

# Parent Rights



Dustin Rynders  
Supervising Attorney

# Presentation Agenda

**1**

**Evaluation  
&  
Eligibility**

**2**

**IEP**

**3**

**Placement**

**4**

**Discipline**

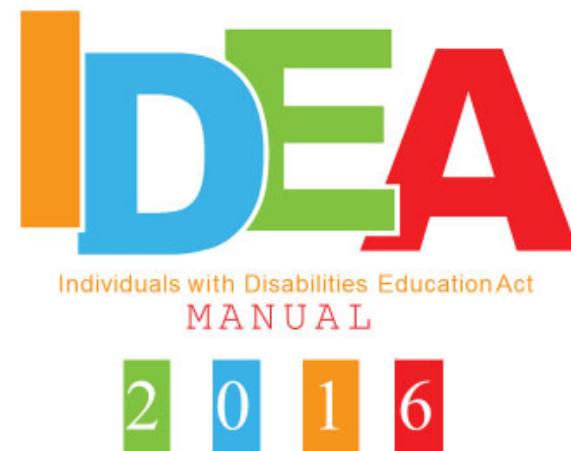
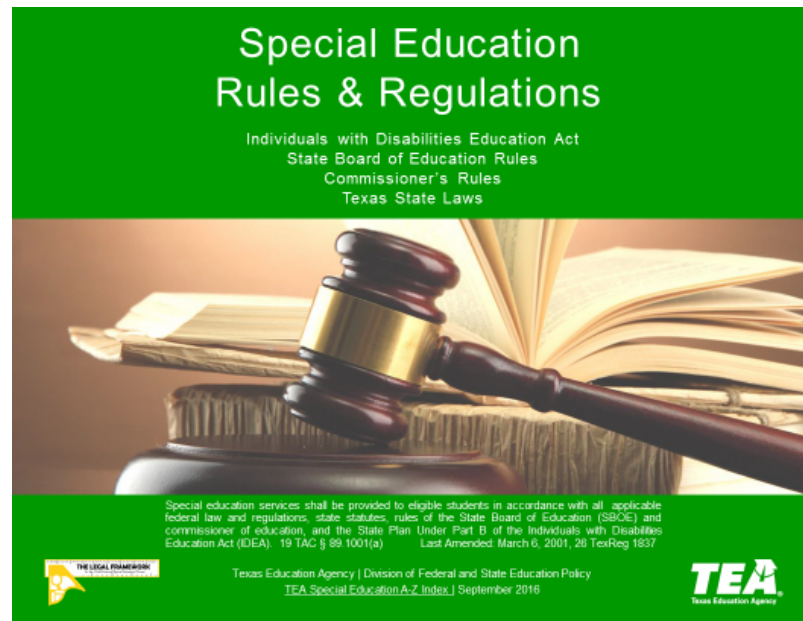
## Purpose of IDEA

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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).

# Free Reference Resources

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## Child Find Duty 34 CFR § 300.111 (b).

