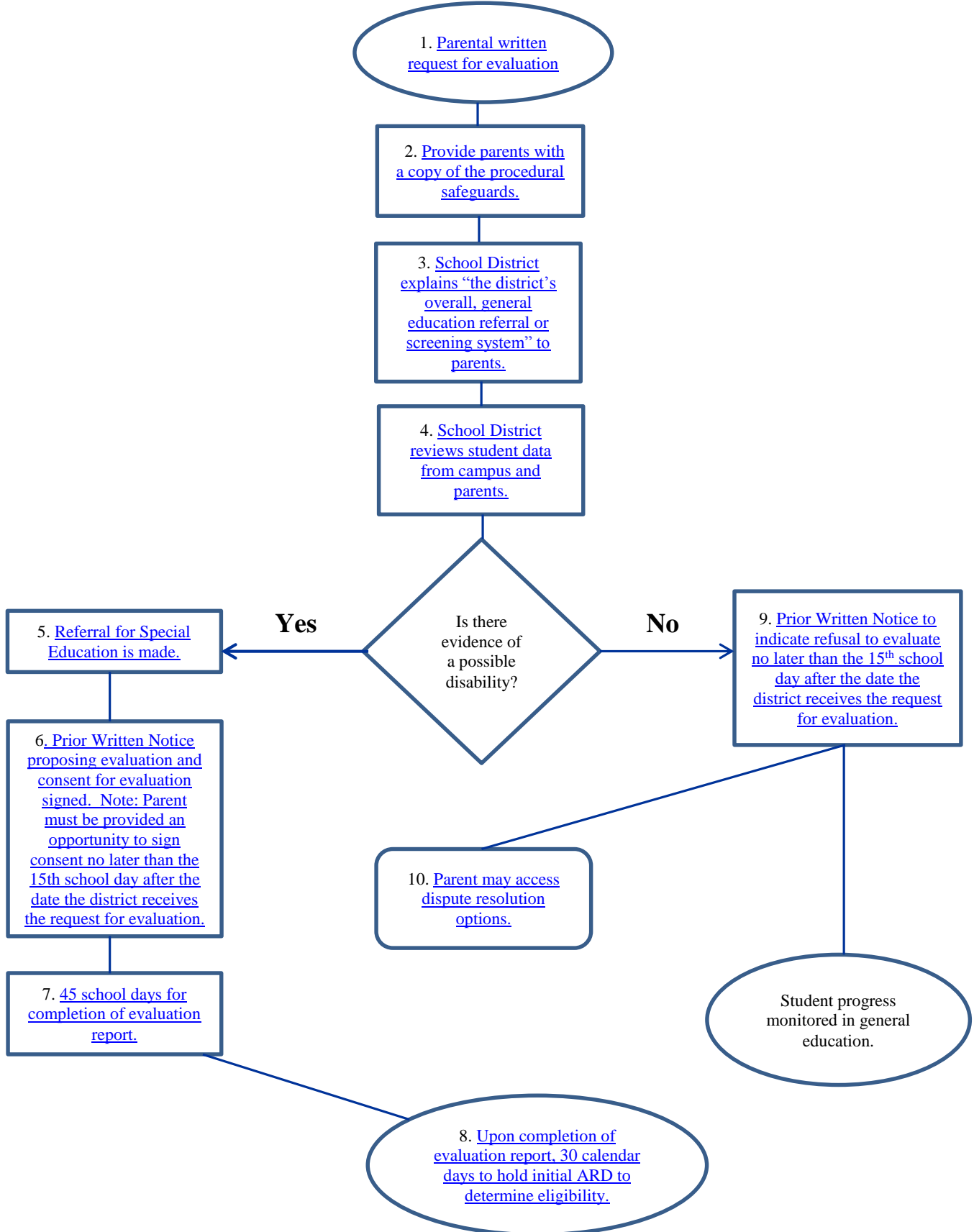


Parental Request for Evaluation Flowchart



1. Parental Written Request for Evaluation

Federal and state laws and regulations make clear that parents have the right to request an evaluation for special education services at any time. Public school districts and charter schools also have the right to request such an evaluation. However, a request does not automatically start the referral process. School districts who receive written requests for evaluations submitted to the special education director or other district administrative employee should reply to parent requests with data to support their decisions no later than the 15th school day after the date the district receives the request.

