

BRENHAM INDEPENDENT SCHOOL SPECIAL EDUCATION OPERATING PROCEDURES: CHILD FIND DUTY

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.

CHILD FIND

Brenham Independent School District has an obligation to identify, locate and evaluate each child, birth to age 21 inclusive, residing within the jurisdiction of the Brenham who has a disability or is suspected of having a disability, regardless of the severity of the disability, and who is in need of special education and related services. This *Child Find* obligation—mandated by the Individuals with Disabilities Education Improvement Act (IDEIA or, more commonly, IDEA) and Texas special education law¹—extends to all children with disabilities, including those who are homeless, highly mobile, migrants, in foster care, homeschooled, court-involved or attending private schools within the jurisdiction of the Brenham.²

The Brenham Independent School District annually notifies and informs the Brenham ISD community of a student’s right to a free appropriate public education and the programs and services available to eligible students, as well as the right to request an evaluation for special education and related services. Brenham ISD distributes written information in both English and Spanish to every enrolled student’s family regarding IDEA’s *Child Find* and free appropriate public education (FAPE) requirements, to inform them of the options and requirements for identifying students who may be suspected of having a disability and have an educational need for special education and specially designed instruction. Brenham ISD’s community-wide efforts may include:

¹ 34 C.F.R. § 300.111(a); TEX. ED. CODE § 29.001

² 34 C.F.R. § 300.111(c). Homeless and highly mobile students are served via the Brenham’s homeless education liaison as part of the Brenham’s participation in TEA’s *Texas Education for Homeless Children and Youth (TEHCY)* program.

- publishing a *Child Find* notice in a local newspaper of general circulation;
- posting or linking the Brenham ISD's *Child Find* notice on the Brenham's website; and
- placing a *Child Find* notice in locations where potentially eligible children and their parent(s) or legal guardian(s) are likely to see it, like disability-related community agencies, hospitals or daycare centers.

Also, at the time of a student's placement in the disciplinary alternative education program (DAEP), Brenham ISD provides information to the student's parent or guardian regarding the process for requesting a full individual and initial evaluation (FIE).³ This information concerning the process for requesting an FIE is also provided to the student's parent or guardian as part of each student's personalized transition plan when the student is released from the DAEP.⁴

Brenham ISD's *Child Find* notice is included in both English and Spanish in the Brenham ISD Student Code of Conduct or Parent Student Handbook which is updated annually. The Brenham ISD *Child Find* notice is available to the public and to parents in both English and Spanish on the Brenham's website. Together with the Brenham ISD's annual *Child Find* notice, Brenham ISD includes information indicating where members of the community can access Brenham ISD's processes and procedures for initiating a referral for special education services, eligibility, and evaluation.⁵ Brenham ISD also offers annual training to teachers and staff regarding the responsibility to actively identify and appropriately refer for evaluation students suspected of being in need of special education and related services, consistent with these *Special Education Operating Procedures* ("Operating Procedures").]

Who is eligible for the 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 Brenham ISD.⁶ To be eligible for 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.⁷ 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 21.⁸

³ TEX. ED. CODE § 37.006(p)

⁴ TEX. ED. CODE § 37.023(d)(1)(B)

⁵ TEX. ED. CODE § 29.023(b)

⁶ 19 TEX. ADMIN. CODE § 89.0135(a)

⁷ 20 U.S.C. § 1402(3); 34 C.F.R. § 300.8

⁸ 19 TEX. ADMIN. CODE § 89.0135(b)

Special education means “specially designed instruction, at no cost to the parents, to meet the unique needs of a student with a disability.”⁹ *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
 - 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.*”¹⁰

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 ISD Policy **EIE(Local)**.¹¹ 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,¹²
- 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.¹³

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

⁹ 34 C.F.R. § 300.39(a)(1)

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

¹¹ 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.

¹² 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>

¹³ 34 C.F.R. § 300.39(a)(2)

disabilities, orthopedic impairment, other health impairment, specific learning disability, speech impairment, traumatic brain injury, visual impairment, and “noncategorical early childhood.”¹⁴

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.¹⁵

Consideration of eligibility for special education and related services begins with a referral for a special education evaluation—a full individual and initial evaluation.¹⁶

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.

How does Brenham ISD attempt to ensure that parents or guardians of Emergent Bilingual students are included in the Brenham’s Child Find efforts and understand the Brenham’s special education process?

If the parent(s), legal guardian(s) or adult student has limited English proficiency and the parent’s or guardian’s native language is Spanish, Brenham ISD will provide Admission, Review and Dismissal (ARD) committee meeting notices and Prior Written Notices, as well as **TEA’s Notice of Procedural Safeguards** and other special education related documents, to the parent or guardian in **Spanish** (TEA’s *Aviso Sobre Procedimientos de Protección*). If the parent or guardian is limited English proficient and the parent’s or guardian’s native language is Spanish, Brenham ISD will also provide either all of the text (comparable rendition) of the written Individualized Education Program (IEP) translated into Spanish or an audio recording of the IEP translated into Spanish. Brenham ISD may also audio record an ARD committee meeting at which the parent or guardian was assisted by an interpreter and offer the parent or guardian an audio recording of the meeting; however, such recording shall not substitute for a written or audio recorded translation of the IEP unless it includes an oral translation into Spanish of all of the content in the student’s IEP.¹⁷

If the parent’s, guardian’s or adult student’s native language is other than English or Spanish, Brenham ISD will make a good faith effort to provide notices to the parent or guardian in the parent’s or guardian’s native language, to provide a written or audio recorded translation of the IEP in the parent’s or guardian’s native language, and to facilitate the parent’s or guardian’s participation in any ARD committee meeting, including arranging for an interpreter, unless it is

¹⁴ 34 C.F.R. § 300.8(c) ; Tex. Ed. Code § 29.003(b); 19 TEX. ADMIN. CODE § 89.1040(c)

¹⁵ 19 TEX. ADMIN. CODE § 89.1040(c)(13)

¹⁶ 19 TEX. ADMIN. CODE § 89.1011

¹⁷ 19 TEX. ADMIN. CODE § 89.1050(i); Tex. Ed. Code § 29.005(d)

clearly not feasible to do so. The term “native language” when used with respect to an individual who is limited English proficient or an emergent bilingual student, means the language normally used by the individual.”¹⁸

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, Brenham ISD offers to meet at least annually with representatives from private schools within Brenham ISD and with parents who have placed their students in a private school within Brenham 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 Brenham ISD but does not provide consent for the evaluation, Brenham ISD 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. Brenham ISD 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 Brenham’s conduct code. Disciplinary protections shall be afforded to a student if Brenham ISD “had knowledge” that the student is a student with a disability prior to the behavioral incident at issue. Brenham ISD 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

¹⁸ 20 U.S.C. § 1401(30); 19 TEX. ADMIN. CODE § 89.1050(f)

personnel of Brenham ISD. Brenham ISD does not have knowledge that the student is a student with a disability if Brenham ISD 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 Brenham ISD and determined to be ineligible by a duly constituted Admission, Review and Dismissal (ARD) committee.¹⁹

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

- Training material
- Notices of FIIE request process provided for student assigned to, or released from, DAEP
- Posters and other media or website postings
- Multi-Tiered Systems of Support or Response to Intervention Data
- Student specific data collection and monitoring
- Databases

¹⁹ 34 C.F.R. § 300.534