

Who is going
To Look After
Younger Sibs
Him? You?
Her??

STUDENTS ELIGIBLE FOR OR RECEIVING SPECIAL EDUCATION SERVICES



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POST CARD: Provided by Foster Care Alumni of America - “Who is going to look after my young sib?”

CHAPTER 12

Students Eligible for or Receiving Special Education Services

Students in foster care are more likely to be identified as needing special education services than their peers who are not in foster care. There are many factors that contribute to a student's identification and need for special education services, including academic delays, trauma, early childhood experiences, learning disabilities, and emotional and behavioral needs. It is critical that students in foster care receive appropriate and timely evaluations for special education when deemed necessary and that educators provide assessments with a "trauma-informed" lens (see *Chapter 10: Trauma-Informed School Supports, Students Mental Health, & Discipline*, on page 101). Students may not be identified as eligible for special education solely based on lack of academic opportunities or because they are in the foster care system.



SPECIAL EDUCATION ELIGIBILITY

A student in foster care has access to special education services just like any other student. If a student is evaluated and determined to have a disability and because of the disability has an educational need for special education and related services,¹⁴⁹ the local educational agency (LEA) is required to provide that student a "free appropriate public education" (FAPE)¹⁵⁰ in accordance with the federal Individuals with Disabilities Education Act (IDEA).

For a list of special education-eligible disabilities, visit the [SPEDTex](#) webpage.



TIP: If LEA staff have a reason to suspect that a student in foster care has a disability under IDEA, the staff must refer the student for a full individual and initial evaluation.¹⁵¹ Additionally, LEA staff should advise the caregiver to contact the LEA's Director of Special Education to learn more about having the student evaluated to determine eligibility for special education services. A child aged three, four, or five who has been evaluated and determined to be a child with a disability may be eligible to participate in the school's Early Childhood Special Education (ECSE) program.

Information related to Free Appropriate Public Education (FAPE):

Federal law guarantees that all students with disabilities aged 3 through 21 have the right to a free appropriate public education, also known as FAPE. Districts must ensure that FAPE is made available from birth for children with visual impairments or who are deaf or hard of hearing.¹⁵² The right to a FAPE ends when a student graduates with a regular high school diploma in accordance with 19 TAC § 89.1070. A certificate of attendance or a certificate of coursework completion is not a regular high school diploma.

- As long as an eligible student is 21 years of age on September 1 of a school year, the student is eligible to receive special education services through that school year or until graduation with a high school diploma, even after turning 22.
- IDEA emphasizes that special education and related services must be designed to meet a student's unique needs and prepare the student for further education, employment, and independent living.

- FAPE is available to any individual student with a disability who needs special education and related services, even if the student is advancing in school and has not failed or been retained in a course or grade.
- Regardless of where a student moves or what type of facility they live in, a student who is eligible for special education services must be allowed to attend school and receive those services that are specified in the student's individualized education program (IEP).



TIP: Individuals who are involved in supporting the student's educational experience should receive relevant information from the IEP. Additionally, the student's parent (see full meaning of "parent" below) must be given a copy of the IEP at no cost.



RESOURCES: The Special Education Admission, Review, Dismissal (ARD) process.

TEA, [ARD Committee Resources](#) (or visit the [SPEDTex website for additional information](#))

TEA, "[5 Tips to Help Parents Prepare for First ARD.](#)"

TEA, Videos on [Admission Review Dismissal Committee.](#)

TEA, "[Parent Guide to the ARD Process](#)" and the "[Notice of Procedural Safeguards.](#)"

THE "CHILD FIND" RESPONSIBILITY

All children with disabilities residing in the state who need special education and related services, including children with disabilities attending private schools, must be identified, located, and evaluated. This process is called *Child Find*. IDEA specifically includes children with disabilities who are homeless, "wards of the state," and "highly mobile children, including migrant children" as groups of students for whom school districts have a *Child Find* responsibility.¹⁵³



TIP: LEA Foster Care Liaisons should work with district special education directors to determine avenues for collaboration among child welfare providers and schools to better identify students in need of special education services.

