

BREHAM INDEPENDENT SCHOOL SPECIAL EDUCATION OPERATING PROCEDURES: ADMISSION, REVIEW, & DISMISSAL COMMITTEE MEETING

Brenham ISD Board Policy along with these *Special Education Operating Procedures* constitute the Policies and Procedures of Brenham ISD, designed to be consistent with the State policies and procedures developed pursuant to the IDEA. Brenham ISD *Special Education Operating Procedures* are not to be for the purpose of creating a requirement that is not otherwise imposed by the Individuals with Disabilities Education Improvement Act (“IDEA”), together with its implementing federal regulations, state statutes and rules, as they shall from time to time be amended, and shall not be construed to create a higher standard than that established by IDEA. These *Special Education Operating Procedures* will be posted on Brenham ISD’s website. These *Special Education Operating Procedures* should be interpreted consistent with the IDEA. Brenham ISD’s *Special Education Operating Procedures* are reviewed and updated, as needed, on at least an annual basis. Brenham ISD will make timely changes to policies and procedures in response to IDEA amendments, regulatory or rule changes, changes to state policy, or new legal interpretation as are necessary to bring Brenham ISD into compliance with the requirements of IDEA. Brenham ISD maintains systems to ensure that all students with disabilities residing in the Brenham, including students with disabilities attending non-public schools, regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located, and evaluated and provided a free appropriate public education. Brenham ISD maintains systems to ensure that students with disabilities and their parents are afforded the procedural safeguards required under the IDEA (and its implementing federal regulations, state statutes and rules) including with respect to the confidentiality of records and personally identifiable information.

How is a student’s IEP developed?

For each eligible student with a disability, the campus shall establish an ARD committee.¹ Each student’s ARD committee shall include the following participants:²

- a parent or adult student;³
- a general education teacher of the student if the student is or may be participating in the general education environment.⁴ The student’s general education teacher, shall, to the extent appropriate, participate in the development of the student’s IEP, including the determination of appropriate positive behavioral interventions and supports and other strategies for the child, supplementary aids and services, program modifications, and support for school personnel;
- a special education teacher of the student. The special education teacher or provider who is a member of the student’s ARD committee should be the person who is responsible for implementing the IEP. For example, if the student’s disability is a speech impairment, the

¹ 19 TEX. ADMIN. CODE § 89.1050(a)

² 34 C.F.R. § 300.321 (a); 19 TEX. ADMIN. CODE § 89.1050(c)

³ 34 C.F.R. § 300.327

⁴ U.S. Dept. of Education, 71 Fed. Reg. 46669 (August 14, 2006) (“[i]t would be inappropriate to require that individuals with specific professional knowledge or qualifications attend all IEP Team meetings. These decisions should be made on a case-by-case basis in light of the needs of a particular child”).

special education teacher or special education provider could be the speech language pathologist;⁵

- a representative of the district who is qualified to provide, or supervise the provision of, specially designed instruction and is knowledgeable about the general education curriculum and about the availability of district resources. The district's representative may be the Director of Special Education or campus designee or a campus administrator acting on behalf of the district. The choice of the representative is at the discretion of the district, so long as the district's representative meets these criteria;⁶
- an individual who can interpret the instructional implications of evaluation results, such as a Licensed Specialist in School Psychology (LSSP) or an Educational Diagnostician;
- at the discretion of the parent, guardian or the district, other individuals who have knowledge or special expertise regarding the student, including related services personnel as appropriate; and
- whenever appropriate, the student.

The ARD committee shall also include the following additional participants, as appropriate:

- with the consent of a parent, guardian or a student who has reached the age of majority, a representative of any participating agency likely to be responsible for providing or paying for transition services. The district, to the extent practicable under the circumstances, shall document efforts to obtain parental consent for the participation of an individual from the agency prior to or at the beginning of a student's ARD committee meeting wherein transition services will be discussed;
- a representative from the district's Career and Technical Education (CTE) when the student's ARD committee is considering placement of a student in CTE;
- if the student is identified as an emergent bilingual student, a professional staff member who is on the district's Language Proficiency Assessment Committee in accordance with Brenham ISD's Policy [EHBE\(Legal\)](#);
- if the student is a student with a suspected or documented visual impairment, a teacher who is certified in the education of students with visual impairments;
- if the student is a student who is suspected to be or is documented to be deaf or hard of hearing, the student's Teacher of the Deaf and Hard of Hearing;

⁵ U.S. Dept. of Education, 71 Fed. Reg. 46669 (August 14, 2006)

⁶ U.S. Dept. of Education, 71 Fed. Reg. 46670 (August 14, 2006)

- if the student is a student with suspected or documented deaf-blindness, a teacher who is certified in the education of students with visual impairments and a teacher who is certified in the education of students who are deaf or hard of hearing;⁷ and
- for any ARD committee meeting that considers initial eligibility for special education and related services based on dyslexia, and at any meeting at which a change in eligibility based on dyslexia is considered (such as a re-evaluation), the ARD committee must include a person with specific knowledge in the reading process, dyslexia and related disorders, and dyslexia instruction who is:
 - a licensed dyslexia therapist (LDT);
 - an individual who holds the most advanced dyslexia-related certification issued by an association recognized by the SBOE, and identified in, or substantially similar to an association identified in, either the rules or Handbook adopted by the SBOE; or
 - If neither of the first two is available, be an individual who meets applicable training requirements adopted by the SBOE.⁸

This member's participation and involvement in an ARD committee meeting must be noted on an IEP signature page and clearly indicate that the person is fulfilling the role of this required member.⁹

Required members must be present for the ARD committee meeting unless properly excused by the parent or guardian and the district. IDEA requires different procedures for different types of excusals, including differentiating between circumstances in which parental consent is required and when an agreement is required to excuse a mandatory ARD committee member from attending an ARD committee meeting. Therefore, Brenham ISD has different procedures in place for the different types of excusals.¹⁰ The two types of excusals triggering the excusal requirements are: (1) when a required ARD committee member's area of the curriculum or expertise is not being modified or discussed; and (2) when a required ARD committee member's area of the curriculum or expertise is being modified or discussed.

