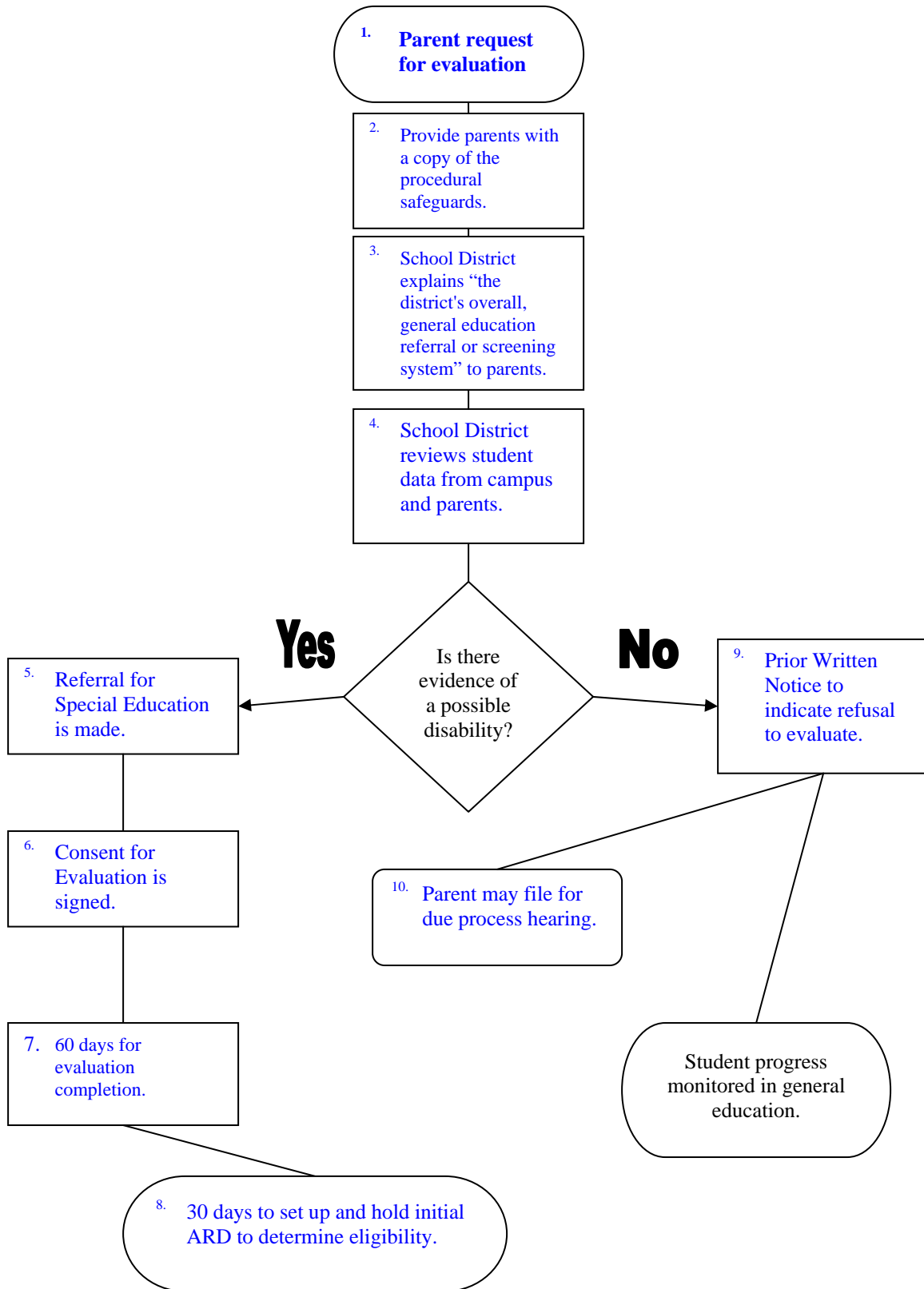


# Responding to Parental Requests for Evaluation



## 1. Parent Request for Evaluation

Federal and state laws and regulations make clear that parents have the right to request an evaluation for special education services at any time. Public school districts and charter schools also have the right to request such an evaluation. However, a request does not automatically start the referral process. School districts who receive requests for evaluations should promptly reply to parent requests with data to support their decisions.

Federal regulation states:

### **§300.301 Initial evaluations.**

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

State regulation reads:

**Tex. Admin. Code §89.1011. Referral for Full and Individual Initial Evaluation.**  
...This referral for a full and individual initial evaluation may be initiated by school personnel, *the student's parents or legal guardian*, or another person involved in the education or care of the student. (emphasis added)

State law reads:

### **Tex. Educ. Code §26.0081. Right to Information Concerning Special Education and Education of Students with Learning Difficulties.**

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

## 2. Provide Parents with a Copy of the Procedural Safeguards

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

The comments to the Federal Regulations state the following:

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

The federal regulation reads:

### **§300.504 Procedural safeguards notice.**

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

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

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

School districts are required by state law to indicate to parents every year and in writing that they can request a referral for special education services at any time as a part of the district or public charter school's overall general education referral or screening process. Districts should reiterate this process when parents ask for evaluation in order to safeguard the parent's rights, provide for the well-being of the student, and clarify the roles and responsibilities of all parties involved during the process.