Federal regulation reads:

34 Code of Federal Regulations (CFR) §300.301 Initial evaluations.

...

(b) Request for initial evaluation. Consistent with the consent requirements in §300.300, either a parent of a child or a public agency may initiate a request for an initial evaluation to determine if the child is a child with a disability. §300.301(b)

State rule reads:

19 Texas Administrative Code (TAC) §89.1011. Referral for Full and Individual Initial Evaluation.

(a)...This referral for a full and individual initial evaluation may be initiated by school personnel, the student's parents or legal guardian, or another person involved in the education or care of the student.

(b) If a parent submits a written request to a school district's director of special education services or to a district administrative employee for a full individual and initial evaluation of a student, the school district must, not later than the 15th school day after the date the district receives the request:

(1) provide the parent with prior written notice of its proposal to conduct an evaluation consistent with 34 Code of Federal Regulations (CFR), §300.503; a copy of the procedural safeguards notice required by 34 CFR, §300.504; and an opportunity to give written consent for the evaluation; or

(2) provide the parent with prior written notice of its refusal to conduct an evaluation consistent with 34 CFR, §300.503, and a copy of the procedural safeguards notice required by 34 CFR, §300.504.

State statute reads:

Texas Education Code (TEC) §26.0081. Right to Information Concerning Special Education and Education of Students with Learning Difficulties.

...

(c) The agency shall produce and provide to school districts a written explanation of the options and requirements for providing assistance to students who have learning difficulties or who need or may need special education. The explanation must state that a parent is entitled at any time to request an evaluation of the parent's child for special education services under Section 29.004. Each school year, each district shall provide the written explanation to a parent of each district student by including the explanation in the student handbook or by another means.

2. Provide Parents with a Copy of the Procedural Safeguards

Federal regulations require school districts and charter schools to provide parents a copy of their procedural safeguards when they **request** an evaluation for special education. The procedural safeguards must be given to parents in their native language or in their communication mode whenever possible.

Federal regulation reads:

34 CFR §300.504 Procedural safeguards notice.

(a) General. A copy of the procedural safeguards available to the parents of a child with a disability must be given to the parents only one time a school year, except that a copy also must be given to the parents--

(1) Upon initial referral or parent request for evaluation;

The comments to the Federal Regulations state the following:

In addition to the prior written notice, § 300.504(a)(1), consistent with section 615(d)(1)(A)(i) of the Act, requires that a copy of the procedural safeguards notice be given to parents upon an initial referral or parental request for an evaluation. Consistent with § 300.503(c) and § 300.504(d), the prior written notice and the procedural safeguards notice, respectively, must be written in language understandable to the general public and be provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so. (Federal Register, 2006, p. 46633)

3. The District's Overall, General Education Referral or Screening System

School districts and charter schools are required by state statute to inform parents that they can request a referral for special education services at any time as a part of the district or charter school's overall general education referral or screening process. This should be communicated to parents in writing each school year. The [required written statement](#) is provided by the Texas Education Agency (TEA) and includes the following statement: "Students having difficulty in the regular classroom should be considered for tutorial, compensatory, and other academic or behavior support services that are available to all students including a process based on Response to Intervention (RtI)." Districts should clearly explain this process when parents ask for an evaluation in order to safeguard the parent's rights, provide for the well-being of the student, and clarify the roles and responsibilities of all parties involved during the process. Districts and charters may also want to inform parents that this process could include a systematic approach which seeks to determine the child's response to scientific, research-based intervention, commonly referred to as [Response to Intervention \(RtI\)](#).

State rule reads:

19 TAC §89.1011. Referral for Full and Individual Initial Evaluation.

(a) Referral of students for a full and individual initial evaluation for possible special education services must be a part of the district's overall, general education referral or screening system...

State statute reads:

TEC §26.0081. Right to Information Concerning Special Education and Education of Students with Learning Difficulties.

...

