Hot Topics in Special Education Compliance

ARD Committee Membership
- In order for an IEP to be legally compliant, the ARD committee must be “duly 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.
Accelerated Instruction and Intensive Programs of Instruction for Students in Special Education Programs

Multiple state statutes require extra instructional support for students who fail to meet the passing standard on a state assessment or who exhibit academic difficulties. This document provides information regarding the applicability of the laws requiring accelerated instruction and intensive programs of instruction to students with disabilities who participate in special education programs.

The terms “accelerated instruction” and “intensive program of instruction” are not defined in statute. School districts have the discretion to determine the appropriate form, content, and timing of the instruction based on an individual student’s needs. According to statute, accelerated instruction may require participation of the student before or after normal school hours and may include participation at times of the year outside normal school operations.

Students in special education, including those who take alternate state assessments and those who are not required to pass state assessments in order to graduate, are not excluded from the laws requiring accelerated instruction and intensive programs of instruction. With regard to these students, however, the admission, review, and dismissal (ARD) committee is responsible for determining the instructional interventions needed to assist the student in achieving the state academic standards and/or the standards set forth in the student’s individualized education program (IEP).

The ARD committee may address accelerated instruction and intensive programs of instruction in an ARD committee meeting. Alternatively, the school district and the student’s parent may agree to amend or modify the student’s IEP without an ARD committee meeting in accordance with the procedures in 34 Code of Federal Regulations (CFR) §300.324(a)(4). In either case, the instructional decisions should be informed by current data, such as the student’s state assessment results, and should be tailored to meet the student’s individual needs.

Accelerated Reading Instruction

Texas Education Code (TEC) §28.006 requires school districts to administer reading instruments to students in kindergarten through second grade to assess their reading development and comprehension. The statute further requires that a school district implement an accelerated reading instruction program for students who are determined, on the basis of their reading instrument results, to be at risk for dyslexia or other reading difficulties. In the case of a student in special education who does not perform satisfactorily on a reading instrument, the student’s ARD committee must determine the manner in which the student will participate in an accelerated reading instruction program.

Accelerated Instruction under the Student Success Initiative

TEC §28.0211 (also referred to as the Student Success Initiative or SSI) requires a school district to provide students in third through eighth grade who do not perform satisfactorily on a state assessment with accelerated instruction in the applicable subject area. Accelerated instruction must be provided each time a student fails a state assessment. These requirements also apply to students in special education, including those who take alternate state assessments.1

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19 TAC §101.2006(a).
In addition, if a student in special education who is in fifth or eighth grade does not perform satisfactorily on a reading or math state assessment, the statute requires that the student’s ARD committee determine: (1) the manner in which the student will participate in an accelerated instruction program; and (2) whether the student will be promoted to the next grade or retained in the current grade. The accelerated instruction must be provided to the student before the next administration of the applicable assessment.²

**Accelerated Instruction for High School Students and Students At Risk of Dropping Out**

TEC §28.0217, §29.081, and §39.025(b-1) require that a school district provide accelerated instruction in the applicable subject area to a student who does not pass an end-of-course (EOC) assessment administered under TEC §39.023(c). Furthermore, the accelerated instruction must be provided before the next administration of the applicable assessment. These provisions also apply to students in special education, including those who take alternate state assessments.³

In addition, TEC §29.081 requires that a school district provide accelerated instruction to a “student at risk of dropping out of school” as described in TEC §29.081(d). A student with a disability may be considered to be at risk of dropping out of school if the student meets one or more of the statutory criteria for being in an at-risk situation that is not considered to be part of the student’s disability.

Accelerated instruction is only required for students who do not perform satisfactorily on the EOC assessments that are currently required under TEC §39.023(c) (i.e., Algebra I, English I (reading/writing), English II (reading/writing), biology, and U.S. history). A school district is not required to provide accelerated instruction to students who failed an EOC assessment that is no longer required for graduation.⁴

**Intensive Programs of Instruction**

Under TEC §28.0213, a school district must also offer an intensive program of instruction to a student who does not perform satisfactorily on any state assessment instrument administered under TEC Subchapter B, Chapter 39. In addition, a recent amendment to the statute now requires that intensive instruction be provided to a student who is not likely to receive a high school diploma before the fifth school year following the student’s enrollment in grade nine, as determined by the school district.

In the case of a student in special education who does not pass a state assessment, the statute requires that the student’s ARD committee design an intensive program of instruction to: (1) enable the student to attain a standard of annual growth on the basis of the student’s IEP; and (2) if applicable, carry out the purposes of TEC §28.0211 (i.e., the SSI).

**Resources**

- The Texas Education Agency’s (TEA’s) Curriculum Division provides guidelines for accelerated programs for students in grades kindergarten through eight who are identified as needing intervention. Response to Intervention (RtI) may be one model that districts can

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²19 TAC §101.2006(e).
³19 TAC §101.2006(a).
use to provide accelerated instruction. Curriculum resources are available at

- TEA’s Student Assessment Division has developed materials to help schools implement the
  SSI grade advancement requirements. These materials are available at
  http://www.tea.state.tx.us/student.assessment/ssi/.