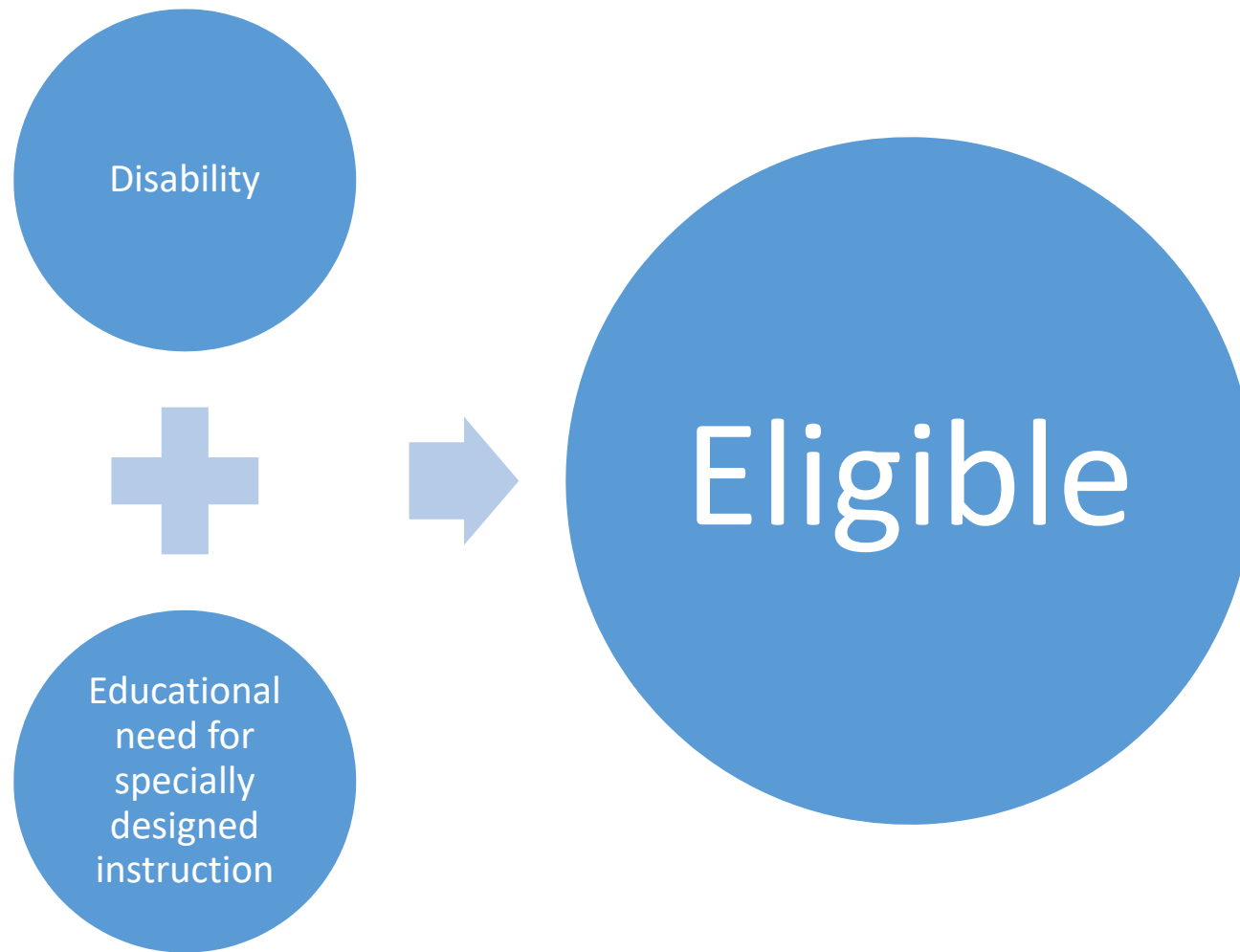
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*Affirmative obligation to find and serve eligible 3 - 22 year old children living in district.*

