

# Navigating Special Education During a Pandemic



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# School Closures/ “Instructional Continuity”

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- March 19, 2020, Governor Abbott closed all schools for 2019-2020 school year.
- Texas Education Agency (TEA), **does not** have the authority to close schools.
- Each district makes it’s own closure decision
- TEA has threatened funding for districts that don’t reopen for in person as soon as TEA desires (currently 4 weeks virtual allowed, with 4 week extension possible).
- TEA provides guidance on topics like special education.
- TEA hasn’t broadly required schools to offer virtual learning as option.
- Most districts are offering virtual learning, but only some allow extracurricular participation for those in virtual learning.
- **Parents should usually maintain enrollment if they continue to want special education services during this time or compensatory services for what is not provided.**

# Students with Disabilities Require Individualized Consideration

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- Some are at higher risk from COVID-19
- Some can't comply with mask, personal hygiene and social distancing expectations
- Some will have more trouble with online learning
- Some will regress more than typical students during breaks in instruction
- Like other students, those with disabilities come from families with diverse opinions about school closure, COVID risk, online learning and how health and educational concerns should be weighed.

## Purpose of IDEA

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To ensure that all children with disabilities have available to them a free appropriate public education (“FAPE”) that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living. 42 U.S.C. § 1400(d)(1)(A).

## Supreme Court's FAPE standard (Endrew F)

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“To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.”

There is no pandemic exception. Decisions should be made individually. When FAPE isn't provided, the relief is compensatory education.

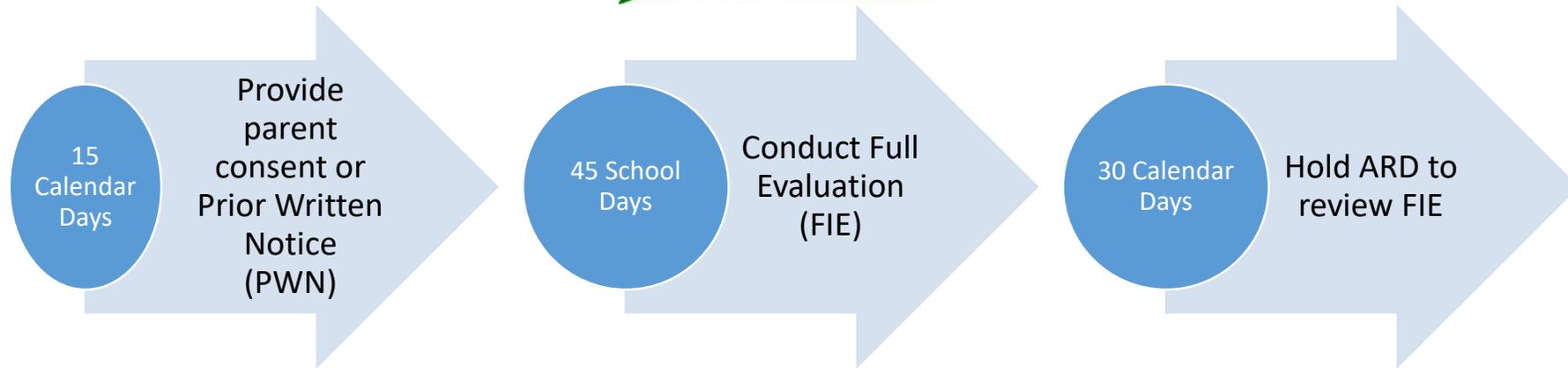
# Evaluation Procedures

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TEA Guidance [https://tea.texas.gov/sites/default/files/covid/covid-19\\_evaluation\\_guidance\\_april\\_2.pdf](https://tea.texas.gov/sites/default/files/covid/covid-19_evaluation_guidance_april_2.pdf)