State regulation states:

#### **Tex. Admin. Code §89.1011. Referral for Full and Individual Initial Evaluation.**

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

State law reads:

#### **Tex. Educ. Code §26.0081. Right to Information Concerning Special Education and Education of Students with Learning Difficulties.**

...

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

#### 4. Review of Data

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

<b>Academic</b>	Standardized Test Performance	District Benchmarks	Formal and informal observations	Work samples	Report cards
<b>Language</b>	Language proficiency	Language used at home	Formal and informal observations		
<b>Behavioral</b>	Formal and informal observations	Office referrals	Teacher comments	Report cards	Parent input
<b>Health</b>	Vision screenings	Hearing screenings	Documentation of other health problems		
<b>Environmental, Cultural, Economic Factors</b>	Cumulative folder review	At Risk status	Data from classroom teachers, counselors, and other support personnel such as social workers		
<b>Intervention History</b>	Interventions provided	Duration of interventions	Performance data collected during intervention		

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

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

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

**initial evaluation. The written notice must meet the requirements in § 300.503(b). Thus, for situations in which a public agency wishes to deny a parent's request for an initial evaluation, *the written notice would provide, among other things, an explanation of why the public agency refuses to conduct an initial evaluation and the information that was used to make that decision.* A parent may challenge the public agency's refusal to conduct an initial evaluation by requesting a due process hearing. (Federal Register, 2006, p. 46636)**

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

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

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

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

special education and related services (Federal Register, 2006, p. 46584).

The referenced federal regulation reads:

**§ 300.101 Free appropriate public education (FAPE).**

...

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

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

## 5. Referral

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

Texas administrative code states:

### **Tex. Admin. Code §89.1011. Referral for Full and Individual Initial Evaluation.**

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

## 6. Consent for Evaluation

Signed parental consent for initial evaluation sets formal timelines in motion. Consent is required for school districts to proceed with an evaluation for special education services.

The federal regulations state the following:

### **§ 300.300 Parental consent.**

#### **(a) *Parental consent for initial evaluation.***

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

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

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

## 7. Sixty Day Timeline

Once consent is signed, school districts and public charter schools have 60 calendar days in which to complete the initial evaluation.

The federal regulations state the following:

### **§ 300.301 Initial evaluations.**

...

**(c) Procedures for initial evaluation. The initial evaluation--**

**(1)(i) Must be conducted within 60 days of receiving parental consent for the evaluation; or**

**(ii) If the State establishes a timeframe within which the evaluation must be conducted, within that timeframe; and**

**(2) Must consist of procedures--**

**(i) To determine if the child is a child with a disability under §300.8; and**

**(ii) To determine the educational needs of the child. §300.301 (c)**

State law states the following:

### **Tex. Educ. Code §29.004. Full Individual and Initial Evaluation.**

**(a) A written report of a full individual and initial evaluation of a student for purposes of special education services shall be completed not later than the 60th calendar day following the date on which the school district, in accordance with 20 U.S.C. Section 1414(a), as amended, receives written consent for the evaluation, signed by the student's parent or legal guardian.**

## 8. Thirty Day Timeline

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

Federal regulations read:

**§ 300.323 When IEPs must be in effect.**

...

**(c) Initial IEPs; provision of services. Each public agency must ensure that—  
(1) A meeting to develop an IEP for a child is conducted within 30 days of a determination that the child needs special education and related services;**

**§300.323 (c)**

Texas regulations state:

**§89.1050 (d) The ARD committee shall make its decisions regarding students referred for a full and individual initial evaluation within 30 calendar days from the date of the completion of the written full and individual initial evaluation report. If the 30th day falls during the summer and school is not in session, the ARD committee shall have until the first day of classes in the fall to finalize decisions concerning the initial eligibility determination, the IEP, and placement, unless the full and individual initial evaluation indicates that the student will need extended school year (ESY) services during that summer.**

## 9. Prior Written Notice

When a school district or public charter school decides to refuse a parental request for evaluation, the school district must provide the parent with a written explanation of the refusal to take action and the reason why this decision was made including the data that supported that decision. Districts should pay close attention to the required contents of the notice to be provided to parents as articulated in § 300.503 (b). (See below.)

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

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

And:

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

The regulation reads:

**§ 300.503 Prior notice by the public agency; content of notice.**  
**(a) Notice.** Written notice that meets the requirements of paragraph (b) of this section must be given to the parents of a child with a disability a reasonable time before the public agency—

**(1) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or**

**(2) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.**

**(b) *Content of notice.* The notice required under paragraph (a) of this section must include—**

**(1) A description of the action proposed or refused by the agency;**

**(2) An explanation of why the agency proposes or refuses to take the action;**

**(3) A description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;**

**(4) A statement that the parents of a child with a disability have protection under the procedural safeguards of this part and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained;**

**(5) Sources for parents to contact to obtain assistance in understanding the provisions of this part;**

**(6) A description of other options that the IEP Team considered and the reasons why those options were rejected; and**

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

**(c) *Notice in understandable language.***

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

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

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

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

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

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

**(iii) That there is written evidence that the requirements in paragraphs (c)(2)(i) and (ii) of this section have been met.**

## 10. Due Process

The Comments to the Federal Regulations state the following:

**The parent may challenge such a refusal by requesting a due process hearing, but the timeline for conducting the evaluation does not begin prior to parental consent for evaluation.**

The applicable federal regulation reads:

### **§ 300.507 Filing a due process complaint.**

#### **(a) General.**

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