
Response to Request for Information

86th Legislature

House of Representatives

Public Education Committee

Interim Charge No. 3: Special Education

September 30, 2020

TO: House Public Education Committee

FROM: Disability Rights Texas¹

Public Education Committee Interim Study Charge 3

Monitor the progress of the TEA's compliance with the Corrective Action Response required by the United States Department of Education, the implementation of the state's Special Education Strategic Plan, and the state's compliance with other federal requirements regarding special education, including maintenance of state financial support for special education. Recommend solutions to barriers the agency, school districts, students with disabilities, and parents face in accessing a free and appropriate public education and in meeting the milestones of the plan and any measures needed at the state level to ensure that students with disabilities are being located, fully evaluated, and appropriately identified for special education instruction and services.

Background

In 2018, the U.S. Department of Education found that the Texas Education Agency (TEA) failed children with disabilities by precluding them from receiving the special education supports and services they are entitled to under Individuals with Disabilities Education Act (IDEA).² Unfortunately, Texas continues having problems evaluating and identifying children with disabilities.

¹ <https://www.disabilityrightstx.org/en/home/>

² <https://www.ed.gov/news/press-releases/us-department-education-issues-findings-texas-individuals-disabilities-education-act-monitoring>

TEA Special Education Strategic Plan

Identification & Evaluation - Identification Support:

“TEA will continue to advise districts on the requirements of IDEA regarding the identification of students who are suspected of having a disability.”³

We are responding to the House Public Education Committee’s Request for Information in order to draw attention to the fact that full individual and initial evaluations (FIEs) for children approaching 3-years old have stalled in many areas of Texas. We recognize we are currently in unprecedented times, but there are steps that TEA and local educational agencies (LEAs) can take to move forward with FIEs. **It is important to note that transition from Part C - Early Childhood Intervention (ECI) to Part B – Special Education, was a pre-existing challenge that has been exacerbated by COVID-19.**

Currently, in Texas Part C - ECI eligibility ends on the child’s third birthday. Local ECI providers refer the children who are likely to need special education services to their local school district prior to the child’s third birthday so that the evaluation process and the Admission, Review and Dismissal (ARD) Committee meeting to determine eligibility and special education services will be completed in a timely manner. By taking steps soon enough, special education services will begin on the child’s third birthday without any delay or a gap in services under IDEA.

The 2020-2021 HHSC and TEA Memorandum of Understanding⁴ - IDEA Part B Childhood Transition Requirements states that TEA will ensure that it has policies and procedures in effect to ensure that:

1. An individualized education program (IEP) be developed and implemented for Part B eligible children by their third birthday;
2. The ARD Committee determines the start date of the IEP if the child's birthday occurs during the summer. Services will begin by the first day of school, or earlier as determined and stated on the IEP; and
3. For children transitioning from Part C services to Part B services, the ARD Committee considers an IFSP that contains the natural environments statement, described in 34 CFR § 303.344, and that is developed in accordance with the IEP procedures under 34 CFR § 300.323(b) when developing the initial IEP.⁵

³ Texas Education Agency, *Special Education Strategic Plan 15* (2018).

<https://tea.texas.gov/sites/default/files/SPED%20Strategic%20Plan%20April%202023%20Final.pdf>

⁴ https://tea.texas.gov/sites/default/files/TEA%20%20HHSC%20ECI%20-%20MOU_0.pdf

⁵ https://tea.texas.gov/sites/default/files/TEA%20%20HHSC%20ECI%20-%20MOU_0.pdf

Currently in Texas, a major problem is occurring. The transition evaluations for children approaching age 3, and aging out of Part C, are not happening in some parts of the state. This leaves families without comprehensive services once the child turns three.

Part C contractors are doing all they can to continue providing virtual services to families during the pandemic; however, in the months leading up to a child's third birthday the school district becomes responsible for evaluating eligibility and ensuring the child has access to needed supports and services. Part C providers have successfully transitioned to virtual evaluations and can provide guidance to TEA on how school districts can do the same for children transitioning into Part B.

TEA has provided the following guidance to LEAs regarding evaluations during the pandemic:

- There has been no waiver of federal timelines related to special education compliance.
- Under no circumstances should an LEA attempt to delay obtaining written parental/guardian consent to evaluate, nor should the LEA decline to evaluate solely because of the current health crisis.
- Review and train staff on procedures the LEA will follow to conduct evaluations (e.g. on campus evaluation safety protocols, use of review of existing evaluation data (REED), process for remote assessment components). When evaluators cannot follow a fully standardized procedure, as specified in the test manual, for administration they must report deviations and carefully consider the impact in the interpretation and validity of the results. Triangulating data from a variety of sources will enhance the validity of evaluation results. Take steps necessary to ensure that evaluators are trained to carefully consider all of the different tools available to them for gathering evaluation data. Evaluators will need to use clinical judgement to identify the methods of assessment that are sufficient for completing an evaluation (e.g. record reviews, rating scales, clinical interviews, standardized testing, permanent product reviews.)⁶

However, there is little oversight or enforcement of this guidance and existing policy. TEA is not ensuring children, especially young children, with delays and disabilities are getting the services they need and are legally entitled to receive.

⁶ https://tea.texas.gov/sites/default/files/covid/strong_start_-_swd_planning_supports_guidebook.pdf?fbclid=IwAR3ANwKfP92jmM3P_bLs0CnrPP65sYv9ErX_tmv3bQJ_6uY3Gtm05sFY4f4

Recommendations

There are steps the legislature and state agencies can take to ensure children turning three do not go without services.

As part of the legislature's responsibility to monitor the progress of the TEA's compliance with the Corrective Action Response required by the United States Department of Education and the state's compliance with other federal requirements regarding special education, the following actions should be taken.

- The House Public Education and the House Human Services should meet together and conduct a joint hearing, or issue a joint request for information, on the topic of children with disabilities transitioning from Part C - ECI to Part B – special education. Given two major state agencies must cooperate, lawmakers should set an example and do the same.
- The Legislature should require that TEA, under the Identification Support section of the Special Education Strategic Plan, to coordinate with HHSC to develop and carry out a plan that ensures all established policies, procedures, and timelines under their Memorandum of Understanding - IDEA Part B Childhood Transition Requirements, are being followed by LEAs. Including:
 1. An individualized education program (IEP) be developed and implemented for Part B eligible children by **their third birthday**;
 2. The IEP team determines the start date of the IEP if the child's birthday occurs during the summer. Services will begin by the first day of school, or earlier as determined and stated on the IEP; and
 3. For children transitioning from Part C services to Part B services, the IEP team considers an IFSP that contains the natural environments statement, described in 34 CFR § 303.344, and that is developed in accordance with the IEP procedures under 34 CFR § 300.323(b) when developing the initial IEP.⁷
- The Legislature should require that TEA, under the Identification Support section of the Special Education Strategic Plan, to impose on LEAs a duty to provide compensatory services when it is determined that requirements and timelines have not been met for students transitioning from Part C to Part B. Children who turned three and were not evaluated and did not have an ARD and IEP developed before their third birthday should not have to suffer further.

⁷ https://tea.texas.gov/sites/default/files/TEA%20%20HHSC%20ECI%20-%20MOU_0.pdf

Resources and Media Articles

- <https://txchildren.org/posts/2020/7/15/isds-must-work-with-kids-transitioning-out-of-eci-during-pandemic>