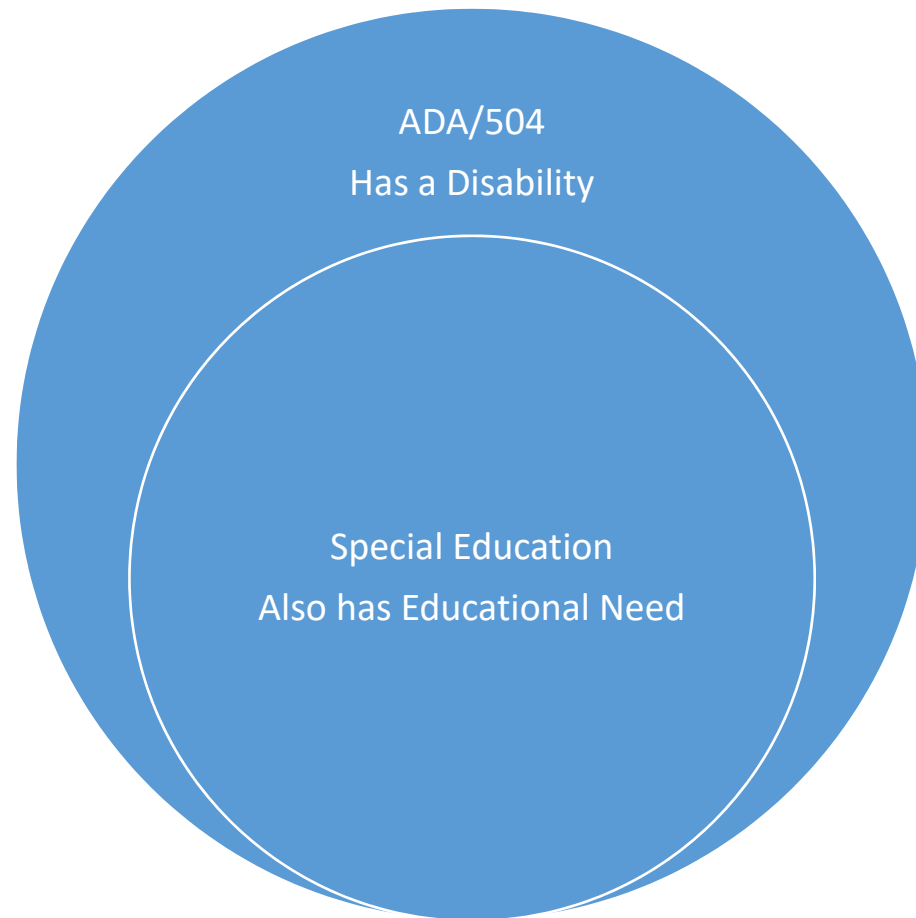
# Special Education Eligibility 42 U.S.C. § 1401(3)

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# Population Protected by ADA / 504 Compared to Special Education

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A CHRONICLE INVESTIGATION

# Denied:

## How Texas keeps tens of thousands of children out of special education

Story by: Brian M. Rosenthal

Photos by: Marie D. De Jesús

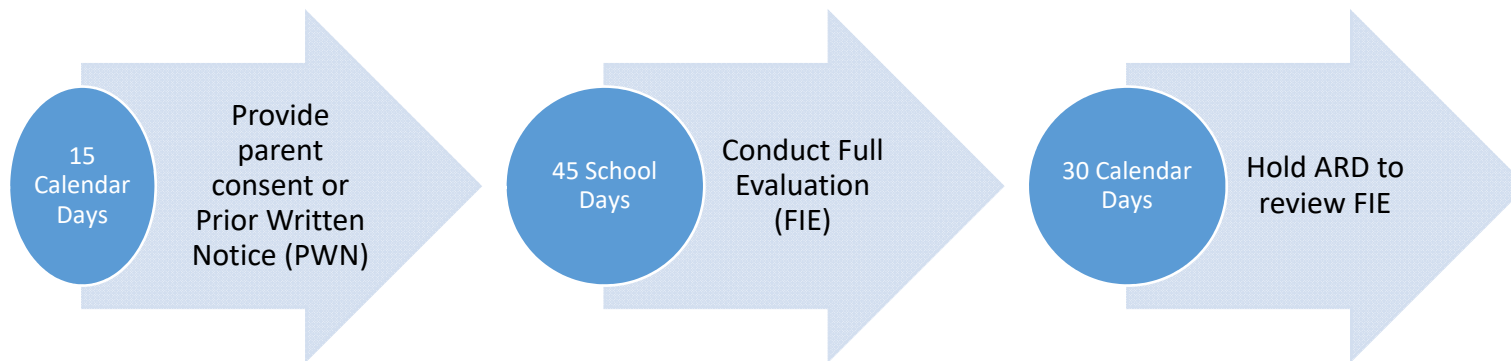
Published Sept. 10, 2016





# Put Initial Request for Evaluation in Writing

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# Evaluations

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Whether child has  
disability

Student's  
educational needs  
resulting from  
disability

# Evaluation Reports Provide Needs Related to

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## Education

- Levels of achievement
- Problem areas
- Comparison to other students
- Reason for any problems

## Related and Other Special Services

- Examples: Occupational therapy, speech therapy, physical therapy, assistive technology, counseling, and transportation.