(c) The agency shall produce and provide to school districts a written explanation of the options and requirements for providing assistance to students who have learning difficulties or who need or may need special education. The explanation must state that a parent is entitled at any time to request an evaluation of the parent's child for special education services under Section 29.004. Each school year, each district shall provide the written explanation to a parent of each district student by including the explanation in the student handbook or by another means.

4. Review of Data

Before any decision is made regarding whether to grant or refuse a request for a Full Individual Evaluation (FIE), district personnel should review data the school has at its disposal regarding the student including any data provided by the parent as part of the request for evaluation. Data could include, but is not limited to the following:

Academic	Standardized Test Performance	District Benchmarks	Formal and informal observations	Work samples	Report cards
Language	Language proficiency	Language used at home	Formal and informal observations		
Behavioral	Formal and informal observations	Office referrals	Teacher comments	Report cards	Parent input
Health	Vision screenings	Hearing screenings	Documentation of other health problems		
Environmental, Cultural, Economic Factors	Cumulative folder review	At Risk status	Data from classroom teachers, counselors, and other support personnel such as social workers		
Intervention History	Interventions provided	Duration of interventions	Performance data collected during intervention	Data from tutorials, compensatory, and other academic or behavior support services	Data from a Response to Intervention (RtI) system in place*

* RtI involves activities that typically occur in the general education setting as schools assist struggling students prior to and in lieu of a referral for a special education evaluation.

Data collected should be used to inform a district's or charter school's decision as to whether to proceed with a referral. The comments to the federal regulations state the following:

Comment: A few commenters recommended that the regulations clarify whether a public agency has the right to deny a parent's request for an initial evaluation.

Discussion: The regulations are sufficiently clear on this point. Section 300.503(a), consistent with section 615(b)(3) of the Act, provides that a public agency may refuse to initiate or change the identification, evaluation, or educational placement of the child, or the provision of FAPE to the child, if the public agency provides written notice. This includes situations in which a public agency wishes to deny a parent's request for an initial evaluation. The written notice must meet the requirements in § 300.503(b). Thus, for situations in which a public agency wishes to deny a parent's request for

an initial evaluation, the written notice would provide, among other things, an explanation of why the public agency refuses to conduct an initial evaluation and the information that was used to make that decision. A parent may challenge the public agency's refusal to conduct an initial evaluation by requesting a due process hearing. (Federal Register, 2006, p. 46636)

School districts should be aware that a simple review of grades is not sufficient and are cautioned not to deny an evaluation based solely on the fact that the student is passing. The comments to the federal regulations state the following:

***Comment:* Some commenters expressed concern that children with disabilities have to fail or be retained in a grade or course in order to be considered eligible for special education and related services.**

***Discussion:* Section 300.101(c) provides that a child is eligible to receive special education and related services even though the child is advancing from grade to grade. Further, it is implicit from paragraph (c) of this section that a child should not have to fail a course or be retained in a grade in order to be considered for special education and related services. A public agency must provide a child with a disability special education and related services to enable him or her to progress in the general curriculum, thus making clear that a child is not ineligible to receive special education and related services just because the child is, with the support of those individually designed services, progressing in the general curriculum from grade-to-grade or failing a course or grade. The group determining the eligibility of a child for special education and related services must make an individual determination as to whether, notwithstanding the child's progress in a course or grade, he or she needs or continues to need special education and related services. (Federal Register, 2006, p. 46580)**

We also believe it is important to clarify that a child suspected of having a disability but who has not failed, is making academic progress, and is passing from grade to grade must be considered in the child find process as any other child suspected of having a disability. As noted earlier in the discussion regarding §300.101, paragraph (c)(1) of §300.111 has been revised to clarify that children do not have to fail or be retained in a course or grade in order to be considered for special education and related services. (Federal Register, 2006, p. 46584)

The referenced federal regulation reads:

34 CFR §300.101 Free appropriate public education (FAPE).

...

(c) Children advancing from grade to grade.

(1) Each State must ensure that FAPE is available to any individual child with a disability who needs special education and related services, even though the child has not failed or been retained in a course or grade, and is advancing from grade to grade.