# Put Initial Request for Evaluation in Writing

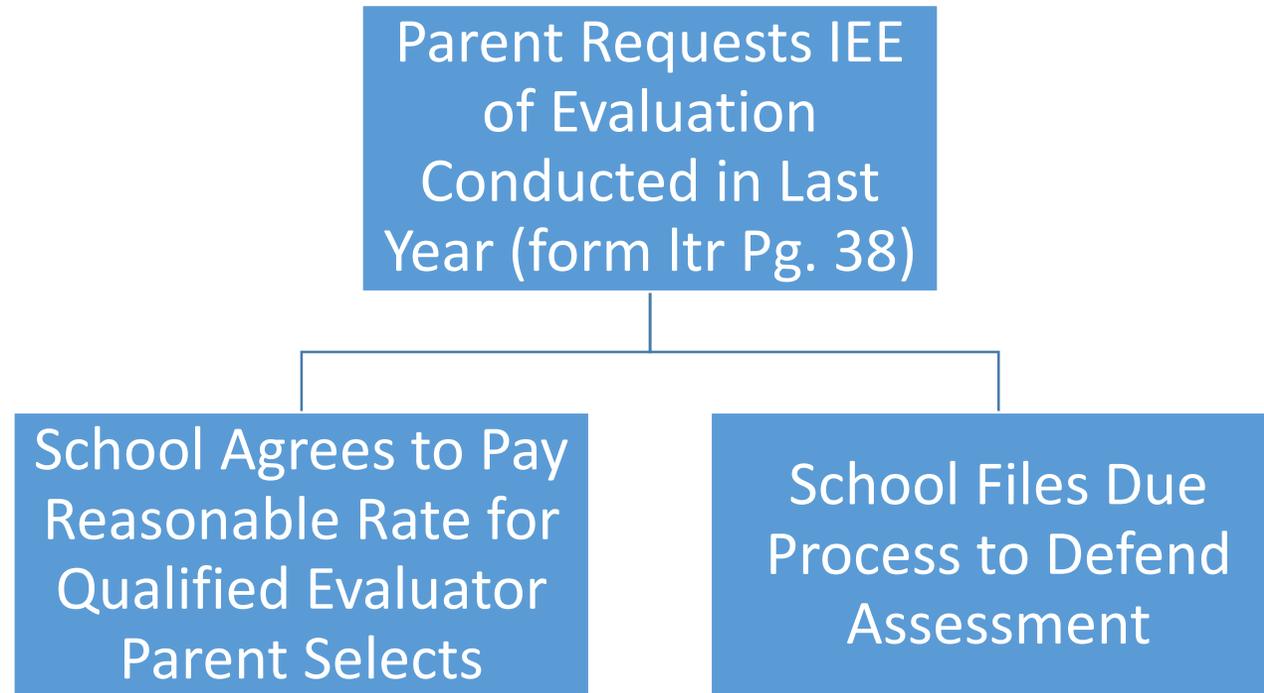
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Timelines still apply during pandemic, but school closure or preparation days don't count. Days of virtual instruction count, but parts of evaluation aren't practicable. Districts should conduct as much of evaluation as possible to minimize missed deadlines.

# Independent Educational Evaluations (IEE)

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If already approved for evaluation, inquire whether IEE provider is conducting evaluations. Some evaluators are conducting in person 1:1 assessments with social distancing and/or masks.

# Admission, Review and Dismissal (ARD) Meeting

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Annually or as often as needed,  
(agreed amendments possible)