With the first type of excusal, parent or guardian and Brenham ISD agreement is required; however, Brenham ISD is given wide latitude about the content of the agreement to excuse a required ARD committee member from the meeting.¹¹ With the second type of excusal, parent or guardian consent is also required, and the member must submit in writing, to the parent or guardian and the ARD committee, input into the development of the IEP prior to the meeting. When consent is required, Brenham ISD will ensure that all of the IDEA consent requirements

⁷ *Id.*

⁸ TEX. ED. CODE § 29.0031(b); TEA's "FAQs: Dyslexia Evaluation, Identification and Instruction—House Bill 3928" is available at <https://tea.texas.gov/academics/special-student-populations/special-education/hb-3928-faqs.pdf>

⁹ TEX. ED. CODE § 29.0031(c); TEA's "FAQs: Dyslexia Evaluation, Identification and Instruction—House Bill 3928"

¹⁰ US Department of Education, 71 Fed. Reg. 46673 (August 14, 2006)

¹¹ *Id.*

are satisfied, including by providing the parent or guardian with appropriate and sufficient information to ensure that the parent or guardian fully understands that the parent or guardian is consenting to excuse an ARD committee member from attending an ARD meeting in which the member's area of the curriculum or expertise is being changed or discussed. The parent or guardian must also be informed that if the parent does not consent, the ARD committee meeting must be held with that ARD committee member in attendance.¹² The district shall document all ARD committee meeting participants, including any member who is excused prior to or during the meeting, and shall verify that the excusal procedures have been followed.

PRACTICE GUIDE—If a parent brings an attorney to an ARD committee meeting without notice to the District, the ARD committee may reschedule the ARD committee meeting to a time and date that the District's counsel may attend the meeting in-person or by virtual means.

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Within 30 calendar days from the date of the completion of the student's initial special education evaluation report, the student's ARD committee shall make its decisions regarding the student's initial eligibility, and, if appropriate, her or his individualized education program (IEP) and placement.¹⁴

At a duly constituted ARD committee meeting *that is conducted after at least 5 school days-notice to the student's parent or guardian*, the student's ARD committee, including the student's parent or guardian, shall develop an IEP, consistent with **Brenham ISD's FAPE Composite Operating Procedure**, by considering—¹⁵

- the student's strengths; the concerns of the parents or guardians for enhancing the education of the student; the results of the student's initial or most recent evaluation; and the present academic, developmental, and functional needs of the student;
- in the case of a student whose behavior impedes the student's learning or that of others, the use of positive behavioral interventions and supports, and other strategies to address that behavior. Further, if a BIP is included as part of a student's IEP the district shall ensure that the ARD committee reviews the BIP at least annually and more frequently if appropriate to address the safety of the student or others, or changes in the student's circumstances that may impact the student's behavior.¹⁶ Circumstances that may impact the student's behavior may include but are not limited to: a change of placement to a

¹² *Id.*

¹³ OSEP's [Letter to Andel](#) (February 17, 2016) (“[i]t would be permissible for the public agency to reschedule the meeting to another date and time if the parent agrees so long as the postponement does not result in a delay or denial of a free appropriate public education to the child”).

¹⁴ 19 TEX. ADMIN. CODE § 89.1011(d)

¹⁵ 34 C.F.R. § 300.324(a)-(b)

¹⁶ Tex. Ed. Code § 29.005(h); 19 TAC § 89.1055(g)

different educational setting; an increase or persistence in disciplinary actions for similar types of behavior; a pattern of unexcused absences; or unauthorized unsupervised departure from an educational setting.¹⁷

- the language needs of a student with emergent bilingual abilities as those needs relate to the student's IEP;
- providing for instruction in Braille and the use of Braille unless the ARD committee determines, after an evaluation of the student's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the student's future needs for instruction in Braille or the use of Braille), consistent with **Brenham ISD's Evaluation Procedure Operating Procedure**, that instruction in Braille or the use of Braille is not appropriate for the student;
- the communication needs of the student, including, for a student who is deaf or hard of hearing, the student's opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the student's language and communication mode; and
- the student's need for assistive technology devices and services.

How does Brenham ISD develop an IEP for a newly enrolled student who had an IEP from another public school?

The Brenham follows **the Brenham ISD Children Who Transfer Operating Procedure**.

What is in a student's IEP?

- **Parent and Student Concerns.**¹⁸ The district shall ensure that the ARD committee elicits, considers and documents the concerns of the parent or guardian for enhancing the education of her or his child. This may be reflected in a concise statement summarizing the educational, social, behavioral and/or emotional concerns of the parent or guardian and student, as appropriate.
- **Student Strengths and Relevant Evaluation Results.**¹⁹ The district shall ensure that the student's IEP identifies the assessment data considered by the ARD committee, including both state and Brenham ISD -wide assessment results, as well as relevant information from any campus. Privately obtained assessments provided by the student's parent or guardian shall be considered in any decision made with respect to the provision of FAPE

¹⁷ *Id.*

¹⁸ 34 C.F.R. § 300.324(a)(1)(ii)

¹⁹ 34 C.F.R. § 300.324(a)(1)(i), (iii)

to the student if it meets district criteria.²⁰ To the extent appropriate, the student's general education performance shall also be documented. This summary shall also include an explanation of how the student's disability or disabilities impact the student's progress and participation in the general education curriculum.²¹

PRACTICE GUIDE—Designated staff may follow up with the student's teachers to ensure that appropriate data will be prepared for the ARD Committee's consideration. The ARD Committee will ensure District evaluations are current. When a parent provides the District with a copy of a privately obtained evaluation, the designed staff member should prepare a consent for the release of confidential information form for the parent to sign.

- **Present Levels of Academic Achievement and Functional Performance (PLAAFP).**²² The district shall coordinate with the student's relevant ARD committee members, general and special education teachers, and/or related service providers, to ensure, through their preparation and participation in the ARD committee meeting and through the participation of the parent or guardian, that the student's IEP contains an accurate description of how the student is performing in the areas of educational and functional need. The statement of present levels in a student's IEP should convey sufficient information to provide clear levels of the student's current academic and functional performance.

