

CHAPTER

12



STUDENTS ELIGIBLE FOR OR RECEIVING SPECIAL EDUCATION SERVICES

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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, as compared to their peers not in foster care. In the 2011–2012 school year, students in foster care in Texas were almost three times more likely to receive special education services compared to students in the general population (24.5% compared to 8.8%).¹⁴⁶ There are many factors that contribute to a child’s identification and need for special education services, including multiple academic delays, trauma, early childhood experiences, learning disabilities, and emotional and behavioral needs. It is critical that students in care receive appropriate and timely evaluations for special education and 504 services when deemed necessary and that educators provide assessments with a “trauma-informed” lens. 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.

WHO IS ELIGIBLE FOR SPECIAL EDUCATION?

A student in foster care has access to special education services just like any other student. If a child is evaluated and determined to be a child with a disability and has an educational need,¹⁴⁷ local education agencies are required to provide students with disabilities a “free appropriate public education” (FAPE)¹⁴⁸ in accordance with the federal Individuals with Disabilities Education Act (IDEA).

For a list of special education-eligible disabilities, visit: nichcy.org/wp-content/uploads/docs/gr3.pdf



TIP: If someone has a young child in foster care and believes he or she is exhibiting early signs of a disability, the caregiver should be told to contact the local school district Director of Special Education to learn more about having the child 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 Pre-school Program for Children with Disabilities (PPCD).

Information Related to Free Appropriate Public Education (FAPE):

- Federal law guarantees that all students with disabilities aged three through 21 have the right to a free appropriate public education, also known as FAPE.
- As long as a student is age 21 at the beginning of the school year, she or he is eligible to receive special education services throughout that school year even after turning 22.
- IDEA emphasizes that special education and related services are designed to meet a student’s unique needs and prepare him or her 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 he or she lives in, the 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 Plan (IEP).
- The right to a FAPE ends when a student *graduates with a regular high school diploma or ages out of special education services in accordance with 19 TAC 89.1035.* A certificate of attendance or a certificate of coursework completion is *not* a regular high school diploma.



TIP: It is helpful when caregivers and other advocates working with the child are informed about the child's IEP.

Generally, there is a person who works in the school who is responsible for overseeing the implementation of the IEP and aware of the details related to the student's progress. This person may be called the folder teacher or case manager. Caseworkers, advocates, and caregivers are encouraged to contact this person for more information about the student's IEP.



For a quick overview and helpful chart describing the special education process:

nichcy.org/wp-content/uploads/docs/10steps.pdf

Additionally, TEA's "A Guide to the Admission, Review and Dismissal Process," is a great resource:

ritter.tea.state.tx.us/special.ed/ardguide/pdf/e-ardguide.pdf

WHO SERVES AS THE "PARENT" REGARDING SPECIAL EDUCATION DECISIONS?

A parent for the purposes of IDEA is defined as:¹⁴⁹

- ⇒ Biological or adoptive parent
- ⇒ Foster parent unless prohibited by state law
- ⇒ 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?¹⁵⁰

1. DFPS must be appointed as the temporary or permanent managing conservator of the student;
2. Child must be placed with the foster parent for at least 60 days;
3. Foster parent agrees to participate in making educational decisions on the child's behalf;
4. Foster parent has no interest that conflicts with the student's interests; and
5. Foster parent agrees to complete a training program for surrogate parents that comply with the training program requirements.

WHAT IS THE ROLE OF A STUDENT'S CAREGIVER FOR A STUDENT IN SPECIAL EDUCATION?

If viewed as a "parent" for special education purposes, foster parents or caregivers may request an independent educational evaluation if they disagree with the findings of the evaluation conducted by the school. Additionally, they are to be included in the ARD process and should be included in the development of the IEP.¹⁵¹

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

When a student moves to another school in the middle of the special education evaluation process, IDEA requires that the sending and receiving school must coordinate to ensure a prompt completion of the evaluation.¹⁵² Texas law requires the receiving school district to accept a special education referral made by the student's previous school.¹⁵³ If a student was in the process of being evaluated for special education eligibility at the sending school, the evaluation must be completed by the 60th calendar day following the date on which the new school district receives written consent for evaluation.