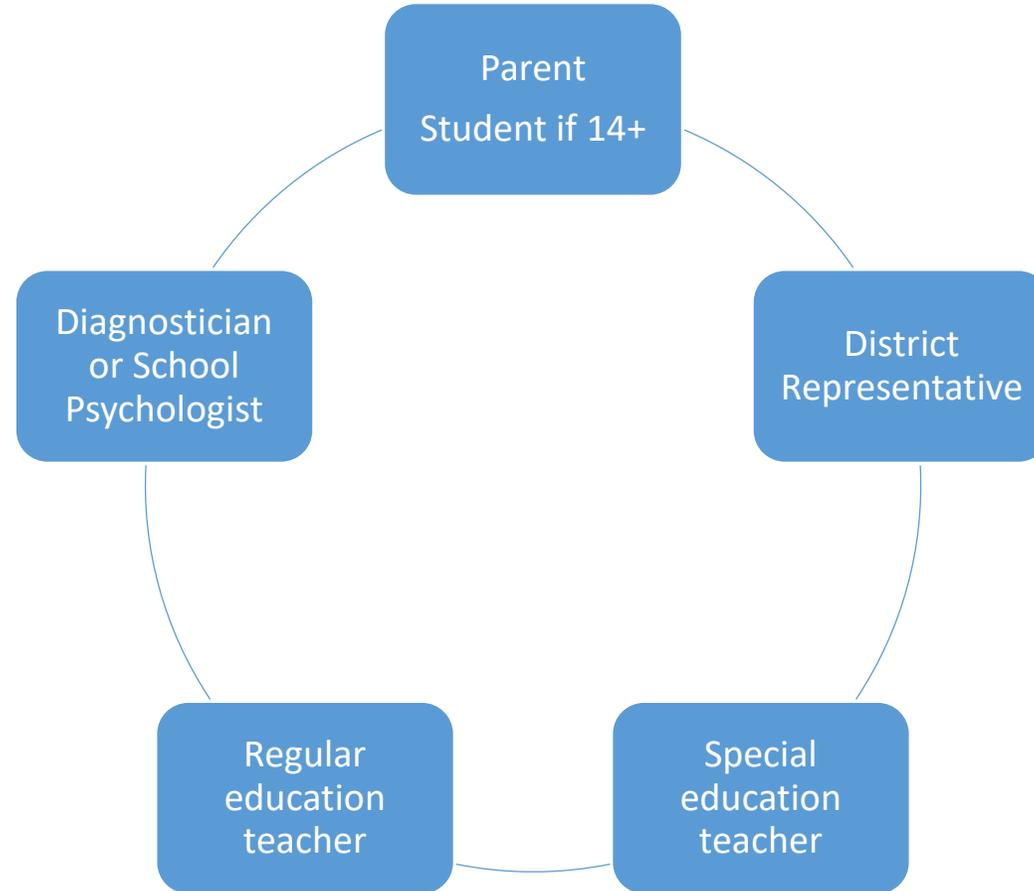
5+ Notice Required



Work with parent's schedule

# ARD Committee Members

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# What is a Contingency Plan

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TEA promoted idea and created form at [https://tea.texas.gov/sites/default/files/covid/Covid-19\\_SPED\\_Emergency\\_Contingency\\_Form.pdf](https://tea.texas.gov/sites/default/files/covid/Covid-19_SPED_Emergency_Contingency_Form.pdf)

- Documents temporary special education services that are feasible and safe to provide to an individual student while a local education agency (LEA) is closed but continuing to provide instruction during the COVID-19 pandemic.
- Not intended to serve as, or to replace, the most recent IEP.
- Without documented parent/guardian agreement under 34 CFR §300.324 to amend the student's IEP, this document should not be considered a fulfillment of an IDEA requirement.
- It may be used for documenting services that will be provided so that there is clarity for both parents/guardians and educators during this unique situation and to assist the ARD committee in determining what, if any, compensatory services will be provided to the student once school reopens.
- LEAs must coordinate with a student's parents/guardians in the completion of this document.
- Must be individualized for each student.

# Something Not Working; Call ARD to Problem Solve

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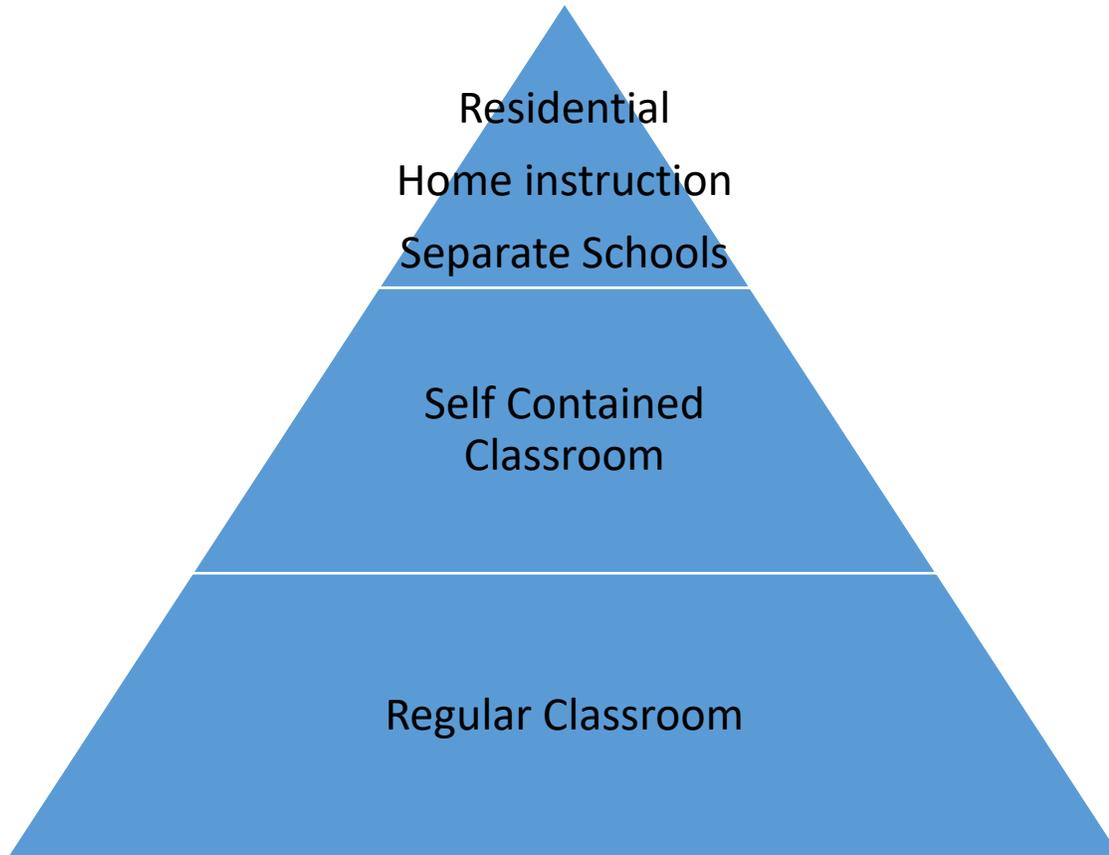
## Examples of Changes ARD Could Make During Pandemic