- Information regarding state compensatory education is available on TEA’s Division of
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.
- For students who receive special education services, the AIP/IPI must be developed by the ARD Committee and included in the IEP.

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.

Frequency, Duration, & Location of Special Education Services
- All special education services must have a frequency, duration, and location of delivery defined in the IEP. This includes special education services that are being delivered in a general education setting (i.e., inclusion services).
- Services defined in the IEP are prescriptive; they are not approximations and are not a minimum amount.
- TEA has specific guidelines for how to document the services in the IEP. These guidelines require that the services be documented as individual sessions with at least a weekly reference. For example, “Speech therapy 30 minutes one time every two weeks”. Services cannot be documented as a lump sum (i.e., “300 minutes per school year”; “10 sessions per semester”).
Documenting the Frequency, Location and Duration of Related Services

The Individuals with Disabilities Act (IDEA) requires that the Individualized Education Program (IEP) for a student receiving related services contain a statement of the “anticipated frequency, location, and duration of those services, 34 Code of Federal Regulations (CFR) §300.320(a)(7).

The Federal Register dated August 14, 2006, provides guidance in this area within its discussion of the comments regarding the proposed 2006 IDEA regulations. A comment to the regulations asked for clarification regarding the term duration. The response in the Federal Register was:

The meaning of the term ‘‘duration’’ will vary, depending on such things as the needs of the child, the service being provided, the particular format used in an IEP, and how the child’s day and IEP are structured. 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 to be 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 p. 46667)

Requirements for Documenting the Provision of Related Services

- Frequency – **how often** the child will receive the service(s) (number of times per day or week). 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)

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

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

Local Education Agencies (LEA) are advised to review their current practices regarding documenting the frequency, duration, and location of related services. The LEA’s commitment of resources should be clear to parents and other IEP team members and clearly stated in the IEP in a manner that is understood by all involved in the development and implementation of the IEP.
Related Services for Students with Disabilities - Questions and Answers

What is meant by the term “related services”?

Under the Individuals with Disabilities Education Act (IDEA), “related services” are a wide array of supportive services provided to children with disabilities to assist them in benefiting from special education. Specifically, the IDEA defines related services as transportation and such developmental, corrective, and other supportive services necessary for a child with a disability to benefit from special education. The need for related services is typically considered during the student’s admission, review, and dismissal (ARD) committee meeting as the committee reviews and discusses the student’s evaluation and assessment data. Related services include, but are not limited to:

- Audiology services
- School health services (including assistance with health-related needs during the school day, e.g. catheterization)
- Counseling services
- Medical services (only to diagnose or evaluate a student’s disability)
- Social work services in school
- Speech-language therapy*
- Occupational therapy
- Transportation
- Orientation and mobility services
- Parent counseling and training
- Physical therapy
- Psychological services
- Recreation
- Rehabilitation counseling services
- Interpreting Services

*In Texas, speech-language therapy is considered an instructional service. This means it can be a stand-alone service as well as a supportive service.

Is a student with a disability who needs only a related service but no special education eligible for related services under the IDEA?

No. A student with a disability who only needs a related service and not special education is not eligible under the IDEA, and hence is not eligible to receive related services.

How is a student’s need for related services determined?

Each student’s need for related services, like the need for special education, is determined by the student’s ARD committee as part of the individualized education program (IEP) process.

Can related services be determined based on a particular disability category?

No. An ARD committee is responsible for determining appropriate educational services, including related services, based on the individual educational needs of a student. A policy of determining related services based on a disability category would be inconsistent with state and federal requirements that services be based on individual needs.

Are parents involved in the provision of related services?

Parents participate in the determination of appropriate related services through the ARD committee decision-making process. Schools should provide timely and informative related service progress reports to parents, teachers, and other school personnel on a regular basis. Schools should also offer parents opportunities to discuss the provision of related services with
the related service provider. Progress reports must explain the student’s progress toward annual IEP goals.

**How should a school handle the provision of a related service when a student is repeatedly absent?**

Schools are required to provide related services consistent with the frequency, location, and duration of services specified in a student's IEP. Schools should consult with a parent when unable to provide a related service due to a student's absence from school. ARD committees should discuss related service options when a student repeatedly fails to receive a related service due to frequent or chronic absences. If a student’s performance becomes negatively impacted due to frequent absences, an ARD committee should address the schedule of delivery of services and consider the appropriateness of compensatory services.

**Do parents have to pay for the related services a child receives?**

No. School districts may not charge parents of eligible students with disabilities for the costs of related services that have been included in the child's IEP. Just as special and regular education must be provided to an eligible student with a disability at no cost to the parent or guardian, related services must be provided at no cost when the IEP team has determined that such services are required and those services are included in the student's IEP.

**How often should a student receive a related service?**

ARD committees determine the frequency, location, and duration of related services based on a student’s individual needs.

