

## **TEXAS COLLEGE PREPARATORY ACADEMIES SPECIAL EDUCATION OPERATING PROCEDURES: REFERRAL FOR POSSIBLE SPECIAL EDUCATION SERVICES**

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Texas College Preparatory Academies Board Policy along with these *Special Education Operating Procedures* constitute the Policies and Procedures of Texas College Preparatory Academies, designed to be consistent with the State policies and procedures developed pursuant to the IDEA. Texas College Preparatory Academies' *Special Education Operating Procedures* are not to be for the purpose of creating a requirement that is not otherwise imposed by the Individuals with Disabilities Education Improvement Act ("IDEA"), together with its implementing federal regulations, state statutes and rules, as they shall from time to time be amended, and shall not be construed to create a higher standard than that established by IDEA. These *Special Education Operating Procedures* will be posted on ResponsiveEd's website. These *Special Education Operating Procedures* should be interpreted consistent with the IDEA. Texas College Preparatory Academies' *Special Education Operating Procedures* are reviewed and updated, as needed, on at least an annual basis. Texas College Preparatory Academies will make timely changes to policies and procedures in response to IDEA amendments, regulatory or rule changes, changes to state policy, or new legal interpretation as are necessary to bring Texas College Preparatory Academies into compliance with the requirements of IDEA. Texas College Preparatory Academies maintains systems to ensure that all students with disabilities enrolled in the Charter, regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located, and evaluated and provided a free appropriate public education. Texas College Preparatory Academies maintains systems to ensure that students with disabilities and their parents are afforded the procedural safeguards required under the IDEA (and its implementing federal regulations, state statutes and rules) including with respect to the confidentiality of records and personally identifiable information.

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### ***Who is eligible for the Charter's program of special education and related services?***

The Charter provides special education and related services to eligible students ages 3 through 21 who reside within the Charter.<sup>1</sup> To be eligible for the Charter's program of special education and related services, a student must (a) have one or more of the thirteen qualifying disabilities listed below and (b) need special education and related services—*Specially Designed Instruction* (SDI)—because of the disability.<sup>2</sup> A free appropriate public education is also available to children with visual impairments or who are deaf or hard of hearing residing within the Charter from birth through age 21.<sup>3</sup>

Special education means "specially designed instruction, at no cost to the parents, to meet the unique needs of a student with a disability."<sup>4</sup> *Specially Designed Instruction* (SDI) means—

- "adapting, as appropriate to the needs of an eligible student under this part, the content, methodology, or delivery of instruction-

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<sup>1</sup> 19 TEX. ADMIN. CODE § 89.0135(a)

<sup>2</sup> 20 U.S.C. § 1402(3); 34 C.F.R. § 300.8

<sup>3</sup> 19 TEX. ADMIN. CODE § 89.0135(b)

<sup>4</sup> 34 C.F.R. § 300.39(a)(1)

- To address the unique needs of the student that result from the student's disability; and
- To ensure access of the student to *the general curriculum*, so that the student can meet *the educational standards within the jurisdiction of the public agency that apply to all children.*<sup>5</sup>

The general curriculum and educational standards that “apply to all children” in TCPA are the [Texas Essential Knowledge and Skills \(TEKS\)](#), as well as the Charter’s Policy.<sup>6</sup> The state-wide assessments that determine a student’s progress toward meeting those educational standards are the [State of Texas Assessments of Academic Readiness \(STAAR\)](#).

**Special Education** or *Specially Designed Instruction (SDI)* also includes—

- speech-language pathology services;
- any other related service, if the service is considered special education rather than a related service under state standards;
- travel training; and
- vocational education.<sup>7</sup>

**PRACTICE GUIDE— Some examples of SDI include delivery of a specialized reading program in a small group setting 4 days a week for 30 minutes a day; individualized social skills programs; modified curriculum; adaptive physical education; or instruction in the use of Braille or specific technology to access curricular content or to provide responses to enable effective progress monitoring and functional performance data collection.**

Subject to the age limitations specified above, students may be eligible for special education and related services under these categories of disability specified under state and federal law: autism, deaf-blindness, auditory impairment, emotional disturbance, intellectual disability, multiple disabilities, orthopedic impairment, other health impairment, specific learning disability, speech impairment, traumatic brain injury, visual impairment, and “noncategorical early childhood.”<sup>8</sup>

Children between the ages of 3-5 who are evaluated as having an intellectual disability, an emotional disturbance, a specific learning disability or autism may be described as “noncategorical early childhood” for the purposes of special education eligibility.<sup>9</sup>

Consideration of eligibility for special education and related services begins with a referral for a special education evaluation—a full individual and initial evaluation.<sup>10</sup>

<sup>5</sup> 34 C.F.R. § 300.39(b)(3)(emphasis added)

<sup>6</sup> The educational standards applicable to all students in the state of Texas are also outlined in Tex. Ed. Code § 28.002 and in 19 TEX. ADMIN. CODE § 74.1.

