Hot Topics in Special Education Compliance

ARD Committee Membership
- In order for an IEP to be legally compliant, the ARD committee must be “fully constituted.” All required members must be in attendance, or the excusal procedures prescribed in IDEA must be followed. Common noncompliance citations in this area are:
  - General education teacher is not a teacher of the child;
  - Special education representative does not provide special education services to the child. (This citation often occurs when this is a “monitoring teacher” or “case manager” who does not actually implement a portion of the child’s IEP); and/or
  - CTE representative was not present at the meeting when initial or continued participation in a CTE course was being considered.

Dually Certified Teachers
- Per TEA, one teacher, even if dually certified in general and special education, cannot provide both general and special education services at the same time. A teacher who is dually certified cannot be responsible for both general education students and special education services to a special education student during the same time period. If a teacher has dual certification and dual responsibilities, the time periods for the dual responsibilities must be separate. The only exception to this rule is for preschool children. (See TEA, Student Attendance Accounting Handbook for details.)

Accelerated Instruction Plan (AIP)/Intensive Program of Instruction (IPI)
- Any student who fails a state assessment must have an AIP/IPI developed and implemented. The AIP/IPI must be designed based on results of state assessments (and cannot be predetermined pending receipt of results).
  - Note: This is a general education requirement – not specific to students who receive special education services.
- For students who receive special education services, the AIP/IPI must be developed by the ARD Committee and included in the IEP.
Sources of Noncompliance

- State Performance Plan data
- PBMAS compliance reviews
- TEA onsite visits
- TEA desk reviews
- Special education complaints process
Common Noncompliance Issues

Common Noncompliance Issues in Special Education Monitoring:
ARD Committee Membership

Ensure each required member is present or ensure excusal procedures were followed before beginning ARD meeting.

Required members (regardless of agenda/type of ARD):
- Parent/Audit Student
- LEA Administrator/Designee
- General Education Teacher of the Student
- Special Education Teacher of the Student
- Someone who can interpret the instructional implications of the evaluation

Additional members required in specific circumstances:
- If the ARD committee will be considering initial or continued placement in CTE courses:
  - CTE representative
- If transition planning is being discussed:
  - Student
  - Agency responsible for or likely to be responsible for transition services (written consent required)
- If the student has a documented or suspected auditory impairment, including deaf-blindness:
  - Teacher certified in auditory impairments
- If the student has a documented or suspected visual impairment, including deaf-blindness:
  - Teacher certified in visual impairments
- If the student is identified as an English Language Learner (ELL):
  - Member of the LPAC committee

Optional members:
- Persons with knowledge or special expertise about the student (may be invited by school or by parent/adult student), such as:
  - Related services personnel
  - Early Childhood Intervention personnel
  - Other personnel with knowledge or special expertise about the student

For questions, please contact:
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Special Ed Accountability Specialist
(213) 374-5761 or leith.minnery@esc20.net
June 2016
ARD COMMITTEE MEMBERSHIP
### Properly Constituted ARD Documentation

#### Special Education Monitoring - Properly Constituted Admission, Review, and Dismissal (ARD) Committees

<table>
<thead>
<tr>
<th>Student Name:</th>
<th>District Name:</th>
<th>County District #:</th>
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<tbody>
<tr>
<td>The district has a system to ensure compliance that required participants attended ARD committee meetings.</td>
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<thead>
<tr>
<th>Is there evidence that the student attended the ARDC meeting, as appropriate? 34 CFR §300.321(a)(1)</th>
<th>Y</th>
<th>N</th>
<th>N/A</th>
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<th>N/A</th>
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<tr>
<td>If the student was not in attendance and transition was addressed, is there evidence that the ARD committee considered and documented the student's transition input? 34 CFR §300.321(b)(1)</td>
<td>Y</td>
<td>N</td>
<td>N/A</td>
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<td>Is there evidence that the parents/guardians of the child attended the ARDC meeting? 34 CFR §300.321(a)(1)</td>
<td>Y</td>
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<td>N/A</td>
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<td>If not, is there evidence that multiple attempts to obtain parent participation were made? 34 CFR §300.322(b)</td>
<td>Y</td>
<td>N</td>
<td>N/A</td>
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<td>N/A</td>
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<td>If student has a foster parent or a surrogate parent assigned, go to the separate section at end of this document.</td>
<td>Y</td>
<td>N</td>
<td>N/A</td>
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<td>N/A</td>
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<td>N/A</td>
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<td>Is there evidence that the general education teacher of the child attended the ARDC meeting? (If the CHLD is, or may be, participating in the general education environment). 34 CFR §300.321(a)(2)</td>
<td>Y</td>
<td>N</td>
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<td>Y</td>
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<td>If no, please describe the situation(s).</td>
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<td>Is there evidence that the special education teacher of the child, or if appropriate, not less than one special education provider of the child, attended the ARDC meeting? 34 CFR §300.321(a)(3)</td>
<td>Y</td>
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ARD Committee Membership

• Common noncompliance citations in this area are:
  – General education teacher is not a teacher of the child;
  – Special education representative does not provide special education services to the child. (This citation often occurs when this is a “monitoring teacher” or “case manager” who does not actually implement a portion of the child’s IEP); and/or
  – CTE representative was not present at the meeting when initial or continued participation in a CTE course was being considered.
Dual Certification – Dual Role

Student Attendance Accounting Handbook:

- The specially designed instruction documented in the IEP is provided by special education personnel. One teacher, even if dually certified, may not serve in both a general education and a special education role simultaneously when serving students in grades K–12.
ACCELERATED INSTRUCTION/INTENSIVE PROGRAM OF INSTRUCTION
AIP/IPI

• When a student fails a state assessment, accelerated instruction/intensive program of instruction must be provided.