SERVING AS THE "PARENT" REGARDING SPECIAL EDUCATION DECISIONS

A PARENT FOR THE PURPOSES OF IDEA IS DEFINED AS:¹⁵⁴

- Biological or adoptive parent
- Foster parent unless prohibited by state law (this is allowed in Texas/not prohibited)
- Guardian generally authorized to act as the child's parent or to make educational decisions for the child
- Person acting in place of a parent and with whom the child lives, including other relatives
- Person legally responsible for child
- Surrogate parent

WHAT IS NEEDED IN ORDER FOR A FOSTER PARENT TO BE ELIGIBLE TO SERVE AS “PARENT” UNDER IDEA?¹⁵⁵

1. Texas Department of Family and Protective Services (DFPS) must be appointed as the temporary or permanent managing conservator of the student;
2. The rights and duties of DFPS to make education-related decisions for the student cannot have been limited by the court; and
3. The foster parent agrees to participate in making special education decisions on the student’s behalf and has or will complete a training program before the student’s next scheduled (ARD) committee meeting but not later than the 90th day after beginning to act as the parent for making special education decisions.



SURROGATE PARENTS

Every student in foster care has an education decision-maker selected by DFPS to make day-to-day education decisions on behalf of the student.¹⁵⁶ In addition, IDEA requires that state and local educational agencies involve parents in decisions about their student’s need for special education or related services. The LEA must appoint an individual to serve as a surrogate parent for a student who receives special education services within 30 days of realizing there is a need for one. Appointment of a surrogate parent must occur if:

1. The LEA is unable to identify or locate a parent for a student with a disability, or
2. The foster parent of a student is unwilling or unable to serve as a parent for the purposes of decision-making related to the student’s needs for special education or related services.

DID YOU KNOW?



A surrogate parent may also be appointed by the judge presiding over the student’s child welfare case.¹⁷¹ If a student has a court appointed surrogate parent, the LEA does not need to appoint a surrogate parent for the student.

WHO IS NOT ELIGIBLE TO BE A SURROGATE PARENT?

- Any employee of an agency involved in the care or education of the student, such as an employee of TEA, the school district, DFPS, the Texas Juvenile Justice Department, or a residential treatment center, is not eligible to be a surrogate parent for the student. Additionally, a person cannot be appointed a surrogate parent if they have any interest that conflicts with the interests of the student¹⁵⁷



LAW: The LEA should make reasonable efforts to ensure the assignment of a surrogate parent not more than 30 days after it is determined that the student needs a surrogate parent, unless, alternatively, the judge overseeing the student’s care appoints the surrogate.¹⁵⁸

WHAT ARE THE RESPONSIBILITIES OF A SURROGATE PARENT?

A surrogate parent must:¹⁵⁹

1. Be willing to serve in that capacity.
2. Exercise independent judgment in pursuing the child’s interests.
3. Ensure that the child’s due process rights under applicable state and federal laws are not violated.

4. Complete a training program that complies with minimum standards established by agency rule within the time specified in [TEC § 29.015\(b\)](#).
5. Visit the child and the school where the child is enrolled.
6. Review the child's educational records.
7. Consult with any person involved in the child's education, including the child's:
 - teachers,
 - caseworkers,
 - court-appointed volunteers,
 - guardian ad litem,
 - attorney ad litem,
 - foster parent, and
 - caregiver.
8. Attend meetings of the child's ARD committee.



REMINDER:

Actions to take if a surrogate or foster parent are not fulfilling their duties:

If the LEA determines that a court appointed surrogate parent is not properly performing their duties, the LEA must consult with DFPS about the issue, and DFPS will notify the court of any agreement to review the appointment of the surrogate parent. Upon notification, the court must review the appointment and enter any orders necessary to ensure the student has a surrogate parent who performs their required duties.¹⁶⁰



RESOURCES: Surrogate Parents

[Surrogate Parent Training and Eligibility](#)

[Surrogate Parent Training & What it Means to Be a Surrogate Parent](#)

[TEA ARD Guidance](#)

THE ROLE OF CAREGIVERS FOR STUDENTS IN SPECIAL EDUCATION

If viewed as a “parent” for special education purposes, the caregiver has the authority to make all special education related decisions, including requesting an independent educational evaluation if they disagree with the findings of the evaluation conducted by the school. They also have the authority to file a complaint and request due process over service or placement disagreements.¹⁶¹ Additionally, they are required members of the ARD committee and must be included in the development of the student's IEP.

REQUESTING A PSYCHOLOGICAL OR EDUCATIONAL EVALUATION OF A STUDENT

Students in foster care may have completed other related education and psychological evaluations while in foster care. If the LEA recommends a student in foster care undergo psychological and/or educational assessment, they must obtain consent from the student's caregiver, caseworker, or Education Decision-Maker.¹⁶²

Additionally, schools should work with the student's caseworker to:

- Request a copy of the student's most recent psychological or educational evaluations to assist in or alleviate the need for further testing.
- Continue coordinating with other child welfare workers and stakeholders about any recommendations that are identified through the evaluation.