- Provide In Home Parent Coach on virtual learning
- Providing more or different direct instruction or related services
- Alter schedule for synchronous instruction
- Provide manipulatives for home use
- Provide additional technology for home use

Parents can use DRTx Letter to express concerns and request ARD  
<https://media.disabilityrightstx.org/wp-content/uploads/2020/03/21212629/Sample-Covid-Letter.pdf>

# Placement in the Least Restrictive Environment (LRE)

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Typical Year



Pandemic Year

# Assistive Technology as Required for FAPE 34 CFR 300.324 (a)(2)(v)

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Schools have to provide students the assistive technology they require to receive FAPE.

# Transition & Graduation

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- Year student turns 14, IEP must include:
  - Appropriate measurable postsecondary goals based upon age-appropriate **transition assessments** related to training, education, employment and independent living skills, where appropriate
  - Transition services needed to assist the child in reaching those goals, including courses of study; and
  - Notice of transfer of rights at age of 18.
  - Ability to remain in school through year student turns 22.

# Prior Written Notice

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- Prior written notice (PWN) is a document school must give parent anytime the school wants to change something in the student's Individualized Education Program (IEP), such as where the student is educated or the amount of special education services currently provided.
- In Texas, **at least five school days** before the school proposes a change, unless the parent agrees to a shorter timeframe.

# Compensatory Education

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- Compensatory education is an award of education services that are offered to compensate for a previously inadequate program that denies FAPE during past year.
- Examples of compensatory education:
  - Enrollment in summer social skills camp
  - X number of hours of 1:1 tutoring by certified teacher
  - X number of hours of OT, PT, Speech, Counseling on top of what is in IEP
  - Reimbursement for educational expenses
- Parents should document services that aren't provided and any information about progress or lack of progress, especially while in at home instruction
- Request compensatory services in ARD Meeting to Start
- TEA COVID-19 policy guidance document on compensatory services <https://tea.texas.gov/sites/default/files/covid/covid19-compensatory-services-and-extended-school-year-guidance.pdf>
- TEA informational flyer on compensatory services for parents: <https://tea.texas.gov/sites/default/files/covid/covid19-comp-services-two-pages.pdf>

# The Big Decision

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- At end of meeting, parents sign that they attended & check “agree” or “disagree.”
- Parents can explain why they disagree but do not have to
- They can disagree with only part of the plan and still accept or “consent” to services.
- If parents disagree, they should be offered reconvene ARD within 10 school days.

# Resolving Disagreement

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## TEA Complaint

Paper Review

60 Day  
Decision

## Mediation

Free

Voluntary

Confidential

## Due Process

Administrative  
Hearing

Experts Often  
Necessary

## Other Q&A Child Won't Wear a Mask

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- The most common modification for people who won't wear masks is to work at home or participate in virtual learning.
- Schools (or other entities) don't have to provide accommodations that pose a Direct Threat to the health or safety of others. Because masks are primarily intended to keep the person wearing the mask from spreading a virus to others, schools would likely make a direct threat claim. But, all accommodation issues are fact specific. Have other styles of masks been attempted, can child wear during halls or transitions, is district exempting any other groups (like young children), does child understand distancing and hygiene, does class size allow distancing, etc.
- If you think of anything that would work for your son and reduce risk to others, request school consider it.

# General Resources During COVID-19

- Disability Rights Texas
  - <https://www.disabilityrightstx.org/en/home/>
  - <https://www.disabilityrightstx.org/en/category/covid19/>
- Texas LawHelp
  - <https://texaslawhelp.org/article/coronavirus-covid-19>
- Texas Council for Developmental Disabilities
  - <https://tcdd.texas.gov/resources/covid-19-information/>
- TEA
  - <https://tea.texas.gov/texas-schools/health-safety-discipline/covid/covid-19-support-special-education-0>
  - [https://tea.texas.gov/sites/default/files/covid/covid19 special ed qa updated may 7.pdf](https://tea.texas.gov/sites/default/files/covid/covid19%20special%20ed%20qa%20updated%20may%207.pdf)
- Department of Education
  - <https://www2.ed.gov/about/offices/list/osers/index.html#spotligh>

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