**What is meant by frequency, location, and duration of a related service?**

The U.S. Department of Education has previously instructed that: "the amount of services to be provided must be stated in the IEP so that the level of the agency's commitment of resources will be clear to parents and other IEP team members." Each IEP must include the frequency, duration and location of the services to be provided. ARD committees should review all IEPs to be sure that the LEA’s commitment of resources is clear.

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<thead>
<tr>
<th>Frequency</th>
<th>Duration</th>
<th>Location</th>
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<tr>
<td>How often will the service be provided (daily, weekly)?</td>
<td>How long will the services be provided?</td>
<td>Where will the services be provided?</td>
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<td>If a service is provided less than daily then the conditions for the provision of the services must be clearly specified within ARD documents using a weekly reference (1 hour a week, 30 minutes every two weeks)</td>
<td>The beginning and ending dates must be specified.</td>
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<td>How long will each session be (15 minutes, 30 minutes)?</td>
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<td>If a term (1 class period) is used in the IEP to define duration of service, the term must be defined in the IEP (example: 1 class period = 50 minutes).</td>
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**How are related services delivered?**

A school district must ensure that all of the related services specified in the student's IEP are provided, including the amount specified. The district usually decides how the services listed in
the IEP will be delivered to the student. For example, the district may provide the services through its own personnel resources, or it may contract with another public or private agency, which then provides the services. Contracted service providers must meet the same standards for credentialing and training as public agency service providers.

**What are direct services?**

*Direct services* usually refer to hands-on, face-to-face interactions between the related services professional and the student. These interactions can take place in a variety of settings, such as the classroom, gym, health office, resource room, counseling office, or playground. Typically, the related service professional analyzes student responses and uses specific techniques to develop or improve particular skills. The professional will also typically: monitor the student’s performance within the educational setting so that adjustments can be made to improve student performance, as needed, and consult with teachers, administrators and parents on an ongoing basis, so that relevant strategies can be carried out through indirect means (see below) at other times.

**What are indirect services?**

*Indirect services* may involve teaching, consulting with, and/or directly supervising other personnel (including paraprofessionals and parents) so that they can carry out therapeutically-appropriate activities. For example, a school psychologist might train teachers and other educators how to implement a program included in a student’s IEP to decrease the child’s problem behaviors. Similarly, a physical therapist may serve as a consultant to a teacher and provide expertise to solve problems regarding a student’s access to instruction.

Revised August 20, 2009
IEP Implementation

- Teachers/Service providers cannot deviate from what the IEP requires. For example, if the IEP calls for 30 minutes of service one time per week, the service should not last more than or less than 30 minutes and should not occur more or less frequently than once per week.
- All IEP service delivery must be documented/logged, regardless of the setting in which the service was provided. This includes services provided in an inclusive/general education setting.

Paraprofessionals Providing Special Education Services

- A paraprofessional who provides special education services in a general education setting (i.e., inclusion services) must be supervised by a certified special educator. This includes the special educator meeting regularly with the paraprofessional and giving him/her direction on what to do to implement the IEP.

State Performance Plan (SPP) Indicators

- All LEAs must report on State Performance Plan indicators 1-14; most are collected through PEIMS. However, the following indicators require the LEA to submit data through TEASE/TEAL. Data must be submitted and certified annually even if the LEA has no students to whom it applies:
  - Indicator 7 (Early Childhood Outcomes)
  - Indicator 11
  - Indicator 12
  - Indicator 13 (Postsecondary Transition Planning)
Noncompliance Findings Specific to Inclusion/Mainstream Services

- **Frequency, Duration, & Location** - Services provided in a general education setting must have a frequency, duration, and location clearly defined in the IEP.

- **Dually Certified** - 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.)

- **Paraprofessional Providing Special Education Services** - If a paraprofessional is providing the services, he/she must be supervised by a certified special educator. This includes the special educator meeting regularly with the paraprofessional and giving him/her direction on what to do to implement the IEP.

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**TEA Guidance on “Mainstream”**

*2014-2015 Student Attendance Accounting Handbook*

(pages 109-110)

Examples of special education and related services provided to a student in the mainstream instructional setting include, but are not limited to, direct instruction, helping teacher, team teaching, co-teaching, interpreter, education aides, curricular or instructional modifications or accommodations, special materials or equipment, consultation with the student and his or her general classroom teacher(s), staff development, and reduction of ratio of students to instructional staff members.

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 teachers.

**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. One teacher, even if dually certified, must not serve in both a general education and a special education role simultaneously when serving students in grades K–12. Students with disabilities who are aged 3 or 4 years may have an instructional setting code of 40, mainstream, if special education services are provided in classroom settings with nondisabled peers. 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.
Helpful Websites

- ESC-20 Special Education  http://www.esc20.net/specialeducation
- The Legal Framework for the Child Centered Educational Process  http://framework.esc18.net
- U.S. Department of Education IDEA Website  http://idea.ed.gov/explore/home
- TEA’s Special Education Webpage  http://tea.texas.gov/Curriculum_and_Instructional_Programs/Special_Education/