PRACTICE GUIDE—Designated staff should inform teachers to bring appropriate data to support the development of the student's PLAAFP statements; current assessments should be considered and reviewed as appropriate, including but not limited to behavioral and academic data, such as benchmark assessments, teacher made tests, or other classroom based assessments. Teachers should also be encouraged to bring information and data describing how the student's disability impacts their functional performance in the areas of the curriculum. For example, in the area of reading, a teacher may make note of whether a student tracks text from left to right or holds reading material correctly.

- **Measurable Annual Goals.** The district shall ensure that a student's IEP, as developed by the ARD committee includes:

²⁰ 34 C.F.R. § 300.502(c)(1)

²¹ U.S. Dept. of Education, 71 Fed. Reg. 46577 (August 14, 2006) ("§ 300.320(a)(2)(i) requires annual IEP goals to be designed to enable the child to be involved in and make progress in the general education curriculum")

²² 34 C.F.R. § 300.320(a); 34 C.F.R. § 300.324(a)(1)(iv).

- o a statement of measurable annual goals, including academic and functional goals.
- o goals designed to meet the student's needs that result from the student's disability to enable the student to be involved and make progress in the general education curriculum, and to meet each of the student's other educational needs that result from the student's disability.
- o for students who take alternate assessments aligned to alternate achievement standards, a description of benchmarks²³ and short term objectives.²⁴

PRACTICE GUIDE—The ARD committee may include goals, as appropriate, in any academic and nonacademic skills deficit area or areas of educational need identified by the student's ARD committee as part of a student's initial evaluation or any subsequent reevaluation. The ARD committee may ensure individualization by avoiding requiring all students with disabilities to master every TEK. Rather, the ARD committee may look to the evaluation and analyze how the student's disability impacts the student's rate of progress so that appropriately challenging goals may be developed. To help ensure the measurability of annual goals, the student's objectives and benchmarks may describe target behavior, conditions, and outcomes, as well as address the data collection strategy for measuring and documenting progress. The ARD committee may document the ARD committee's consideration of the services from the prior school year and the progress on the prior annual goals, objectives, and benchmarks when developing the student's current measurable annual goals, and consider and document the unique circumstances of the student's disability and past rate of progress when crafting the student's current IEP to develop appropriately challenging goals and objectives.

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- **Supplementary Aids and Services.** The district shall ensure that the student's IEP, as developed by the ARD committee, includes a statement of needed supplementary aids and services (aids, services, and other supports) in regular education classes, other education-related settings, and in extracurricular and nonacademic settings, to enable the student to be educated with non-disabled students to the maximum extent appropriate.²⁶

²³ TEX. ED. CODE § 39.0263

²⁴ 34 C.F.R. § 300.320

²⁵ *E.R. v. Spring Branch Indep. Sch. Dist.*, 909 F.3d 754 (5th Cir. 2018).

²⁶ 34 C.F.R. § 300.42; 34 C.F.R. § 300.320

As part of supplementary aids and services, the IEP may include a list or a chart of all accommodations, behavioral or academic, determined by the student's ARD committee to be appropriate to meet the educational needs of the student in the general education setting.

PRACTICE GUIDE—In addition to the FIE, the ARD committee may reference assessment data which could include classroom observations to support the educational need for these services, as appropriate, and consider any relevant peer reviewed research as appropriate.

- **Behavioral Supports and Interventions.**²⁷ In the case of a student with a disability whose behavior impedes the student's own learning or that of others, the district shall ensure that the student's ARD committee considers the use of positive behavioral interventions and supports, and other strategies, to address that behavior, and includes as part of the IEP any needed interventions, supports and strategies.²⁸ The student's ARD committee may determine that a behavior improvement plan or a behavioral intervention plan (BIP) is appropriate for a student. In such instances, the ARD committee determines the appropriate components of a BIP for the student's individual needs; there are no formal requirements for a BIP.²⁹ If the student's ARD committee determines that a BIP is appropriate, the BIP shall be included as part of the student's IEP and provided to each responsible teacher.³⁰ If a BIP is included as part of a student's IEP the district shall ensure that the ARD committee reviews the BIP at least annually and more frequently if appropriate to address the safety of the student or others, or changes in the student's circumstances that may impact the student's behavior.³¹ Circumstances that may impact the student's behavior may include but are not limited to: a change of placement to a different educational setting; an increase or persistence in disciplinary actions for similar types of behavior; a pattern of unexcused absences; or unauthorized unsupervised departure from an educational setting.³² Students will be subject to the Student Code of Conduct (SCOC) consistent with students without disabilities, provided that any discipline under the SCOC shall be subject to the timelines and protections provided to a student with a disability under the IDEA, including holding an ARD Committee (MDR) meeting in connection with any "disciplinary change of placement" in accordance with the Brenham's [FOF\(Legal\)](#) policy.

Specially Designed Instruction.³³ The district shall ensure that the student's IEP as developed by the ARD committee includes a statement of needed special education services. Special

²⁷ 34 C.F.R. § 300.324(a)(2)(i)

²⁸ 34 C.F.R. § 300.324(a)(2)(i)

²⁹ *Alex R. v. Forestville Valley Community Unit School Brenham*, 375 F.3d 603 (7th Cir. 2004)

³⁰ TEX. ED. CODE § 29.005(g)

³¹ TEX. ED. CODE § 29.005(h); 19 TAC § 89.1055(g)

³² *Id.*

³³ 34 C.F.R. § 300.320; 34 C.F.R. § 300.38(b)(3)

education means “specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability.”³⁴

