

# **BRENHAM INDEPENDENT SCHOOL**

## **SPECIAL EDUCATION OPERATING PROCEDURES:**

### **REFERRAL FOR POSSIBLE SPECIAL EDUCATION SERVICES**

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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.

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#### ***Who is eligible for Brenham ISD’s program of special education and related services?***

Brenham ISD provides special education and related services to eligible students ages 3 through 21 who reside within the Brenham ISD district.<sup>1</sup> To be eligible for the Brenham’s program of special education and related services, a student must (a) have one or more of the thirteen qualifying disabilities listed below and (b) need special education and related services—*Specially Designed Instruction* (SDI)—because of the disability.<sup>2</sup> A free appropriate public education is also available to children with visual impairments or who are deaf or hard of hearing residing within the Brenham from birth through age 21.<sup>3</sup>

Special education means “specially designed instruction, at no cost to the parents, to meet the unique needs of a student with a disability.”<sup>4</sup> *Specially Designed Instruction* (SDI) means—

- “adapting, as appropriate to the needs of an eligible student under this part, the content, methodology, or delivery of instruction-
  - To address the unique needs of the student that result from the student's disability; and

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<sup>1</sup> 19 TEX. ADMIN. CODE § 89.0135(a)

<sup>2</sup> 20 U.S.C. § 1402(3); 34 C.F.R. § 300.8

<sup>3</sup> 19 TEX. ADMIN. CODE § 89.0135(b)

<sup>4</sup> 34 C.F.R. § 300.39(a)(1)

- o To ensure access of the student to *the general curriculum*, so that the student can meet *the educational standards within the jurisdiction of the public agency that apply to all children.*<sup>5</sup>

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)**.<sup>6</sup> The state-wide assessments that determine a student’s progress toward meeting those educational standards are the [State of Texas Assessments of Academic Readiness \(STAAR\)](#).

**Special Education** or *Specially Designed Instruction* (SDI) also includes—

- Evidence-based dyslexia programs or curriculums, including “Standard Protocol Dyslexia Instruction,” purchased or Brenham-developed, that are aligned with all instructional methods and components for dyslexia instruction as described in the Dyslexia Handbook;<sup>7</sup>
- speech-language pathology services;
- any other related service, if the service is considered special education rather than a related service under state standards;
- travel training; and
- vocational education.<sup>8</sup>

**PRACTICE GUIDE—** Some examples of SDI include delivery of a specialized reading program in a small group setting 4 days a week for 30 minutes a day; individualized social skills programs; modified curriculum; adaptive physical education; or instruction in the use of Braille or specific technology to access curricular content or to provide responses to enable effective progress monitoring and functional performance data collection.

Subject to the age limitations specified above, students may be eligible for special education and related services under these categories of disability specified under state and federal law: autism, deaf-blindness, auditory impairment, emotional disturbance, intellectual disability, multiple disabilities, orthopedic impairment, other health impairment, specific learning disability, speech impairment, traumatic brain injury, visual impairment, and “noncategorical early childhood.”<sup>9</sup>

Children between the ages of 3-5 who are evaluated as having an intellectual disability, an emotional disturbance, a specific learning disability or autism may be described as “noncategorical early childhood” for the purposes of special education eligibility.<sup>10</sup>

<sup>5</sup> 34 C.F.R. § 300.39(b)(3)(emphasis added)

<sup>6</sup> The educational standards applicable to all students in the state of Texas are also outlined in Tex. Ed. Code § 28.002 and in 19 TEX. ADMIN. CODE § 74.1.

<sup>7</sup> 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>

<sup>8</sup> 34 C.F.R. § 300.39(a)(2)

<sup>9</sup> 34 C.F.R. § 300.8(c) ; TEX. ED. CODE § 29.003(b); 19 TEX. ADMIN. CODE § 89.1040(c)

<sup>10</sup> 19 TEX. ADMIN. CODE § 89.1040(c)(13)

Consideration of eligibility for special education and related services begins with a referral for a special education evaluation—a full individual and initial evaluation.<sup>11</sup>

**PRACTICE GUIDE—** While the ARD committee will consider records from private providers or private evaluators, including physicians, the ARD committee is not required to adopt specific eligibilities or other recommendations from those reports. Any decisions to reject recommended eligibilities or services may be described and explained in the Prior Written Notice with reference to the District’s evaluation reports.