<sup>7</sup> 34 C.F.R. § 300.39(a)(2)

<sup>8</sup> 34 C.F.R. § 300.8(c) ; Tex. Ed. Code § 29.003(b); 19 TEX. ADMIN. CODE § 89.1040(c)

<sup>9</sup> 19 TEX. ADMIN. CODE § 89.1040(c)(13)

<sup>10</sup> 19 TEX. ADMIN. CODE § 89.1011

**PRACTICE GUIDE—** While the ARD committee will consider records from private providers or private evaluators, including physicians, the ARD committee is not required to adopt specific eligibilities or other recommendations from those reports. Any decisions to reject recommended eligibilities or services may be described and explained in the Prior Written Notice with reference to the District’s evaluation reports.

### ***Who can initiate a referral for a Full Individual and Initial Evaluation for Special Education and Related Services?***

A referral for a special education evaluation may be initiated by school personnel, a student’s parent or legal guardian, or another person involved in the education or care of the student.<sup>11</sup>

Should an administrator, teacher, parent or legal guardian believe that there is reason to suspect a student has a disability and is in need of special education, even if they are progressing from grade to grade, they may initiate the referral process.

The referral may be made verbally or in writing. A written request for a special education evaluation is not required by IDEA or TCPA. Written referrals should be directed to the Charter’s Director of Special Education or to the campus administrator. Any employee of the Charter receiving a verbal or written referral should communicate the referral to the campus administrator and the Special Education teacher. Charter staff should make any referrals for special education in writing to the Director of Special Education or to the campus administrator.

### ***How should the Charter respond when it receives a referral for special education?***

Referrals should be considered by the Special Education Coordinator or other qualified professional, as outlined below, to determine whether there is reason to suspect that the student has a disability and is in need of special education and related services. All referrals should be forwarded to the campus administrator and the Special Education teacher. If a parent or legal guardian makes a referral to a general education teacher, a paraprofessional or campus office staff, the parent should be directed to the campus administrator and the Special Education teacher on the student’s campus who is responsible for receiving referrals.

If a parent, legal guardian or adult student verbally requests a special education evaluation, the Charter staff who received the verbal request should report the request to campus administrator and the Special Education teacher for the student’s home campus. The campus administrator and the Special Education teacher should contact the requestor either by telephone or via email to gather more information about the request.

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<sup>11</sup> 19 TEX. ADMIN. CODE § 89.1011(a)

When the Charter receives a request for an initial evaluation, the campus administrator and the Special Education teacher should promptly review the student’s record and document any consideration that has been given to alternatives to special education, including but not limited to general education academic and behavioral interventions; *MTSS* data; remedial instruction; tutoring; compensatory education pursuant to Tex. Ed. Code § 29.081 (“services designed to supplement the regular education program for students identified as at risk of dropping out of school”); **Multi-Tiered Systems of Support (MTSS)**;<sup>12</sup> and/or Dyslexia-related general education services.

**PRACTICE GUIDE— When the District receives privately-completed evaluation reports or recommendations, the ARD committee should consider that information. In many instances, the student’s ARD committee will need to seek consent from the parent(s) to complete the District’s evaluation because it relies on school-based evaluation instruments and observations that incorporate special education standards.**

If a student’s parent(s), legal guardian(s), or Charter staff submits a written request for a full individual and initial evaluation for special education and related services to the Charter’s Director of Special Education or to an administrative employee of the Charter, the personnel designated below will take the following steps:

- **Within 15 school days of the Director of Special Education or administrative employee’s receipt of the written request for an initial special education evaluation**, a licensed specialist in school psychology (LSSP), an educational diagnostician, or other appropriately certified or licensed practitioner with experience or training in the area of the suspected disabilities designated by the Director of Special Education may, as appropriate—
  - Review the records and performance data of the student in order to determine if there is sufficient evidence to suspect a disability. Information reviewed shall include, but is not limited to, all individual and group standardized assessments, *including evaluations provided by the parent or guardian completed privately*; standards of learning test scores; school enrollment history; attendance records; student work samples; and teacher observational information.
  - Consult with the student’s general education teachers and other campus staff familiar with the student to review the general education supports and services, curricular modifications, instructional methodologies or evidence-based classroom accommodations or interventions that have been used with the student prior to referral, including the use of any **Multi-Tiered Systems of Support (MTSS)**, **such as Response to Intervention (RtI)**, *Leveled Literacy Interventions (LLI)*, and other

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<sup>12</sup> TEA describes MTSS as a school-wide framework designed to provide varying levels of support to meet the academic, behavioral, and social/emotional needs of students and includes RtI for academics and/or behavior and other evidence-based early intervention strategies.