- Specially designed instruction means—
 - “adapting, as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction-
 - To address the unique needs of the child that result from the child's disability; and
 - To ensure access of the child to *the general curriculum*, so that the child can meet *the educational standards within the jurisdiction of the public agency that apply to all children.*”³⁵
- Specially designed instruction includes standard protocol dyslexia instruction (as defined by TEA’s “Dyslexia Handbook: Procedures Concerning Dyslexia and Related Disorders”) and other types of direct dyslexia instruction including evidence-based reading programs or curriculums purchased or developed by the Brenham that are aligned with all instructional methods and components for dyslexia instruction as described in the Dyslexia Handbook. These evidence-based dyslexia programs include instructional methods that are simultaneous and multisensory (visual, auditory, kinesthetic, and tactile); systematic and cumulative; explicit; diagnostic and taught to automaticity; synthetic; and analytic.³⁶

The general curriculum and educational standards that “apply to all children” in Brenham ISD are the [Texas Essential Knowledge and Skills \(TEKS\)](#) as well as the Brenham’s Policy **EIE(Local)**.³⁷ The state-wide assessments that determine a student’s progress toward meeting those educational standards are the [State of Texas Assessments of Academic Readiness \(STAAR\)](#).

When developing specifically designed instruction, the student’s ARD committee shall consider—

- How content, methodology and delivery of instruction will be modified from the general curriculum.
- Student performance criteria that accurately and appropriately evidences the modification of the content of the performance or assessment.

³⁴ 34 C.F.R. §300.39(a)(1)

³⁵ 34 C.F.R. §300.39(b)(3)(emphasis added)

³⁶ TEX. ED. CODE § 7.102(c)(28); TEA’s “FAQs: Dyslexia Evaluation, Identification and Instruction—House Bill 3928”

³⁷ The educational standards applicable to all children in the state of Texas are also outlined in Tex. Ed. Code § 28.002 and in 19 TEX. ADMIN. CODE § 74.1.

- **Program Modifications and Supports for School Personnel.** The district shall ensure that the student's IEP as developed by the ARD committee includes a statement of any needed program modifications or supports for campus and other Brenham personnel that will be provided to enable the student: to advance appropriately toward attaining the annual goals in the student's IEP; to be involved in and make progress in the general education curriculum; to participate in extracurricular and other nonacademic activities³⁸; and to be educated and participate with other students with disabilities and non-disabled students.³⁹

PRACTICE GUIDE—The District may identify a person knowledgeable about specialized resources or trainings available for teachers to assist with this provision.

- **Related Services.** The district shall ensure that the student's IEP as developed by the ARD committee includes any needed related services and the projected date for the beginning of the student's related services, together with the anticipated frequency, location and duration of the student's related services. Related services means transportation and such developmental, corrective, and other supportive services *as are required* to assist a student with a disability to benefit from special education, and includes: speech-language pathology and audiology services; interpreting services; psychological services; physical and occupational therapy; recreation, including therapeutic recreation; early identification and assessment of disabilities in children; counseling services, including rehabilitation counseling; orientation and mobility services; and medical services for diagnostic or evaluation purposes. Related services also include school health services and school nurse services, social work services in schools, and parent counseling and training.⁴⁰ The district shall further ensure that the IEP developed by the ARD committee includes sufficient information about the amount and type of services, so that it is clear to the parent, as well as to the student's related service providers and teachers, what level of support the student is to receive.⁴¹
- **Consideration of Strategies for Students with Autism.** The district will ensure that for a student eligible for special education and related services as a student with Autism, the student's ARD committee considers the eleven strategies as described in the IEP Autism Supplement, and includes as part of the IEP any strategies deemed necessary and appropriate for the student.⁴² Those strategies deemed necessary and appropriate for the student may be incorporated throughout the IEP and/or described in a supplement.
- **Transition Services.** Beginning not later than the first IEP to be in effect when a student turns 14 and then updated annually, the district shall ensure that the student's IEP as developed by the student's ARD committee includes:

³⁸ 34 C.F.R. § 300.320(a)(4)(iii).

³⁹ 34 C.F.R. § 300.320

⁴⁰ 34 C.F.R. § 300.34(a)

⁴¹ U.S. Department of Education, 71 Fed. Reg. 46667(2006)

⁴² 19 TEX. ADMIN. CODE § 89.1055(h)

- o appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and
- o the transition services (including courses of study) needed to assist the student in reaching those goals.⁴³

The district shall further ensure that the student's ARD committee complies with Brenham ISD's [Policy EHBAD\(Legal\)](#) ("Special Education Transition Services") regarding the procedures for including representatives from the [Texas Workforce Commission](#) on a student's ARD committee.

- **State and Brenham-wide Assessment.** The district shall ensure that the student's IEP as developed by the ARD committee includes a statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the student on State and Brenham-wide assessments. The ARD Committee will follow TEA guidelines when determining how a student will participate in the Texas Statewide Assessment Program, including how to select allowable accommodations, and in deciding whether a student with a disability meets the criteria to be assessed based on modified or alternate academic achievement standards. If the ARD committee determines that the student must take an alternate assessment instead of a particular regular State or Brenham wide assessment of student achievement, Brenham ISD shall ensure as appropriate that the student's IEP as developed by the ARD committee includes a statement of why the student cannot participate in the regular assessment and why the particular alternate assessment selected is appropriate for the student.
- **Placement in the Least Restrictive Environment and the Justification for any Removal from General Education.**
- **Extended School Year (ESY) Services.** Whenever appropriate, the student's ARD committee shall determine whether the student requires an extended school year based on a regression-recoupment analysis. The need for ESY services shall be documented from formal and/or informal evaluations provided by the Brenham or the student's parents or guardians. The documentation must demonstrate that in one or more critical areas addressed in the student's current IEP goals and objectives, the student has exhibited, or reasonably may be expected to exhibit, severe or substantial regression that cannot be recouped within a reasonable period of time. Severe or substantial regression means that the student has been, or will be, unable to maintain one or more acquired critical skills in the absence of ESY services.⁴⁴ It is important to remember that ARD committee

⁴³ 34 C.F.R. § 300.320(b)(1); U.S. Department of Education, 71 Fed. Reg. 46668 (2006)

⁴⁴ 19 TEX. ADMIN. CODE § 89.1065 ; *Alamo Heights ISD v. State Board of Ed.*, 790 F2d. 1153 (5th Cir. 1986)(severe or substantial regression required for ESY).

determinations regarding ESY services are prospective in nature and not intended to make up for past denials of FAPE, if any.⁴⁵

PRACTICE GUIDE—Designated special education staff may coordinate with the student’s teacher(s) regarding collection of data regarding regression and recoupment at appropriate intervals.