(2) The determination that a child described in paragraph (a) of this section is eligible under this part, must be made on an individual basis by the group responsible within the child's LEA for making eligibility determinations.

5. Referral

Referrals are part of a school's overall, general education referral or screening system and should follow a process outlined in board policy, special education procedures (see the [Legal Framework](#)), and local operational guidelines. Students being referred for special education services should have been considered, not necessarily provided, for all support services available to all students prior to the referral.

State rule reads:

19 TAC §89.1011. Referral for Full and Individual Initial Evaluation.

(a) Referral of students for a full individual and initial evaluation for possible special education services must be a part of the district's overall, general education referral or screening system. Prior to referral, students experiencing difficulty in the general classroom should be considered for all support services available to all students, such as tutorial; remedial; compensatory; response to scientific, research-based intervention; and other academic or behavior support services. If the student continues to experience difficulty in the general classroom after the provision of interventions, district personnel must refer the student for a full individual and initial evaluation. This referral for a full individual and initial evaluation may be initiated by school personnel, the student's parents or legal guardian, or another person involved in the education or care of the student.

6. Consent for Evaluation

Receipt of signed parental consent for initial evaluation sets formal timelines in motion for completion of the evaluation. Consent is required for school districts to proceed with an evaluation for special education services. School districts and charter schools should provide parents with prior written notice of the proposal to evaluate that includes a description of any evaluation procedure it proposes to conduct, including information regarding the names and types of tests that will be used in the evaluation and for what purpose they will be used. The parent must be provided an opportunity to give written consent not later than the 15th school day after the date the district receives the request for evaluation.

Federal regulation reads:

34 CFR §300.300 Parental consent.

(a) Parental consent for initial evaluation. (1)(i) The public agency proposing to conduct an initial evaluation to determine if a child qualifies as a child with a disability under § 300.8 must, after providing notice consistent with §§ 300.503 and 300.504, obtain informed consent, consistent with § 300.9, from the parent of the child before conducting the evaluation.

(ii) Parental consent for initial evaluation must not be construed as consent for initial provision of special education and related services.

(iii) The public agency must make reasonable efforts to obtain the informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability.

State rule reads:

19 TAC § 89.1011. Referral for Full and Individual Initial Evaluation.

...

(b) If a parent submits a written request to a school district's director of special education services or to a district administrative employee for a full individual and initial evaluation of a student, the school district must, not later than the 15th school day after the date the district receives the request:

(1) provide the parent with prior written notice of its proposal to conduct an evaluation consistent with 34 Code of Federal Regulations (CFR), §300.503; a copy of the procedural safeguards notice required by 34 CFR, §300.504; and an opportunity to give written consent for the evaluation; or

(2) provide the parent with prior written notice of its refusal to conduct an evaluation consistent with 34 CFR, §300.503, and a copy of the procedural safeguards notice required by 34 CFR, §300.504.

State statute reads:

TEC § 29.0041. Information and consent for certain psychological examinations or tests.

(a) On request of a child's parent, before obtaining the parent's consent under 20 U.S.C. Section 1414 for the administration of any psychological examination or test to the child that is included as part of the evaluation of the child's need for special education, a school district shall provide to the child's parent:

(1) the name and type of the examination or test; and

(2) an explanation of how the examination or test will be used to develop an appropriate individualized education program for the child.

(b) If the district determines that an additional examination or test is required for the evaluation of a child's need for special education after obtaining consent from the child's parent under Subsection (a), the district shall provide the information described by Subsections (a)(1) and (2) to the child's parent regarding the additional examination or test and shall obtain additional consent for the examination or test.

(c) The time required for the district to provide information and seek consent under Subsection (b) may not be counted toward the 60 calendar days for completion of an evaluation under Section 29.004. If a parent does not give consent under Subsection (b) within 20 calendar days after the date the district provided to the parent the information required by that subsection, the parent's consent is considered denied.**

*****Note: Section 29.004 has been amended from 60 calendar days to not later than the 45th school day following the date on which the school district receives written consent from the parent.***

TEC § 29.004. Full & Individual Evaluation.