evidence-based general education interventions, tutorial, remedial, compensatory and other academic or behavior support services.<sup>13</sup>

- Contact the parent, legal guardian or adult student to provide an overview of the Charter’s special education process and identify the date by which informed written consent for the evaluation may be obtained (i.e., no later than 15 school days after receiving the written request for an initial evaluation).<sup>14</sup>
- **No later than 15 school days after the Director of Special Education or administrative employee’s receipt of the written request for an initial special education evaluation,** the Special Education Coordinator or the Special Education teacher shall—
  - Ensure the Charter provides the parent(s), legal guardian and/or adult student with a copy of TEA’s most recent *Notice of Procedural Safeguards*.<sup>15</sup>
    - A parent, legal guardian or adult student may choose to receive the *Notice of Procedural Safeguards*, as well as the Prior Written Notice discussed below, by email, if the Charter makes that option available. If the parent or legal guardian does not affirmatively elect to receive the aforementioned notices by email, the Charter will mail or hand-deliver the notice(s) and document the method of delivery.<sup>16</sup>
  - Provide Prior Written Notice of the Charter’s proposal to conduct a full individual and initial evaluation (*Notice of Proposed Evaluation*) and an opportunity for the parent, legal guardian or adult student to give informed written consent for the evaluation, *if there is evidence of a suspected disability and, as a result of the suspected disability, a suspicion that the student may require specially designed instruction based on the information obtained during the 15-school day period described above.*<sup>17</sup>
    - Prior Written Notice. The Charter’s *Notice of Proposed Evaluation* shall describe any evaluation procedures that the Charter proposes to conduct.<sup>18</sup> Please see the Charter’s Evaluation procedures set out in the Charter’s Evaluation Procedures Operating Procedure for additional requirements regarding the Charter’s *Notice of Proposed Evaluation*.
    - Informed Written Consent. The Charter shall document that the parent, legal guardian or adult student has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, and the mode of communication. The Charter shall also document that the parent, legal

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<sup>13</sup> 19 TEX. ADMIN. CODE § 89.1011(a)

<sup>14</sup> Tex. Ed. Code § 29.004; 19 TEX. ADMIN. CODE § 89.1011(b); 19 TEX. ADMIN. CODE § 89.1040(b)

<sup>15</sup> 34 C.F.R. § 300.504

<sup>16</sup> 34 C.F.R. § 300.505

<sup>17</sup> 19 TEX. ADMIN. CODE § 89.1011(b)(1)

<sup>18</sup> 34 C.F.R. § 300.304(a)

guardian or adult student acknowledged understanding and agreeing in writing to the carrying out of the activity for which his or her consent is sought (e.g., a full individual and initial evaluation). The consent will describe the activity and indicate which educational records, if any, will be released and to whom those records will be released.<sup>19</sup>

- Notice and Consent by Email. The Charter may provide prior written notice via email if the Charter offers and the parent elects to receive the notice via email.<sup>20</sup> The Charter may also obtain a parent's or a guardian's informed written consent for an evaluation by using a record and signature in electronic form that identifies and authenticates the person or guardian as the source of the consent and indicates the parent's or guardian's approval of the information contained in the electronic signature.<sup>21</sup>
  
- If the parent, legal guardian or adult student does not provide consent for the initial special education evaluation, the Charter is relieved of its *Child Find* duty and its obligation to provide the student with a free appropriate public education pursuant to IDEA.<sup>22</sup> However, the Charter reserves the right in its sole discretion to file a request for a special education due process hearing to override a lack of parental consent for such evaluation. Designated staff should provide the parent, legal guardian or adult student with a ready, willing, and able letter regarding the Charter's intent to complete the evaluation with parental consent, together with prior written notice (*Notice of Proposed Evaluation*) documenting the Charter's offer to evaluate and the basis for the offer to evaluate and providing the parent or guardian with a copy of **TEA's Procedural Safeguards Notice**. Please see the Charter's FAPE Composite Operating Procedure. Consistent with TEA's *The Dyslexia Handbook* (2021 Update) the student may be referred to the Charter's Section 504 Coordinator or local campus designee for a potential Section 504 evaluation.
  - Provide the parent, legal guardian, or adult student with prior written notice of the Charter's decision not to conduct an evaluation, *if there is no evidence of a suspected disability or a suspicion that the student may require special education and related services.*
    - If appropriate, the student may be referred to the Charter's Section 504 Coordinator or local campus designee for a potential Section 504 evaluation.
    - Prior Written Notice. The Special Education Coordinator or the Special Education teacher will prepare the Prior Written Notice to include an

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<sup>19</sup> 34 C.F.R. § 300.9; Tex. Ed. Code § 29.004(a)(1)

<sup>20</sup> 34 C.F.R. § 300.505

<sup>21</sup> *Part B Procedural Safeguards in the COVID-19 Environment Q&A Document* (June 30, 2020). OSEP. June 30, 2020.