### ***Who can initiate a referral for a Full Individual and Initial Evaluation for Special Education and Related Services?***

A referral for a special education evaluation may be initiated by school personnel, a student’s parent or legal guardian, or another person involved in the education or care of the student.<sup>12</sup>

Should an administrator, teacher, parent or legal guardian believe that there is reason to suspect a student has a disability and is in need of special education, even if they are progressing from grade to grade, they may initiate the referral process.

The referral may be made verbally or in writing. A written request for a special education evaluation is not required by IDEA or Brenham ISD. Written referrals should be directed to the Brenham’s Director of Special Education or to the campus principal. Any employee of the district receiving a verbal or written referral should communicate the referral to the campus principal or diagnostician.

### ***How should Brenham ISD respond when it receives a referral for special education?***

Referrals should be considered by the campus administrator or other qualified professional, as outlined below, to determine whether there is reason to suspect that the student has a disability and is in need of special education and related services. Each campus should have a designated staff member responsible for receiving referrals. All referrals should be forwarded to the campus administrator AND the campus diagnostician. If a parent or legal guardian makes a referral to a general education teacher, a paraprofessional or campus office staff, the parent should be directed to the administrator on the student’s campus who is responsible for receiving referrals.

If a parent, legal guardian or adult student verbally requests a special education evaluation, the Brenham ISD staff who received the verbal request should report the request to the campus administrator or the aforementioned designated staff for the student’s home campus. The

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<sup>11</sup> 19 TEX. ADMIN. CODE § 89.1011

<sup>12</sup> 19 TEX. ADMIN. CODE § 89.1011(a)

administrator or designated staff should contact the requestor either by telephone or via email to gather more information about the request.

When Brenham ISD receives a request for an initial evaluation, the designated campus staff, and/or administrator should promptly review the student's record and document any consideration that has been given to alternatives to special education, including but not limited to general education academic and behavioral interventions; *RtI* data; remedial instruction; tutoring; compensatory education pursuant to Tex. Ed. Code § 29.081 ("services designed to supplement the regular education program for students identified as at risk of dropping out of school"); and/or **Multi-Tiered Systems of Support (MTSS)**.<sup>13</sup>

**PRACTICE GUIDE— When the District receives privately-completed evaluation reports or recommendations, the ARD committee should consider that information. In many instances, the student's ARD committee will need to seek consent from the parent(s) to complete the District's evaluation because it relies on school-based evaluation instruments and observations that incorporate special education standards.**

If a student's parent(s), legal guardian(s), or Brenham ISD staff submits a written request for a full individual and initial evaluation for special education and related services to the Brenham's Director of Special Education or to an administrative employee of the Brenham, the personnel designated below will take the following steps:

- **Within 15 school days, the Director of Special Education or administrative employee's receipt of the written request for an initial special education evaluation,** a licensed specialist in school psychology (LSSP), an educational diagnostician, or other appropriately certified or licensed practitioner with experience or training in the area of the suspected disabilities designated by the district, may, as appropriate—
  - Review the records and performance data of the student in order to determine if there is sufficient evidence to suspect a disability. Information reviewed shall include, but is not limited to, all individual and group standardized assessments, *including evaluations provided by the parent or guardian completed privately*; standards of learning test scores; school enrollment history; attendance records; student work samples; and teacher observational information.
  - Consult with the student's general education teachers and other campus staff familiar with the student to review the general education supports and services, curricular modifications, instructional methodologies or evidence-based classroom accommodations or interventions that have been used with the student prior to referral, including the use of any **Multi-Tiered Systems of Support (MTSS)**, **such as** *Response to Intervention (RtI)*, *Leveled Literacy Interventions*

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<sup>13</sup> TEA describes MTSS as a school-wide framework designed to provide varying levels of support to meet the academic, behavioral, and social/emotional needs of students and includes RtI for academics and/or behavior and other evidence-based early intervention strategies.