...

c) If a parent or legal guardian makes a written request to a school district's director of special education services or to a district administrative employee for a full individual and initial evaluation of a student, the district shall, not later than the 15th school day after the date the district receives the request:

- (1) provide an opportunity for the parent or legal guardian to give written consent for the evaluation; or**
- (2) refuse to provide the evaluation and provide the parent or legal guardian with notice of procedural safeguards under 20 U.S.C. Section 1415(b).**

7.45 School Day Timeline

Upon receipt of parental consent, school districts and charter schools have 45 school days in which to complete the initial evaluation.

- If a student is absent three or more days during the evaluation timeline, then the evaluation timeline is extended by the number of school days the student has been absent.
- If the district receives consent for the evaluation at least 35 school days but less than 45 school days before the last instructional day of the school year, then the evaluation report must be provided to the parent no later than June 30 of that year. In this case, if the student is absent three or more days during the evaluation period, then the timeline is extended to 45 school days, which will extend into the next school year, and is extended for the number of school days the student has been absent.
- If consent is received by the district less than 35 school days before the last instructional day of the school year, then the evaluation timeline is 45 school days, which will extend into the next school year. If a student is absent three or more days during the evaluation timeline, then the evaluation timeline is extended by the number of school days the student has been absent.

Federal regulation reads:

34 CFR §300.301 Initial evaluations.

...

(c) Procedures for initial evaluation. The initial evaluation—

- (1)**
 - (i) Must be conducted within 60 days of receiving parental consent for the evaluation; or**
 - (ii) If the State establishes a timeframe within which the evaluation must be conducted, within that timeframe; and**
- (2) Must consist of procedures--**
 - (i) To determine if the child is a child with a disability under §300.8; and**
 - (ii) To determine the educational needs of the child. §300.301 (c)**

State statute reads:

TEC §29.004. Full Individual and Initial Evaluation.

(a) A written report of a full individual and initial evaluation of a student for purposes of special education services shall be completed as follows, except as otherwise provided by this section:

- (1) not later than the 45th school day following the date on which the school district, in accordance with 20 U.S.C. Section 1414(a), as amended, receives written consent for the evaluation, signed by the student's parent or legal guardian, except that if a student has been absent from school during that period on three or more days, that period must be extended by a number of school days equal to the number of school days during that period on which the student has been absent; or**
- (2) for students under five years of age by September 1 of the school year and not enrolled in public school and for students enrolled in a private or home school setting, not later than the 45th school day following the date on which the school district receives written consent for the evaluation, signed by a student's parent or legal guardian.**

(a-1) If a school district receives written consent signed by a student's parent or legal guardian for a full individual and initial evaluation of a student at least 35 but less than 45 school days before the last instructional day of the school year, the evaluation must be completed and the written report of

the evaluation must be provided to the parent or legal guardian not later than June 30 of that year. The student's admission, review, and dismissal committee shall meet not later than the 15th school day of the following school year to consider the evaluation. If a district receives written consent signed by a student's parent or legal guardian less than 35 school days before the last instructional day of the school year or if the district receives the written consent at least 35 but less than 45 school days before the last instructional day of the school year but the student is absent from school during that period on three or more days, Subsection (a)(1) applies to the date the written report of the full individual and initial evaluation is required.

(a-2) For purposes of this section, "school day" does not include a day that falls after the last instructional day of the spring school term and before the first instructional day of the subsequent fall school term. The commissioner by rule may determine days during which year-round schools are recessed that, consistent with this subsection, are not considered to be school days for purposes of this section.

(a-3) Subsection (a) does not impair any rights of an infant or toddler with a disability who is receiving early intervention services in accordance with 20 U.S.C. Section 1431.

8. Thirty Day Timeline

In Texas, completion of the Full Individual Evaluation (FIE) begins a second timeline. From the completion of the report, the school district or charter school must convene an Admission, Review, or Dismissal (ARD) meeting within 30 calendar days. The ARD committee determines eligibility, the Individual Education Program (IEP), and placement for the student at this meeting.