<sup>22</sup> 34 C.F.R. § 300.300(a)(3)

explanation of why the Charter refuses to conduct an initial evaluation as well as a description of the information (assessments, records, reports or observations) that the Charter used as a basis for its refusal to evaluate.<sup>23</sup> The Charter will provide this prior written notice by means reasonably designed to ensure that it is received by the parent, legal guardian or adult student, and document the fact that the notice was sent. This notice will be provided in a language that is understandable to the general public and also in the native language of the parent, unless it is clearly not feasible to do so.<sup>24</sup> **Please see the Charter’s Child Find Duty Operating Procedure.**

***What happens when the parent or guardian of a student attending private school or being homeschooled in the Charter requests a referral for a special education evaluation?***

The Charter is responsible for identifying, locating and evaluating solely those students who are enrolled in the Charter.

***What about students who transfer?***

If a student is in the process of being evaluated for special education eligibility by another public school district and enrolls in the Charter before the evaluation is completed, the Charter will coordinate with the student’s previous school district to ensure prompt completion of the initial evaluation. If the student transfers from another public school district when an initial evaluation is pending, the timelines for conducting the evaluation apply to TCPA unless:

- the Charter is making sufficient progress to ensure a prompt completion of the evaluation; and
- the parent and the Charter agree to a specific time when the evaluation will be completed.

If a student transfers from another school in Texas with an Individualized Education Plan (IEP), the Charter will provide a free appropriate public education to the transfer student by providing services comparable to the services described in the student’s IEP from the student’s previous school district until:

- the Charter adopts the student’s IEP from the previous school district, or
- the Charter develops, adopts and implements a new IEP in accordance with the procedures outlined in **the Charter’s FAPE Composite Operating Procedure.**<sup>25</sup>

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<sup>23</sup> 34 C.F.R. § 503(b)

<sup>24</sup> 34 C.F.R. § 300.503(c)

<sup>25</sup> 34 C.F.R. § 300.323(e)

If a student transfers from another state with an IEP, the Charter will offer services comparable to the services described in the IEP from the sending school district until the Charter takes the following actions:

- conducts a new full and individual evaluation, as described in **the Charter’s Evaluation Procedure Operating Procedure**, if the Special Education Coordinator determines that a new evaluation is necessary; and
- develops, adopts and implements a new IEP, if appropriate, in accordance with the procedures outlined in **the Charter’s FAPE Composite Operating Procedure**.<sup>26</sup>

Additionally, the Charter will take reasonable steps to promptly obtain a transfer student’s special education and general education records from the sending school.<sup>27</sup>

***What protections are available for students who have not been identified but may qualify for IDEA’s disciplinary safeguards?***

Students not yet eligible for special education and related services may be entitled to the disciplinary protections afforded eligible students, including the manifestation determination review process. The Charter may be obligated to provide a manifestation determination review and other disciplinary change of placement protections for a student even if the student is not yet determined to be eligible for special education and related services at the time of the violation of the Charter’s conduct code. Disciplinary protections shall be afforded to a student if the Charter “had knowledge” that the student is a student with a disability prior to the behavioral incident at issue. The Charter is considered to have knowledge (1) if the parent or guardian expressed concern in writing to supervisory or administrative personnel, or a teacher of the student, that the student is in need of special education and related services; (2) the parent or guardian of the student requested an evaluation of the student pursuant to IDEA; or (3) the teacher of the student, or other Charter personnel, expressed specific concerns about a pattern of behavior demonstrated by the student directly to the director of special education or to other supervisory personnel of the Charter. The Charter does not have knowledge that the student is a student with a disability if the Charter sought and the parent refused to permit the student to be evaluated or declined special education and related services, or if the student was evaluated by the Charter and determined to be ineligible by a duly constituted Admission, Review and Dismissal (ARD) committee.<sup>28</sup>

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**Demonstrations of this procedure’s implementation may include, but are not limited to, examples such as:**

- Training material
- Posters and other media or website postings
- Multi-Tiered Systems of Support or Response to Intervention Data

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<sup>26</sup> 34 C.F.R. § 300.323(f)

<sup>27</sup> 34 C.F.R. § 300.323(g)

<sup>28</sup> 34 C.F.R. § 300.534



- Student specific data collection and monitoring
- Databases
- Texas Record Exchange (TREX) requests
- Telephone logs of calls to prior school districts and demonstrating calls to students' parents seeking collaboration
- Records from prior schools
- Notices of evaluation
- Documents seeking consent for evaluation