CONSIDERATIONS FOR HIGHLY MOBILE STUDENTS

WHAT HAPPENS WHEN A STUDENT MOVES IN THE MIDDLE OF BEING INITIALLY EVALUATED FOR SPECIAL EDUCATION?

Under most circumstances, if a student is being initially evaluated for special education eligibility, the evaluation must be completed no later than the 45th school day following the date on which the LEA receives written consent for evaluation.¹⁶³ Exceptions to the 45th school day timeline are found at 19 TAC §89.1011(e).



DID YOU KNOW?

Texas law requires the receiving LEA to accept a special education referral made by the student's previous school if the student is homeless or in substitute care. The receiving LEA must provide comparable services to the student during the referral process or until the new school develops an IEP for the student.¹⁷²

If a student was in the process of being evaluated for special education eligibility by an LEA and enrolls in another LEA before the previous LEA completed the full individual and initial evaluation, the new LEA must coordinate with the previous LEA as necessary and as expeditiously as possible to ensure a prompt completion of the evaluation. The new LEA is not required to complete the full individual and initial evaluation in the 45-school-day timeline, so long as the new LEA is making sufficient progress to ensure a prompt completion of the evaluation and the parent and the new LEA agree to a specific time when the evaluation will be completed.¹⁶⁴

WHAT IF THE STUDENT IS ALREADY RECEIVING SPECIAL EDUCATION SERVICES?

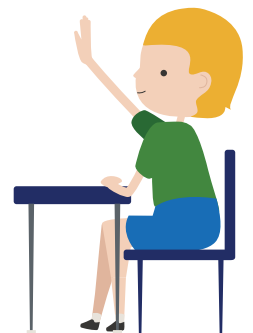
If the student was already receiving special education services at the prior LEA in Texas and enrolls in a new Texas LEA within the same school year, the new LEA must provide services comparable to those described in the student's IEP from the previous LEA until the new LEA either adopts the student's IEP from the previous LEA or develops, adopts, and implements a new IEP that meets federal requirements.¹⁶⁵

If the student was already receiving special education services and moves into a new LEA during the summer, the new LEA must fully implement the IEP in effect for the student on the first day of class in the new school year.

IF A STUDENT'S SPECIAL EDUCATION NEEDS ARE NOT BEING MET

Concerns related to a student's special education program can be addressed locally with the student's teachers, campus principal, special education director, or the superintendent, either informally or by using the ARD committee process. School personnel should also contact the student's caregiver, caseworker, and the DFPS regional education specialist for assistance.

If local resolution is not possible, the law provides for [state-level dispute resolution functions](#) through TEA. The dispute resolution handbook, which provides detailed information related to special education mediation, complaints, and due process hearings, can also be accessed through the above link.



SECTION 504

Section 504 of the Federal Rehabilitation Act is a civil rights law that prohibits discrimination against individuals with disabilities. Section 504's purpose is to ensure that a student with a disability has equal access to an education. Not all students who are eligible for protections under Section 504 will be eligible for special education and related services under IDEA. To receive special education, a student must have a disability that falls within at least one of the thirteen eligibility categories identified in IDEA and, because of that disability, requires special education and related services. Student with disabilities who do not meet one of the thirteen eligibility categories under IDEA may still be entitled to protections under Section 504. In those cases, schools will develop a Section 504 plan.

The purpose of the Section 504 plan is to create a blueprint that is unique to each student and provides the student access to an appropriate education. An appropriate education is one that is designed to meet the individual needs of the student as adequately as that of their non-disabled peers. Section 504 plans provide education accommodations that level the playing field, without changing what the student is expected to master.

RESOURCES: Technical Assistance, Section 504

U.S. Department of Education, "[Disability Discrimination](#)." - An overview of Section 504 with helpful resources and links.

TEA, "[Technical Assistance, Section 504](#)."

U.S. Department of Education, "[Parent and Educator Resource Guide to Section 504 in Public Elementary and Secondary Schools](#)."

RESOURCES: Special Education

SPED basics:

- [Accommodations](#)
- [Key Terms to Know in Special Education](#)
- [Glossary of Terms](#)
- [ADHD and Hyperactivity Information](#)
- [Behavior at School](#)

Parent Resources and Advocacy Groups:

- [Disability Rights Texas](#)
- [SPEDTex](#)
- [Partners Resource Network](#) - Empowering Parents through Education
- [Texas Parent to Parent](#)
- [Decoding Dyslexia Texas](#)

TEA:

- [Special Education Dispute Resolution Process](#)
- [Special Education in Texas A-Z](#)
- [TEA Accommodations Resources](#)
- [Parent's Guide to the Admission, Review, and Dismissal Process](#)