- **Response to Bullying or Harassment.** Following an investigation of a student with a disability who is an alleged victim or perpetrator of bullying or harassment in violation of the Brenham’s **FFH(Local)** and **FFI(Local)** policies, an ARD committee meeting shall be held to review the conduct and to consider the impact, if any, of the bullying conduct on the provision of FAPE to the student.⁴⁶ Brenham ISD will provide notice of an ARD committee meeting in collaboration with the Campus Administrator.

PRACTICE GUIDE—Draft IEPs may be prepared prior to the ARD committee meeting at the discretion of the District. However, if the District elects to prepare a draft IEP prior to an ARD committee meeting including in response to a parent’s written request for a draft, the District or designee shall clarify to the parent or guardian at the start of the ARD committee meeting and in any written correspondence with the parent providing the proposed draft IEP, that the draft IEP is the District’s preliminary recommendations for review and revision with the parent at the ARD meeting. The District’s decision to prepare or to decline to prepare a draft IEP at a parent’s request is an administrative decision at the discretion of the District.

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How does Brenham ISD use Prior Written Notice (PWN) to inform parents about the decisions of a student’s ARD committee?

Prior Written Notice (PWN) ⁴⁸ shall include the following—

⁴⁵ OSEP. [Part B Implementation of IDEA Provision of Services in the Current COVID-19 Environment Q&A Document](#). September 28, 2020.

⁴⁶ TEX. ED. CODE § 37.001(b-1)

⁴⁷ US Department of Education, 71 Fed. Reg. 46678 (2006)(“[w]e do not encourage public agencies to prepare a draft IEP prior to the IEP Team meeting, particularly if doing so would inhibit a full discussion of the child’s needs. However, if a public agency develops a draft IEP prior to the IEP Team meetings, the agency should make it clear to the parents at the outset of the meeting that the services proposed by the agency are preliminary recommendations for review and discussion with the parents”; *White ex rel. White v. Ascension Parish School Board*, 343 F.3d 373 (5th Cir. 2003).

⁴⁸ 34 C.F.R. § 300.503(b)

- A description of the action proposed or refused by the Brenham.
- An explanation of why the Brenham proposes or refuses to take an action.
- A description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action.
- A statement that the parents of a student with a disability have protection under [TEA's Notice of Procedural Safeguards](#).
- Sources for parents to contact to obtain assistance in understanding the provisions of a Prior Written Notice, such as the **Education Service Center** or [TEA](#).
- A description of other options that the ARD committee considered and the reasons why those options were rejected.
- A description of other factors that are relevant to the Brenham's proposal or refusal.

Minutes or Deliberations. The written statement of an IEP shall document the decisions of the student's ARD committee with respect to issues discussed at each ARD committee meeting or IEP Amendment. While deliberations are not required, the district shall ensure that the documents from an ARD committee meeting and the written statement of an IEP include the date of the meeting; the name, position, and signature of each member participating in the meeting; and an indication of whether the student's parents or guardians, the adult student, if applicable, and the administrator agreed or disagreed with the decisions of the committee.⁴⁹

- **Documentation of the decisions of the student's ARD committee** may be done through preparation of ARD committee meeting deliberations or minutes. Prior Written Notice (PWN) shall be issued after each ARD committee meeting. A completed PWN would satisfy the Brenham's obligation to document the decisions of a student's ARD committee. Brenham ISD may use the IEP and the deliberations or minutes as part of the PWN so long as the document(s) the parent or guardian receives meet all the requirements of prior written notice.⁵⁰ The deliberations and/or the Prior Written Notice may be used to establish how the Brenham is providing a FAPE to a student and collaborating with a parent or to document other factors relevant to a student's IEP.

⁴⁹ TEX. ED. CODE § 29.005(b-1)

⁵⁰ U.S. Department of Education, 71 Fed. Reg. 46691 (August 14, 2006)

PRACTICE GUIDE—When preparing the documents from the ARD committee meeting, the District collaborates with parents concerning the form and content of these documents; however, final decisions concerning the form and content of written documents is an administrative decision within the discretion of the District. There is no requirement to read the minutes aloud at the end of an ARD committee meeting or to project the documents at issue on a screen. If there is a dispute about the contents, the District may attach a *Parent Addendum* to the student's IEP. The *Parent Addendum* would not be binding on the District or the student's ARD committee; however, the *Parent Addendum* would become part of the student's educational records maintained by the District.

- IDEA does not require that the Brenham include additional information in a student's IEP beyond what is expressly required under 20 U.S.C. § 1414; 34 C.F.R. § 300.320 (d)(1). By way of example and not limitation, a student's IEP does not need to include—
 - o The identity of specific teachers or specific educational methodology.⁵¹
 - o Extracurricular activities unrelated to the student's IEP.⁵²
 - o Services that are unrelated to the student's special education program.⁵³

How does a student's ARD committee make a placement decision?⁵⁴

To the maximum extent appropriate, students with disabilities must be educated with students who are nondisabled, and special classes, separate schooling, or other removal of students with disabilities from the general educational environment occurs only if the nature or severity of the disability is such that education in general education classes, with the use of supplementary aids and services, cannot be achieved satisfactorily.⁵⁵ Once a student's IEP is fully developed, the district shall ensure that the student's ARD committee considers, and the student's IEP documents, a placement determination based upon the individual needs of the particular student and the appropriate and least restrictive educational environment in which the IEP can be implemented. When making a placement decision, the district shall ensure that the ARD committee considers a continuum of alternative placements.

⁵¹ *Letter to Hall*, 21 IDELR 58 (OSERS 1994).