If the district receives consent for the evaluation at least 35 school days but less than 45 school days before the last instructional day of the school year and the student was not absent 3 or more days during this period, then the evaluation report must be provided to the parent no later than June 30 of that year. For this situation, the ARD meeting must be held no later than the 15th school day of the following school year to consider the evaluation.

For the student who is evaluated during the school year but the 30 calendar days for the ARD meeting falls during the summer and school is not in session, then the ARD committee has until the first day of fall classes to convene to consider the evaluation unless the evaluation indicates the student may need extended school year services during that summer.

Federal regulation reads:

34 CFR §300.323 When IEPs must be in effect. ...

...

(c) Initial IEPs; provision of services. Each public agency must ensure that—

- (1) A meeting to develop an IEP for a child is conducted within 30 days of a determination that the child needs special education and related services;**

State rule reads:

19 TAC §89.1011. Referral for Full and Individual Initial Evaluation.

...

(d) The admission, review, and dismissal (ARD) committee must make its decisions regarding a student's initial eligibility determination and, if appropriate, individualized education program (IEP) and placement within 30 calendar days from the date of the completion of the written full individual and initial evaluation report. If the 30th day falls during the summer and school is not in session, the student's ARD committee has until the first day of classes in the fall to finalize decisions concerning the student's initial eligibility determination, IEP, and placement, unless the full individual and initial evaluation indicates that the student will need extended school year services during that summer.

State statute reads:

TEC §29.004. Full Individual and Initial Evaluation.

...

(a-1) If a school district receives written consent signed by a student's parent or legal guardian for a full individual and initial evaluation of a student at least 35 but less than 45 school days before the last instructional day of the school year, the evaluation must be completed and the written report of the evaluation must be provided to the parent or legal guardian not later than June 30 of that year. The student's admission, review, and dismissal committee shall meet not later than the 15th school day of the following school year to consider the evaluation. If a district receives written consent signed by a student's parent or legal guardian less than 35 school days before the last instructional day of the school year or if the district receives the written consent at least 35 but less than 45

school days before the last instructional day of the school year but the student is absent from school during that period on three or more days, Subsection (a)(1) applies to the date the written report of the full individual and initial evaluation is required.

9. Prior Written Notice of Refusal

When a school district or charter school decides to refuse a parental request for evaluation, the school district must provide the parent with a written explanation of the refusal to take action and the reason why this decision was made including the data that supported that decision. This prior written notice must be provided to the parent no later than the 15th school day after the request for evaluation was received. Districts should pay close attention to the required contents of the notice to be provided to parents as articulated in 34 CFR § 300.503 (b). (See below.)

In the comments to the Federal Regulations, the Department of Education states the following:

If, however, the public agency does not suspect that the child has a disability and denies the request for an initial evaluation, the public agency must provide written notice to the parents, consistent with §300.503(b) and section 615(c)(1) of the Act, which explains, among other things, why the public agency refuses to conduct an initial evaluation and the information that was used as the basis to make that decision. (Federal Register, 2006, p. 46636)

And:

Section 300.503(a), consistent with section 615(b)(3) of the Act, provides that a public agency may refuse to initiate or change the identification, evaluation, or educational placement of the child, or the provision of FAPE to the child, if the public agency provides written notice. This includes situations in which a public agency wishes to deny a parent's request for an initial evaluation. The written notice must meet the requirements in §300.503(b). Thus, for situations in which a public agency wishes to deny a parent's request for an initial evaluation, the written notice would provide, among other things, an explanation of why the public agency refuses to conduct an initial evaluation and the information that was used to make that decision. (Federal Register, 2006, p. 46636)

Federal regulation reads:

34 CFR §300.503 Prior notice by the public agency; content of notice.

- (a) Notice. Written notice that meets the requirements of paragraph (b) of this section must be given to the parents of a child with a disability a reasonable time before the public agency—**
- (1) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or**
 - (2) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.**
- (b) Content of notice. The notice required under paragraph (a) of this section must include—**
- (1) A description of the action proposed or refused by the agency;**
 - (2) An explanation of why the agency proposes or refuses to take the action;**
 - (3) A description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;**
 - (4) A statement that the parents of a child with a disability have protection under the procedural safeguards of this part and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained;**
 - (5) Sources for parents to contact to obtain assistance in understanding the provisions of this part;**
 - (6) A description of other options that the IEP Team considered and the reasons why those**

options were rejected; and

(7) A description of other factors that are relevant to the agency's proposal or refusal.