• Note: This is a general education requirement – not specific to students who receive special education services.
AIP/IPI

Common noncompliance citations in this area are:

- Accelerated instruction/intensive program of instruction is not specified in the IEP
- Accelerated instruction/intensive program of instruction is not based on student’s state assessment results/individualized to student’s needs
PERSONAL GRADUATION PLANS
Personal Graduation Plans (PGPs)

- All students who are fail a state assessment or are at risk of not graduating on time must have a personal graduation plan. ( HB 5 requires all high school students have a PGP.)

- Note: This is a general education requirement – not specific to students who receive special education services.
PGPs

Common noncompliance citation in this area:

– PGP is not developed by the ARD committee/specified in the IEP
TRANSFER STUDENTS/COMPARABLE SERVICES
Transfer Students/ Comparable Services

- When a student transfers school districts/charters schools, the receiving school must verify the receipt of special education services and then, in consultation with the parent(s), develop comparable services.

- Within 30 school days of verification that the child received special education services, the receiving school must either adopt the previous IEP or develop a new IEP.
Transfer Students/ Comparable Services

Common noncompliance findings in this area:

– Services are changed with no justification
– New IEP is not developed within timeline
– IEP adopted from previous LEA had errors/missing pieces
FREQUENCY, DURATION, & LOCATION OF SPECIAL EDUCATION SERVICES
Frequency, Duration, Location

“What is required is that the IEP include information about the amount of services that will be provided to the child, so that the level of the agency's commitment of resources will be clear to parents and other IEP Team members. The amount of time to be committed to each of the various services provided must be appropriate to the specific service, and clearly stated in the IEP in a manner that can be understood by all involved in the development and implementation of the IEP.”

- Federal Register, Vol. 71, No. 156, page 46667
Frequency

- **how often** the child will receive the service(s).
- If the service is less than daily then the conditions for the provision of the services must be clearly specified within the ARD documents using a weekly reference (ex: 1 hour per week, 30 minutes every two weeks)
- From TEA’s document “Documenting the Frequency, Location and Duration of Related Services”
Duration

- Duration - *how long* each “session” will last (number of minutes) and *when* services will begin and end (starting and ending dates)

- From TEA’s document “Documenting the Frequency, Location and Duration of Related Services”
Location

- Location - *where* services will be provided (in the general education classroom or another setting such as a special education resource room)

- From TEA’s document “Documenting the Frequency, Location and Duration of Related Services”
Frequency, Duration, and Location

CANNOT be based on administrative convenience
Frequency, Duration, & Location

Common noncompliance findings in this area:

- No frequency, duration, and/or location specified
- Frequency, duration, & location not specified in accordance with TEA guidelines
- Services were not delivered in accordance with IEP prescribed frequency, duration, location
Can you schedule it on a calendar?
And would a colleague follow the same schedule you did?
Does it matter if the services are direct or indirect?

• No.
• The requirements are the same for direct and indirect services.
What if the student is fully included/mainstreamed (Setting Code: 40)?

- The same rules apply. All special education services, regardless of location and/or delivery provider, must have a frequency, duration, and location.
- This includes “inclusion” type/in-class support services.
For a student to be coded with an instructional setting code of 40 (special education mainstream), the student must have:

- special education and related services provided in a general education classroom on a regularly scheduled basis;
- an IEP specifying the special education and related services that enable the student to access the general curriculum and to make progress toward individual goals and objectives; and
- qualified special education personnel involved in the implementation of the student’s IEP through the provision of direct, indirect, and/or support services:
  - to the student in the general education classroom and/or
  - in collaboration with the student’s general education classroom teacher(s).

- Monitoring student progress in and of itself does not constitute a special education service. If certified special education personnel are only monitoring student progress, mainstream special education funding must not be generated.
Requirements Related to Teachers Providing Instruction in Mainstream Settings

• A student with a disability receives specially designed instruction.

• The specially designed instruction documented in the IEP is provided by special education personnel.
For an “inclusion student” can I take him/her to another location to provide the service (accommodation/modification/ etc.?)

- The ARD committee determines the location in which the service should be provided (general education or special education setting). A service provider cannot override the decision of the ARD committee.
If the service provider is absent/unavailable, does the service need to be made up? What if it is a co-teach or inclusion setting where a general education teacher is present?