⁵² *Letter to Anonymous*, 17 IDELR 180 (OSEP 1990).

⁵³ *Letter to Montano*, 18 IDELR 1232 (OSEP 1992).

⁵⁴ *A.B. v. Clear Creek ISD*, 75 IDELR, 787 F.App'x 217 (5th Cir. 2019); *Daniel RR v. State Bd. of Ed.*, 874 F.2d 1036 (5th Cir. 1989); *J.H. v. Fort Bend Indep. Sch. Dist.*, 482 Fed. Appx. 915 (5th Cir. 2012)

⁵⁵ 34 C.F.R. § 300.114(a)

PRACTICE GUIDE—Location of a particular classroom or program is an administrative decision not within the purview of an ARD committee. Location is different from the determination of an individual student’s special education placement. The location of classrooms and programs is an administrative decision within the discretion of the District. School district administration may centralize the location of certain programs to efficiently use the District’s resources in the service of students with disabilities.

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What does it mean to have a continuum of placement options for students? The Brenham shall make available a continuum of alternative placements listed in the definition of special education under 34 C.F.R. § 300.38 (e.g., instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions), and make provision for supplementary services to be provided in conjunction with placement in the general education setting to facilitate such placement.⁵⁷ The IEP, evaluations and other relevant data guide the ARD committee in making placement decisions.

PRACTICE GUIDE—The ARD committee may determine that additional evaluations, updated assessment or other information are needed to make a placement decision. Consider having the student’s evaluation team review the continuum of placements within the District for potential recommendations to the student’s ARD committee, as appropriate. The student’s ARD committee shall ensure that the student is not removed from education in age-appropriate general education classrooms solely because of needed modifications in the general curriculum.

Before moving a student to a more restrictive environment⁵⁸, the student’s ARD committee shall consider ---

- Has Brenham ISD taken steps to accommodate the student with disabilities in general education?
- Were these efforts sufficient or token?
- Will the student receive an educational benefit from general education?
- What will the student’s overall educational experience be in the general education environment, balancing the benefits of general and special education?

⁵⁶ *White ex rel. White v. Ascension Parish School Board*, 343 F.3d 373 (5th Cir. 2003).

⁵⁷ 34 C.F.R. § 300.115(b); 34 C.F.R. § 300.115(b); 19 TEX. ADMIN CODE §89.1005

⁵⁸ 34 C.F.R. § 300.116(e)

- What effect does the student's presence have on the general education classroom environment? ⁵⁹

PRACTICE GUIDE—The ARD committee will take steps to accommodate the student in general education and may document attempted services and accommodations. The District is not required to provide every conceivable aid or service to assist the student. General education instructors are not required to devote all or most of their time to one student or to modify the general education program beyond recognition. Data may be collected to determine the student's overall educational experience in the general education environment. Should the student's presence be so disruptive in the general education classroom that the education of other students is significantly impaired, then the needs of the student with a disability cannot be met in that environment.

Residential Treatment Centers (RTCs) or private residential programs are included in the continuum of placements.⁶⁰ The district is not required to place a student in a private residential program unless such placement is necessary to provide special education and related services. In order for a residential placement to be appropriate under the IDEA, the placement must be (1) essential in order for the student to receive a meaningful educational benefit, and (2) primarily oriented toward enabling the student to obtain an education. The district is not required to bear the costs of private residential services that are primarily aimed at treating a student's medical difficulties or enabling the student to participate in non-educational activities.^{61 62}

⁵⁹ *Daniel RR v. State Bd. of Ed.*, 874 F.2d 1036 (5th Cir. 1989)

⁶⁰ 34 C.F.R. § 300.115

⁶¹ *Richardson ISD v. Michael Z*, 580 F.3d 286 (5th Cir. 2009); 34 C.F.R. § 300.104

⁶² TEX. ED. CODE § 29.008; Tex. Ed. Code § 29.012; 19 TEX. ADMIN. CODE § 89.1092; 34 C.F.R. § 300.325(a)

PRACTICE GUIDE—The student's ARD committee will follow and ensure the criteria are met for any residential educational placement for a student with disabilities at the onset of any consideration for such a placement. Before a student's ARD committee places a student in a Residential Treatment Center, the District must initiate and conduct a meeting to develop an IEP placing the student at the private residential setting. A designee of the ARD committee will ensure that a representative of the private school or facility attends the meeting. If the representative cannot attend, the District will use other methods to ensure participation by the private school or facility, including individual or conference telephone calls. Initiating the RTC placement process with TEA is among the steps for ensuring the availability of RTC as option for an ARD committee's consideration. The Director of Special Education or designee may visit the proposed facility prior to any final decisions regarding placement and complete the RTC placement application process as an administrative action to verify whether placement in an RTC is a viable option considering the student's individual circumstances.

How does Brenham ISD respond to a parent or guardian's request for private placement when there is a disagreement regarding FAPE?

If the parents or guardians of a student with a disability, who previously attended the Brenham, enroll the student in a private preschool, elementary school, or secondary school without the consent of or referral by the Brenham, a court or a hearing officer may require Brenham ISD to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that Brenham ISD had not made FAPE available to the student in a timely manner prior to that enrollment, and that the private placement is appropriate. The cost of reimbursement may be reduced or denied:

- if, at the most recent ARD committee meeting that the parents or guardians attended prior to removal of the student from the district, the parents or guardian did not inform the ARD committee that they were rejecting the placement proposed by the district to provide FAPE to the student, including stating their concerns and their intent to enroll the student in a private school at public expense;
- if, at least 10 business days (including any holidays that occur on a business day) prior to the removal of the student from the district, the parents or guardians did not give written notice to the district that they were withdrawing the student and seeking reimbursement from the district for the cost of the private school placement;
- if, prior to the parents or guardians' removal of the student from the district, the district informed the parents or guardians, through the notice requirements described in these Operating Procedures, of its intent to evaluate the student (including a statement of the

purpose of the evaluation that was appropriate and reasonable), but the parents did not make the student available for the evaluation; or

- if a hearing officer or judge finds that the parents acted unreasonably.⁶³

PRACTICE GUIDE—The student’s campus special education staff may consider the need to conduct a District evaluation; schedule an ARD committee meeting to consider revisions to the student’s IEP to address the parents’ concerns and ensure the availability of FAPE to the student; request information from the student’s private school, and request from the parents any privately obtained evaluations.