Helpful information addressing when a student moves to a new school and the impacts of a move on special education can be found here:

www.americanbar.org/content/dam/aba/migrated/child/education/publications/qa_mobility_final_authcheckdam.pdf

WHAT IS A “SURROGATE PARENT”?

IDEA requires that state and local education agencies involve parents in decisions about their child's needs. In situations where the child is a ward of the state, has no parents, or no parents can be located, a surrogate parent must be appointed to represent the child and protect the child's rights in matters relating to identification, evaluation, and educational placements in special education.¹⁵⁴

Who is not eligible to be a surrogate parent?¹⁵⁵

- A school district employee or any agency involved in care or education of the child, such as DFPS, the Texas Juvenile Justice Department, a school, or a Residential Treatment Center.
- Any person with personal or professional interests that conflict with the interests of the student.



LAW: Reasonable efforts to ensure the assignment of a surrogate parent must be made not more than 30 days after it is determined that the child needs a surrogate parent, unless, alternatively, the judge overseeing the child's care appoints the surrogate.¹⁵⁶

A school district shall give “preferential consideration” to a foster parent of a child with a disability when appointing a surrogate parent.¹⁵⁷

WHAT ARE THE RESPONSIBILITIES OF A SURROGATE PARENT?

1. Complete a **training program within 90 calendar days** after being initially assigned as a surrogate.¹⁵⁸
2. Visit the child and the child's school.¹⁵⁹
3. 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.¹⁶⁰
4. Review the child's educational records.
5. Attend the student's Admission, Review, Dismissal (ARD) committee meetings.¹⁶¹ A parent or adult student is required to sign the ARD report but is no longer required to indicate agreement with the IEP. The local education agency, however, must allow the parent or the adult student to write a statement of disagreement into the IEP, if the parent or adult student disagrees with the IEP.¹⁶²
6. Exercise independent judgment in pursuing the child's interests¹⁶³



RESOURCES: Surrogate Parents

Surrogate Parent Training and Eligibility:

framework.esc18.net/display/Webforms/ESC18-FW-Summary.aspx?FID=123&DT=G&LID=en

Surrogate Parent Training & What it Means to Be a Surrogate Parent:

www.esc9.net/vnews/display.v/ART/4ed7a03fba2ca?in_archive=1

www.esc9.net/pages/uploaded_files/What%20is%20a%20Surrogate%20Parent%20%28English%29.pdf

See TEA ARD FAQ for more information: ritter.tea.state.tx.us/special.ed/guidance/ardfaq.pdf

WHAT IS THE “CHILD FIND” RESPONSIBILITY AND HOW DOES IT IMPACT STUDENTS IN FOSTER CARE?

All children with disabilities residing in the state who are in need of special education and related services, including children with disabilities attending private schools, must be identified, located, and evaluated. This process is called *Child Find*.¹⁶⁴ IDEA specifically includes “wards of the state” and “highly mobile children” as groups of students for whom school districts have a *Child Find* responsibility.¹⁶⁵



TIP: School district foster care liaisons should work with district special education directors to determine avenues for collaboration among child welfare providers and schools to better identify children in need of special education services.

WHAT DO I DO 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, and the superintendent. Additionally, these concerns can be addressed locally through the ARD process. Please also contact the student’s caregiver, caseworker, and the DFPS Regional Education Specialist.

If local resolution is not possible, there are state-level dispute resolution functions available. Please see www.tea.state.tx.us/index2.aspx?id=2147497560. The dispute resolution handbook, which provides detailed information related to special education mediation, complaints, and due process hearings, can be accessed through that same website.

WHAT SHOULD SCHOOL PERSONNEL CONSIDER BEFORE REQUESTING A PSYCHOLOGICAL OR EDUCATION EVALUATION OF A STUDENT?¹⁶⁶

Students in foster care may have completed other related education and psychological evaluations. If a school psychologist or diagnostician recommends a child in foster care undergo psychological or educational assessment, or both, she or he must obtain consent from the student’s caregiver. Additionally, schools should work with the student’s caseworker to:

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