



**WINDHAM SCHOOL
DISTRICT**

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SUPERSEDES: N/A

OPERATING PROCEDURES

**SUBJECT: SPECIAL EDUCATION IDENTIFICATION, EVALUATION,
AND ELIGIBILITY**

AUTHORITY: *Individuals with Disabilities Education Act (IDEA) of 2004, 20 U.S.C. §1400 et seq., 34 C.F.R. Part 300; Rehabilitation Act of 1973, §504, 29 U.S.C. §794, 34 C.F.R. Part 104; Tex. Educ. Code §§29.001–29.020; 19 Tex. Admin. Code §§89.61–89.1195*

APPLICABILITY: Windham School District (WSD)

POLICY:

WSD identifies and evaluates students to determine eligibility for special education and related services in accordance with applicable federal regulations, state laws, State Board of Education rules, and commissioner’s rules.

PROCEDURES:

I. Identification – Child Find

All students in TDCJ-operated facilities who have disabilities, regardless of the severity, and who need special education and related services are identified, located, and evaluated. This requirement applies to:

- A. Homeless students;
- B. Students who are wards of the state;
- C. Highly mobile students (including migrant students); and
- D. Students who are suspected of being in need of special education but who are advancing from grade to grade.

II. Requests and Referrals for Evaluation

A. Screenings

The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation is not considered an evaluation for eligibility for special education and related services.

B. Referrals

Referral of students for an initial full and individual evaluation (FIE) for possible special education services is part of WSD's overall general education referral or screening system. The parent(s), guardian, or person standing in parental relation to a minor student (parent) or adult student, the Texas Education Agency, WSD, or other state agency may initiate a request for an FIE.

C. WSD's Obligation to Refer

1. Prior to Referral

Before referral, students experiencing difficulty in the general classroom should be considered for support services available to all students. If a student continues to experience difficulty in the general classroom after the provision of interventions, WSD refers the student for an FIE.

2. Parent Requests to Refer

If a parent or adult student submits a written request for an FIE of a student, no later than the 15th school day after the date WSD receives the request, WSD provides the parent with prior written notice of:

- a. its agreement to conduct an FIE consistent with 34 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
- b. its refusal to conduct an FIE consistent with 34 CFR §300.503, and a copy of the procedural safeguards notice required by 34 CFR §300.504.

3. Notice of Rights

A reasonable time period before WSD proposes or refuses to initiate the FIE or other evaluation for a student or the provision of a free and appropriate public education to a student, WSD provides written notice to the student's parent or adult student.

4. Initial Evaluation Required

a. FIE Before Initial Evaluation

WSD conducts an FIE before the initial provision of special education services and related services to a student with disabilities. The initial evaluation consists of procedures to determine whether a student has a disability and what the educational needs of that student are.

b. Consent for Initial Evaluation

- i. Before WSD conducts an FIE, reasonable efforts are made to obtain informed consent from a parent or adult student.
- ii. If a parent or adult student does not provide consent for an FIE or fails to respond to a request to provide consent, WSD may, but is not required to, pursue the FIE by utilizing due process procedures, except to the extent that doing so is inconsistent with state law relating to parental consent.
- iii. Parental consent to an FIE is not construed as consent for placement for special education and related services.
- iv. WSD makes reasonable efforts to obtain informed consent for an FIE, unless:
 - (a) despite reasonable efforts to do so, WSD cannot discover the whereabouts of a parent or adult student;
 - (b) the rights of a parent have been terminated; or
 - (c) the rights of a parent or adult student to make educational decisions have been subrogated and an individual appointed by a judge to represent the student has given consent for an FIE.

5. Written Report

- a. Time Frame for Completion of Written Report
 - i. WSD completes the written report of an FIE:
 - (a) not later than the 45th school day following the date on which WSD receives written consent for the evaluation from a student's parent or adult student. If a student has been absent from school for three or more days during that period, the period must be extended by the number of school days the student was absent during that period; or
 - (b) if WSD receives written consent for the evaluation from a student's parent or adult student at least 35 but less than 45 school days before the last instructional day of the school year, the written report of an FIE is provided to the student's parent or adult student not later than June 30 of that year.
 - ii. If WSD receives written consent signed by a parent or adult student less than 35 school days before the last instructional day of the school year or 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 for three or more days during that period, the FIE report is

completed no later than the 45th school day following the date WSD received written consent, except that the period must be extended by the number of school days the student was absent during that period.

b. Absences

A student is considered absent for the school day if the student is not in attendance at the school's official attendance-taking time or at the alternate attendance-taking time set specifically for that student. A student is considered in attendance if the student is off campus participating in an activity that is approved by WSD for school purposes and is under the direction of a professional staff member of WSD.

c. School Days

In this context, the term 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. These time frames do not apply if the student repeatedly fails or refuses to appear for the evaluation.

d. Transfer Students

i. WSD ensures that evaluations of students who transfer from one district to another in the same academic year are coordinated with the student's prior and subsequent schools, as necessary and as expeditiously as possible, to ensure prompt completion of evaluations.

ii. If a student was in the process of being evaluated for special education eligibility by a district and enrolls in a WSD school before the previous district completed the full individual and initial evaluation, WSD coordinates with the previous district, as necessary and as expeditiously as possible, to ensure prompt completion of the evaluation in accordance with 34 CFR §300.301(d)(2) and (e) and §300.304(c)(5).

iii. The timelines above do not apply in such a situation if:

(a) WSD is making sufficient progress to ensure prompt completion of the evaluation; and

(b) a parent or adult student and WSD agree to a specific time when the evaluation will be completed.

e. Psychological Examinations

i. If WSD determines that an additional examination or test is required for the FIE, WSD provides the information required by Section

29.0041(a), Education Code, and obtains additional parental consent. If a parent or adult student does not give consent within 20 calendar days after WSD provided the information, the consent is considered denied.