What happens if an ARD committee meeting ends in disagreement?

All members of the student’s ARD committee shall have the opportunity to participate in a collaborative manner when developing the student’s IEP.⁶⁴ A decision of the ARD committee concerning the required elements of the student’s IEP should be made by mutual agreement, if possible. No decision is made by majority vote. If a student’s ARD committee cannot reach consensus, the district shall provide the parents with Prior Written Notice of the ARD committee’s proposals and/or refusals and the basis of the disagreement.

When mutual agreement about all required elements of the IEP is not achieved, the parent who disagrees shall be offered a **single opportunity** to recess and reconvene the ARD committee meeting. The period of time for reconvening the ARD committee meeting shall not exceed 10 school days, unless the parties mutually agree otherwise. The ARD committee shall schedule the reconvened meeting at a mutually agreed upon time and place.⁶⁵

PRACTICE GUIDE—The ARD committee can recess a meeting for reasons other than disagreement. There is no mandate on time to return when the parties table for reasons other than reaching agreement on FAPE.

During the recess, the student’s ARD committee members⁶⁶ shall consider alternatives for any disputed educational programming, gather additional data, prepare further documentation, and/or obtain additional resource persons who may assist in enabling the ARD committee to reach

⁶³ *School Comm. of Burlington v. Department of Educ. of Mass.*, 471 U.S. 359, 369 (1985); *see also*, 34 C.F.R. 300.148(c); *Forest Grove Sch. Dist. v. T.A.*, 557 U.S. 230, 129 S. Ct. 2484, 2496 (2009)

⁶⁴ 19 TEX. ADMIN. CODE § 89.1050(g)

⁶⁵ 19 TEX. ADMIN. CODE § 89.1050(g)(1)

⁶⁶ 19 TEX. ADMIN. CODE § 89.1050(g)(2)

mutual agreement, if possible.⁶⁷ The 10-day recess is not required when the student's presence on the campus presents a danger of physical harm to the student or others or when the student has committed an expellable offense or an offense that may lead to placement in a DAEP.⁶⁸

PRACTICE GUIDE—The ARD committee may consider obtaining additional evaluation, retaining a consultant in an area of disagreement; offer the parent an opportunity to visit classrooms at issue; consider whether the issue of dispute could better be resolved administratively, such as personnel-related issues; consider training options; consider ARD facilitation and/or mediation to reach consensus; and ensure effective collaboration by reviewing rules of decorum and expectations for participation.

When mutual agreement is not reached, the district shall ensure that a written statement of the basis for the disagreement is thoroughly documented. Following Prior Written Notice, the district will implement the IEP that it has determined to be appropriate for the student.⁶⁹

PRACTICE GUIDE—The ARD committee does not have to secure parent agreement to implement the IEP with which the parent disagrees. The designated staff member will provide Prior Written Notice 5 school days prior to implementation; consider whether mediation or ARD facilitation is appropriate; and provide the parent with a copy of [TEA's Notice of Procedural Safeguards](#) (consider also—TEA's [Parent's Guide to the Admission, Review and Dismissal Process](#)). The ARD committee shall also offer the parent, who disagrees with the IEP implemented by the District, the option of writing a statement of disagreement.

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When and how is a student's IEP updated?

In making changes to a student's IEP after the annual ARD committee meeting for a school year, a parent or guardian and the district may agree not to convene an ARD committee meeting for the purpose of making those changes, and instead may develop a written document to amend or modify the student's current IEP without a meeting. If changes are made to the student's IEP by IEP Amendment without a meeting, the district shall ensure that the student's ARD committee

⁶⁷ *Id.*

⁶⁸ 19 TEX. ADMIN. CODE § 89.1050(g)(1)

⁶⁹ 19 TEX. ADMIN. CODE § 89.1050(g)(3)

⁷⁰ 19 TEX. ADMIN. CODE § 89.1050(g)(4) ; [TEA's Notice of Procedural Safeguards](#); [Parent's Guide to the Admission, Review and Dismissal Process](#)

and the individuals responsible for the implementation of the student's IEP are informed of those changes. The district will provide the parent or guardian with Prior Written Notice of the amendments to the IEP.⁷¹ Upon request, a parent or guardian shall be provided with a revised copy of the IEP with the amendments incorporated.⁷²

PRACTICE GUIDE—The District may consider using the IEP Amendment process to address changes to goals and objectives, accommodations, and supplementary aids and service. Whenever the District proposes to amend an IEP without a meeting, the District should ensure that the parent understands that the parent can choose not to agree, and instead have an IEP Team meeting. Changes in placement and manifestation determination reviews cannot be addressed via an IEP Amendment.

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The student's ARD committee shall review and revise the student's IEP as follows:

- to periodically, but not less than annually, to determine whether the annual goals for the student are being achieved;
- to address any lack of expected progress toward the annual goals in the IEP and in the general education curriculum, if appropriate;
- to review the results of any reevaluation of the student or any information about the student provided to, or by, the parents or guardians, relevant to the student's program of special education and related services;
- to consider the student's anticipated needs and other matters, as appropriate;⁷⁴ and
- If a BIP is included as part of a student's IEP the ARD committee will review the BIP at least annually and more frequently if appropriate to address the safety of the student or others, or changes in the student's circumstances that may impact the student's behavior.⁷⁵ Circumstances that may impact the student's behavior may include but are not limited to: a change of placement to a different educational setting; an increase or persistence in disciplinary actions for similar types of behavior; a pattern of unexcused absences; or unauthorized unsupervised departure from an educational setting.⁷⁶

⁷¹ OSERS, [*Questions and Answers on Individualized Education Programs \(IEPs\), Evaluations, and Reevaluations*](#). Revised September 2011.