(LLI), and other evidence-based general education interventions, tutorial, remedial, compensatory and other academic or behavior support services.<sup>14</sup>

- o Contact the parent, legal guardian or adult student to provide an overview of the Brenham's special education process and identify the date by which informed written consent for the evaluation may be obtained (i.e., no later than 15 school days after receiving the written request for an initial evaluation).<sup>15</sup>
- **No later than 15 school days after the Director of Special Education or administrative employee's receipt of the written request for an initial special education evaluation,** Brenham ISD (Director of Special Education or Campus Diagnostician) shall—
  - o Ensure the Brenham provides the parent(s), legal guardian and/or adult student with a copy of TEA's most recent *Notice of Procedural Safeguards*.<sup>16</sup>
    - A parent, legal guardian or adult student may choose to receive the *Notice of Procedural Safeguards*, as well as the Prior Written Notice discussed below, by email, if Brenham ISD makes that option available. If the parent or legal guardian does not affirmatively elect to receive the aforementioned notices by email, Brenham ISD will mail or hand-deliver the notice(s) and document the method of delivery.<sup>17</sup>
  - o Provide Prior Written Notice of Brenham ISD's proposal to conduct a full individual and initial evaluation (*Notice of Proposed Evaluation*) and an opportunity for the parent, legal guardian or adult student to give informed written consent for the evaluation, *if there is evidence of a suspected disability and, as a result of the suspected disability, a suspicion that the student may require specially designed instruction based on the information obtained during the 15-school day period described above*.<sup>18</sup>
    - Prior Written Notice. Brenham ISD's *Notice of Proposed Evaluation* shall describe any evaluation procedures that Brenham ISD proposes to conduct.<sup>19</sup> Please see the Brenham ISD's Evaluation procedures set out in **the Brenham ISD Evaluation Procedures Operating Procedure** for additional requirements regarding the *Notice of Proposed Evaluation*.
    - Informed Written Consent. The district shall document that the parent, legal guardian or adult student has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, and

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<sup>14</sup> 19 TEX. ADMIN. CODE § 89.1011(a)

<sup>15</sup> Tex. Ed. Code § 29.004; 19 TEX. ADMIN. CODE § 89.1011(b); 19 TEX. ADMIN. CODE § 89.1040(b)

<sup>16</sup> 34 C.F.R. § 300.504

<sup>17</sup> 34 C.F.R. § 300.505

<sup>18</sup> 19 TEX. ADMIN. CODE § 89.1011(b)(1)

<sup>19</sup> 34 C.F.R. § 300.304(a)

the mode of communication. The district shall also document that the parent, legal guardian or adult student acknowledged understanding and agreeing in writing to the carrying out of the activity for which his or her consent is sought (e.g., a full individual and initial evaluation). The consent will describe the activity and indicate which educational records, if any, will be released and to whom those records will be released.<sup>20</sup>

- Notice and Consent by Email. The district may provide prior written notice via email if Brenham ISD offers and the parent elects to receive the notice via email.<sup>21</sup> Brenham ISD may also obtain a parent's or a guardian's informed written consent for an evaluation by using a record and signature in electronic form that identifies and authenticates the person or guardian as the source of the consent and indicates the parent's or guardian's approval of the information contained in the electronic signature.<sup>22</sup>
- If the parent, legal guardian or adult student does not provide consent for the initial special education evaluation, Brenham ISD is relieved of its *Child Find* duty and its obligation to provide the student with a free appropriate public education pursuant to IDEA.<sup>23</sup> However, the district reserves the right in its sole discretion to file a request for a special education due process hearing to override a lack of parental consent for such evaluation. Designated staff should provide the parent, legal guardian or adult student with a ready, willing, and able letter regarding the district's intent to complete the evaluation with parental consent, together with prior written notice (*Notice of Proposed Evaluation*) documenting the district's offer to evaluate and the basis for the offer to evaluate and providing the parent or guardian with a copy of **TEA's Procedural Safeguards Notice**. Please see the Brenham ISD FAPE Composite Operating Procedure.
  - Provide the parent, legal guardian, or adult student with prior written notice of the district's decision not to conduct an evaluation, *if there is no evidence of a suspected disability or a suspicion that the student may require special education and related services.*
  - If appropriate, the student may be referred to the district's Section 504 Coordinator or local campus designee for a potential Section 504 evaluation
  - Prior Written Notice. The district will prepare the Prior Written Notice to include an explanation of why the district refuses to conduct an