- ii. The time required for WSD to provide information and seek consent may not be counted toward the time frame for the completion of an evaluation.

III. Eligibility and Reevaluations

A. Eligibility for Special Education

A student is eligible to participate in WSD's special education program if the student:

1. is younger than 22;
2. has one or more of the disabilities listed in federal regulations, state law, or both; and
3. has at least one disability that prevents the student from being adequately or safely educated in a public school without the provision of special services.

B. Visual and Auditory Impairments

A student with a visual or auditory impairment is eligible to participate in WSD's special education program.

C. Determination of Initial Eligibility

1. Upon completion of the administration of assessments and other evaluation measures, a team of qualified professionals and a parent or adult student determines whether the student has a disability and what that student's educational needs are.
2. WSD provides a copy of the evaluation report and the documentation of the determination of eligibility at no cost to the parent or adult student.
3. 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 on a day when school is not in session, the student's ARD committee has until the first day of classes 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.
4. When a report is provided to a parent or adult student as described in section II.C.5.a., the ARD committee must meet no later than the 15th school day of the

following school year to consider the evaluation. If, however, an evaluation indicates that a student will need extended school year services, the ARD committee must meet as soon as possible.

D. Consent for Services

1. Initial Provision of Services

WSD obtains informed consent from a parent or adult student for the initial provision of special education and related services. If a parent or adult student fails to respond to a request for or refuses to consent to, the initial provision of services, WSD:

- a. may not use the procedures in 34 CFR part 300, Subpart E (including the mediation and due process procedures) in order to obtain agreement or a ruling that the services may be provided to the students;
- b. will not be considered to be in violation of the requirement to make free and appropriate public education available to the student for the failure to provide the services for which the district requests consent; and
- c. is not required to convene an ARD meeting or develop an IEP for the services.

2. Revoking Consent

If, at any time after the provision of initial services, a parent or adult student revokes consent in writing for the continued provision of services, WSD:

- a. may not continue to provide services to the students but must provide prior written notice before ceasing services;
- b. may not use the procedures in 34 CFR part 300, Subpart E in order to obtain agreement or a ruling that the services may be provided to the students;
- c. will not be considered to be in violation of the requirement to make free and appropriate public education available to the student because of the failure to provide the student with further services; and
- d. is not required to convene an ARD meeting or develop an IEP for further provision of services.

3. Reevaluations

- a. WSD ensures that each student with a disability is reevaluated if:
 - i. WSD determines that the educational or related services needs of the student, including improved academic achievement and functional performance, warrant a reevaluation; or

- ii. a parent, adult student, or teacher requests a reevaluation.
- b. Reevaluation occurs:
 - i. no more than once a year, unless a parent or adult student and WSD agree otherwise; and
 - ii. at least once every three years, unless a parent or adult student and WSD agree that a reevaluation is unnecessary.
- c. WSD obtains informed parental consent before conducting a reevaluation. However, informed parental consent is not needed if WSD can demonstrate that it has taken reasonable measures to obtain consent and a student's parent or adult student has failed to respond.

4. Evaluation for Change in Eligibility

a. WSD Evaluation

WSD evaluates a student before determining that the student no longer has a disability. However, an evaluation is not required before the termination of eligibility due to graduation from secondary school with a standard diploma or due to exceeding the age of eligibility for free and appropriate public education under state law. A summary of academic achievement and functional performance must be provided in these circumstances.

b. Independent Evaluation

- i. Parents and adult students have a right to obtain an independent educational evaluation of their student. If a parent or adult student requests an independent evaluation, WSD provides information regarding where an independent evaluation can be obtained and WSD's criteria for independent evaluations.
- ii. The results of a parent- or adult student-initiated independent educational evaluation, whether at public or private expense, must be considered by WSD if it meets WSD's criteria, in decisions made with respect to providing free and appropriate public education to the student.
- iii. If a parent requests an independent evaluation at public expense, WSD must, without unnecessary delay, either:
 - (a) file a due process complaint to request a hearing to show that WSD's evaluation is appropriate; or
 - (b) ensure that an independent evaluation is provided at public expense unless WSD demonstrates that the evaluation obtained by the parent or adult student did not meet WSD's criteria.

- iv. If WSD initiates a hearing, and the final decision is that WSD's evaluation is appropriate, a parent or adult student still has the right to an independent evaluation but not at public expense.

IV. Prescription Medication

An employee of WSD is prohibited from requiring a student to obtain a prescription for a substance covered under the federal Controlled Substances Act (21 USC 801 et seq.) as a condition of attending school, receiving an evaluation for special education, or receiving special education and related services.

V. Sharing Information with Parent

An employee of WSD is not prohibited from consulting with or sharing classroom-based observations with a parent or adult student regarding a student's academic and functional performance, behavior in the classroom or school, or the need for evaluation for special education or related services.



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