⁷² 34 C.F.R. § 300.324(a)(6)

⁷³ US Department of Education, 71 Fed. Reg. 46685 (August 14, 2006).

⁷⁴ 34 C.F.R. § 300.324

⁷⁵ Tex. Ed. Code § 29.005(h); 19 TAC § 89.1055(g)

⁷⁶ *Id.*

What additional ARD committee responsibilities arise when the district provides written notification of the use of restraint?

For students who have a BIP, when the district provides written notification of a restraint as required by **the district's Timeout and Restraint Operating Procedure**, the written notification will specify whether the BIP may need to be revised due to the behavior that prompted the restraint.⁷⁷ If revision to the BIP is recommended, the district is responsible for scheduling the ARDC meeting to discuss any potential revisions if appropriate.⁷⁸

For students who do not have a BIP, when the district provides written notification of a restraint as required by **the district's Timeout and Restraint Operating Procedure**, the district will share information with the parent on how to request an ARD committee meeting to discuss the possibility of an FBA and developing a plan for the student.⁷⁹

What are Brenham ISD's obligations to children transitioning from IDEA Part C Early Intervention Services (EIS) to IDEA Part B Early Childhood Special Education (ECSE)?

Brenham ISD coordinates with [Texas Health and Human Services Commission \(THHSC\)](#)⁸⁰ or its local designees—the Early Intervention Agency—to notify parents or guardians of children in the Brenham who are at least 3 years of age but younger than 6 years of age and who are potentially eligible for enrollment in Brenham ISD's IDEA Part B Early Childhood Special Education (ECSE) program of the availability of the program.⁸¹ Additionally, at least 90 days before the 3rd birthday of a child with a disability under Part C EIS, who may be eligible for preschool special education and related services under Part B, the Early Intervention Agency—must notify the Brenham that the child will shortly reach the age of eligibility for Brenham ISD's ECSE program.⁸²

If a child is potentially eligible for Brenham ISD's ECSE program, with family approval, a transition conference will be convened by the Early Intervention Agency, with an invitation to the Brenham, not fewer than 90 days and not more than 9 months before the child's 3rd birthday, to discuss any potential special education and related services the child could receive from the Brenham.

If the Early Intervention Agency determines that the child is eligible for [Early Intervention Services \(EIS\)](#) more than 45 but less than 90 days before the child's 3rd birthday and if that child may be eligible for ECSE services under Part B, the Early Intervention Agency, as soon as

⁷⁷ 19 TAC Section 89.1053(e) (5) (K)(i)

⁷⁸ Id.

⁷⁹ 19 TAC Section 89.1053(e) (5) (K)(ii)

⁸⁰ 34 C.F.R. § 303.22

⁸¹ Tex. Ed. Code § 29.009

⁸² 34 C.F.R. § 303.209(b)(1)(i); [Early Childhood Transition FAQs](#) (OSEP 2009).

possible after determining the child's eligibility, must notify Brenham ISD that the child on his 3rd birthday will reach the age of eligibility for the Brenham's ECSE program.⁸³

Brenham ISD shall ensure that an IEP is in effect for an IDEA B eligible child with a disability who had previously received IDEA Part C services by the child's 3rd birthday while complying with the procedures in **the district's Evaluation Procedure Operating Procedure**. If a child's 3rd birthday occurs during the summer, the student's ARD committee shall determine the date when services will begin.⁸⁴

If Brenham ISD knows that a child served in Part C via an *Individualized Family Service Plan* (IFSP) developed by the Early Intervention Agency and referred to IDEA Part B will turn 3 over the summer and that appropriate Brenham ISD personnel won't be available to conduct evaluations and hold ARD committee meetings during the summer, the district shall ensure that required activities such as conducting the evaluations, and convening the ARD committee meeting occurs before the end of the school year.⁸⁵

When the Early Intervention Agency provides notification to Brenham ISD of a potentially eligible child fewer than 90 days before the student's 3rd birthday, the Early Intervention Agency must provide a written explanation to the Brenham stating the reason for the delay. If notification is given between 45-89 days before the student's 3rd birthday, the district shall ensure that eligibility is determined as soon as possible.

If a student with a disability was served under IDEA Part C via an *IFSP*, the student's IFSP may serve as the IEP of a child with a disability aged 3 through 5 (or, at the discretion of the state educational agency, a 2-year-old child with a disability who will turn age 3 during the school year), if the IFSP was developed in accordance with ARD committee procedures, is consistent with state policy, and agreed to by Brenham ISD and the student's parents or guardians.⁸⁶

If a student's IFSP was incorrectly developed by the Early Intervention Agency and Brenham ISD and the parent or guardian agree to use the IFSP in lieu of an IEP, Brenham ISD shall modify the IFSP so that it meets the requirements for an IEP.⁸⁷

While IDEA Part B requires coordination to assure the continuity of services, it does not compel Brenham ISD to provide all the same services in an IEP that were in a student's IFSP.

Demonstrations of this procedure's implementation may include, but are not limited to, examples such as:

- Training materials
- ARD committee reports
- ARD committee meeting invitations and notices

⁸³ 34 C.F.R. § 303.209 (b)(1)(ii).

⁸⁴ 34 C.F.R. § 300.101

⁸⁵ [*Early Childhood Transition FAQs*](#) (OSEP 2009)

⁸⁶ 34 C.F.R. § 300.323 (b)(1); 20 USC § 1414 (d)(2)

⁸⁷ 34 C.F.R. § 300.323 (b); U.S. Department of Education, 71 Fed. Reg. 46679 (2006)

- The results of the student's initial or most recent evaluation; and the present academic, developmental, and functional needs of the student.
- Assessment data presented for considered by the ARD committee, including both state and Brenham-wide assessment results, as well as other relevant information from the campus.
- Privately obtained assessments provided by the student's parent or guardian
- Forms demonstrating the Brenham's request for consent for disclosure between the campus and private service providers
- Formal and/or informal evaluations provided by the Brenham or the student's parents or guardians in connection with consideration of Extended School Year eligibility