- Yes. The school must provide the service from a special educator on the schedule developed by the ARD committee.
- Per the “Student Attendance Accounting Handbook” a general educator, even if dually certified, cannot simultaneously provide general education and special education services.
Special Circumstances

- The only context in which a dually certified teacher may serve in both a general education and a special education role is in an early childhood program for students aged 3 or 4 years old.

(2016-2017 Student Attendance Accounting Handbook)
If the student is absent, does the service need to be made up?

- It depends...
- Schools should consult with a parent when the student is repeatedly absent from school. ARD committees should discuss service delivery options when a student repeatedly misses a service. If student performance is negatively impacted, the ARD committee should address the schedule of services and consider the appropriateness of compensatory services.

See TEA’s Related Services for Students with Disabilities – Questions and Answers"
Let’s Practice
45 minutes once per week
45 minutes once per week
15 minutes one time per day
15 minutes one time per day
as needed
as needed
360 minutes per school year
360 minutes per school year
at least 30 minutes per week
at least 30 minutes per week
20 minutes
twice per week
20 minutes twice per week
360 minutes/12 times per year
360 minutes/12 times per year
upon student request
upon student request
1 session of 45 minutes per week for the first 5 weeks of 6 weeks period; no session week 6 to allow for generalization of skills
1 session of 45 minutes per week for the first 5 weeks of 6 weeks period; no session week 6 to allow for generalization of skills
IEP IMPLEMENTATION
# IEP Implementation

## Special Education Monitoring - IEP Development/Implementation

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<tr>
<th>District Name</th>
<th>County/State #</th>
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The LEA has a system to ensure compliance of the following items:

### Student Name:

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<tr>
<th>If the student is transitioning from ELD, is there evidence that an IFSP was adopted or an IEP developed and implemented by the child’s third birthday? 34 CFR §300.114(b), and consistent with §300.321(b)</th>
<th>Y</th>
<th>N</th>
<th>N/A</th>
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<th>Was the student promoted to the next grade level at the end of the previous school year?</th>
<th>Y</th>
<th>N</th>
<th>N/A</th>
<th>Y</th>
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<th>If there was a change in services from the previous to the current IEP, is there evidence for the change (PLAAPEPs, goals, evaluation, etc.)? (If applicable, the legal reference(s) would be contingent on the situation.)</th>
<th>Y</th>
<th>N</th>
<th>N/A</th>
<th>Y</th>
<th>N</th>
<th>N/A</th>
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### Transfer Students:

<table>
<thead>
<tr>
<th>If the student is a transfer student, were comparable services provided?</th>
<th>Y</th>
<th>N</th>
<th>N/A</th>
<th>Y</th>
<th>N</th>
<th>N/A</th>
<th>Y</th>
<th>N</th>
<th>N/A</th>
<th>Y</th>
<th>N</th>
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<tbody>
<tr>
<td>If not, was an ARD committee convened prior to the 30-day permanent ARD committee meeting to develop a new IEP? 34 CFR §300.323(a) 19 TAC §89.1050(c)(2)</td>
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<tr>
<th>If the student is a transfer student, was the 30-day permanent ARD committee held within time? 34 CFR §300.323(a)(2): 19 TAC §89.1050(c)</th>
<th>Y</th>
<th>N</th>
<th>N/A</th>
<th>Y</th>
<th>N</th>
<th>N/A</th>
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### For Initial and Annual ARD Committee Meetings:

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<tr>
<th>Is the current IEP an initial placement?</th>
<th>Y</th>
<th>N</th>
<th>N/A</th>
<th>Y</th>
<th>N</th>
<th>N/A</th>
<th>Y</th>
<th>N</th>
<th>N/A</th>
<th>Y</th>
<th>N</th>
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<tr>
<td>If so, is there consent for initial placement? 34 CFR §300.200(a)(1)</td>
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Page 1 of 6
IEP Implementation

Common Citations of Noncompliance:

• IEP not implemented as written
  – Note: IEP is prescriptive, not suggestive.
• No documentation that IEP was implemented
PARAPROFESSIONALS PROVIDING SPECIAL EDUCATION SERVICES
Paraprofessionals

• Must be supervised by a special education teacher
  – This includes regularly scheduled meetings with the teacher to give direction to the paraprofessional.
  – These meetings must be documented.
STATE PERFORMANCE PLAN (SPP) INDICATORS
SPP Indicators

- Indicators 1-14, but most are collected through PEIMS
- LEAs must report data through TEASE for:
  - Indicator 7 (Early Childhood Outcomes)
  - **Indicator 11 (Child Find)**
  - Indicator 12 (Early Childhood Transition)
  - **Indicator 13 (Postsecondary Transition)**
  - Indicator 14 (Post-school Outcomes)
Common noncompliance findings in this area:

- LEA reported noncompliance with SPP Indicators 11, 12, or 13
- Data not reported for SPP (All LEAs must certify and submit in TEASE, even if they have no students/data to report)
FINDINGS OF NONCOMPLIANCE RELATED TO INCLUSION/MAINSTREAM SERVICES
Inclusion/Mainstream

- Frequency, duration, & location
- Dually certified
- Paraprofessionals providing special education services
CLOSING THOUGHTS
Q & A