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<sup>20</sup> 34 C.F.R. § 300.9; TEX. ED. CODE § 29.004(a)(1)

<sup>21</sup> 34 C.F.R. § 300.505

<sup>22</sup> *Part B Procedural Safeguards in the COVID-19 Environment Q&A Document* (June 30, 2020). OSEP. June 30, 2020.

<sup>23</sup> 34 C.F.R. § 300.300(a)(3)

initial evaluation as well as a description of the information (assessments, records, reports or observations) that the district used as a basis for its refusal to evaluate.<sup>24</sup> The district will provide this prior written notice by means reasonably designed to ensure that it is received by the parent, legal guardian or adult student, and document the fact that the notice was sent. This notice will be provided in a language that is understandable to the general public and also in the native language of the parent, unless it is clearly not feasible to do so.<sup>25</sup> **Please see the Brenham ISD's Child Find Duty Operating Procedure.**

***What happens when the parent or guardian of a student attending private school or being homeschooled in Brenham ISD requests a referral for a special education evaluation?***

Brenham ISD is responsible for identifying, locating and evaluating those students who reside within the jurisdiction of Brenham ISD but who are parentally placed in private schools or homeschooled. The parent, legal guardian, or teacher of a resident student who is parentally placed in private school or home instructed may refer a student suspected of having a disability and in need of special education and related services to the student's home campus for Brenham zoning purposes.

To meet its *Child Find* obligation to students who are homeschooled or attend private schools, the district offers to meet at least annually with representatives from private schools within the district and with parents who have placed their students in a private school within the district or who home-school their students, about special education and how to refer a student for a special education evaluation, and the special education and related service options available in the event their student is eligible.

If the parent or legal guardian of a student who is home-instructed or who is placed in a private school is offered an initial evaluation by the district but does not provide consent for the evaluation, the district may not use the special education dispute resolution process to override the lack of consent.

***What protections are available for students who have not been identified but may qualify for IDEA's disciplinary safeguards?***

Students not yet eligible for special education and related services may be entitled to the disciplinary protections afforded eligible students, including the manifestation determination review process. The district may be obligated to provide a manifestation determination review and other disciplinary change of placement protections for a student even if the student is not yet determined to be eligible for special education and related services at the time of the violation of the district's conduct code. Disciplinary protections shall be afforded to a student if the district

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<sup>24</sup> 34 C.F.R. § 503(b)

<sup>25</sup> 34 C.F.R. § 300.503(c)



“had knowledge” that the student is a student with a disability prior to the behavioral incident at issue. The district is considered to have knowledge (1) if the parent or guardian expressed concern in writing to supervisory or administrative personnel, or a teacher of the student, that the student is in need of special education and related services; (2) the parent or guardian of the student requested an evaluation of the student pursuant to IDEA; or (3) the teacher of the student, or other Brenham ISD personnel, expressed specific concerns about a pattern of behavior demonstrated by the student directly to the director of special education or to other supervisory personnel of the district. The district does not have knowledge that the student is a student with a disability if the district sought and the parent refused to permit the student to be evaluated or declined special education and related services, or if the student was evaluated by the district and determined to be ineligible by a duly constituted Admission, Review and Dismissal (ARD) committee.<sup>26</sup>

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

- Training material
- Posters and other media or website postings
- Multi-Tiered Systems of Support or Response to Intervention Data
- Student specific data collection and monitoring
- Databases
- Texas Record Exchange (TREX) requests
- Telephone logs of calls to prior school Brenhams and demonstrating calls to students’ parents seeking collaboration
- Records from prior schools
- Notices of evaluation
- Documents seeking consent for evaluation

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<sup>26</sup> 34 C.F.R. § 300.534