(c) Notice in understandable language.

(1) The notice required under paragraph (a) of this section must be—

(i) Written in language understandable to the general public; and

(ii) Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.

(2) If the native language or other mode of communication of the parent is not a written language, the public agency must take steps to ensure—

(i) That the notice is translated orally or by other means to the parent in his or her native language or other mode of communication;

(ii) That the parent understands the content of the notice; and

(iii) That there is written evidence that the requirements in paragraphs (c)(2)(i) and

(ii) of this section have been met.

State rule reads:

19 TAC § 89.1011. Referral for Full and Individual Initial Evaluation.

...

(b) If a parent submits a written request to a school district's director of special education services or to a district administrative employee for a full individual and initial evaluation of a student, the school district must, not later than the 15th school day after the date the district receives the request:

(1) provide the parent with prior written notice of its proposal to conduct an evaluation consistent with 34 Code of Federal Regulations (CFR), §300.503; a copy of the procedural safeguards notice required by 34 CFR, §300.504; and an opportunity to give written consent for the evaluation; or

(2) provide the parent with prior written notice of its refusal to conduct an evaluation consistent with 34 CFR, §300.503, and a copy of the procedural safeguards notice required by 34 CFR, §300.504.

State statute reads:

TEC § 29.004. Full & Individual Evaluation.

...

(c) If a parent or legal guardian makes a written request to a school district's director of special education services or to a district administrative employee for a full individual and initial evaluation of a student, the district shall, not later than the 15th school day after the date the district receives the request:

(1) provide an opportunity for the parent or legal guardian to give written consent for the evaluation; or

(2) refuse to provide the evaluation and provide the parent or legal guardian with notice of procedural safeguards under 20 U.S.C. Section 1415(b).

10. Parent Options

Parents have a range of options if they disagree with the school's decision including mediation, the state complaint process, or filing for a due process hearing. Parents and local education agencies (school districts and charters) are encouraged to solve their disputes locally and may call upon assistance from their regional Education Service Center.

The comments to the Federal Regulations state the following:

The parent may challenge such a refusal by requesting a due process hearing, but the timeline for conducting the evaluation does not begin prior to parental consent for evaluation. (Federal Register, 2006, p. 46636)

Federal regulation reads:

34 CFR §300.507 Filing a due process complaint.

(a) General.

(1) A parent or a public agency may file a due process complaint on any of the matters described in § 300.503(a)(1) and (2) (relating to the identification, evaluation or educational placement of a child with a disability, or the provision of FAPE to the child).

State Rule reads:

19 TAC §89.1150. General Provisions.

(a) It is the policy and intent of the Texas Education Agency (TEA) to encourage and support the resolution of any dispute that arises between a parent and a public education agency relating to the identification, evaluation, or educational placement of or the provision of a free appropriate public education (FAPE) to a student with a disability at the lowest level possible and in a prompt, efficient, and effective manner.

(b) The possible options for resolving disputes include, but are not limited to:

- (1) meetings of the student's admission, review, and dismissal committee, including individualized education program (IEP) facilitation if offered by the public education agency in accordance with §89.1196 of this title (relating to Individualized Education Program Facilitation);**
- (2) meetings or conferences with the student's teachers;**
- (3) meetings or conferences, subject to the public education agency's policies, with the campus administrator, the special education director of the public education agency (or the shared services arrangement to which the public education agency may be a member), the superintendent of the public education agency, or the board of trustees of the public education agency;**
- (4) requesting state IEP facilitation in accordance with §89.1197 of this title (relating to State Individualized Education Program Facilitation);**
- (5) requesting mediation through the TEA in accordance with 34 Code of Federal Regulations (CFR), §300.506;**
- (6) filing a complaint with the TEA in accordance with 34 CFR, §300.153; or**
- (7) requesting a due process hearing through the TEA in accordance with 34 CFR, §§300.507-300.514**