific or systemic noncompliance;
- steps/procedures that will be put in place to ensure that the same errors will not occur in the future; and
- how the LEA will monitor itself to know if the noncompliance is being corrected.

## **TEA Approval of CIPs and Corrective Actions**

The Division of Program Monitoring and Interventions will review an RF LEA's submissions, including the CIP and any corrective actions submitted by an LEA, to determine whether they reflect appropriate findings and goals and activities targeted to improve program effectiveness and/or correction of all identified area(s) of student-specific or systemic noncompliance. Upon receipt of an RF LEA's submission, the TEA will review the documents and either approve them or determine that additional information and/or a revision is required. If additional information is required or adjustments are needed, TEA staff will communicate with the RF LEA to address required changes.

## **TEA Validation Activities**

Subsequent to approval of an LEA's CIP, the TEA will conduct ongoing, follow-up verification of implementation of the continuous improvement plan, with corrective action activities, as appropriate, for all identified areas of noncompliance as documented in LEA submissions or in a TEA RFM report. An LEA is required to correct any noncompliance items as soon as possible, but in no case may the correction of noncompliance take longer than one calendar year from the date of notification of noncompliance.

TEA verification activities will occur on an on-going basis to determine the RF LEA's progress toward improvement of targeted areas and correction of identified noncompliance. If verification results indicate that an LEA has not corrected identified noncompliance within one calendar year from the date of notification of findings, the LEA will be subject to sanctions as referenced in 19 TAC §97.1072 and Section E of this manual. Additionally, failure to correct noncompliance within one calendar year from the date of notification of the findings will impact an LEA's determination status as issued by the TEA under 34 CFR §300.608(a). Additional information on LEAs' determination status can be found on the TEA website under the *Special Education in Texas A-Z Index* at [Local Education Agency Determination](#).

## **Section E: RFM Interventions and Sanctions**

In accordance with 19 TAC §97.1072, the TEA will implement sanctions authorized under TEC, Chapter 39, or 19 TAC, Chapter 97, Subchapter EE, Accreditation Status, Standards, and Sanctions, as necessary to promote compliance with RFM requirements, improved program effectiveness, and timely and complete correction of identified noncompliance. A decision to impose sanctions will be based on the accreditation and compliance performance of the LEA, as determined under 19 TAC, Chapter 97, Subchapter EE, 19 TAC §89.1076 (relating to Interventions and Sanctions), and 19 TAC §97.1035 (relating to Procedures for Accreditation Sanctions). RFM sanctions taken under 19 TAC §97.1072 are intended to assist the LEA in achieving improved program effectiveness and compliance and do not preclude or substitute for other responses to or consequences of program ineffectiveness or noncompliance, such as:

- assignment of required professional services, paid for by the LEA;
- required submission of an improvement and/or corrective action plan, including the provision of compensatory services as appropriate, paid for by the LEA;
- expanded oversight including, but not limited to, frequent follow-up contacts with the LEA, submission of documentation verifying implementation of intervention activities and/or a corrective action plan, and submission of LEA/program data.
- public release of RFM review findings;
- issuance of a public notice of deficiencies and planned corrective actions to the LEA's board of trustees;
- denial of requests under TEC, §7.056 and/or §12.114;
- appointment of a monitor, conservator, management team, or board of managers under TEC, Chapter 39, and/or §97.1073;
- reduction, suspension, redirection, or withholding of program funds;
- lowering of the LEA's special education monitoring status; and/or
- lowering of the LEA's accreditation status.