## Positive Behavioral Supports

## Reevaluation 20 U.S.C. § 1414 (a)(2)(A)(B)

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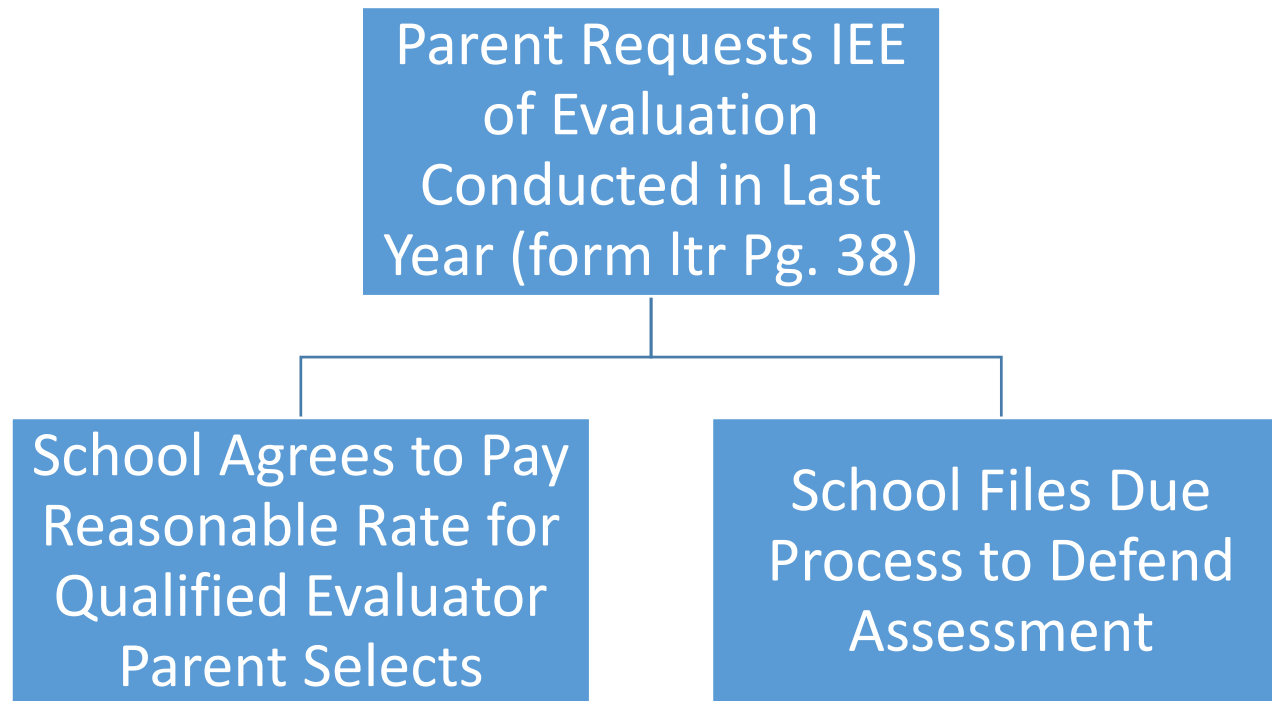
At least every 3 years

As often as needed, not more than once per year

Review of Existing Evaluation Data (REED) may be used instead of formal assessment, but is inappropriate if student is not making satisfactory progress.

# Independent Educational Evaluations (IEE)

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# Admission, Review and Dismissal (ARD) Meeting

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Annually or as often as needed



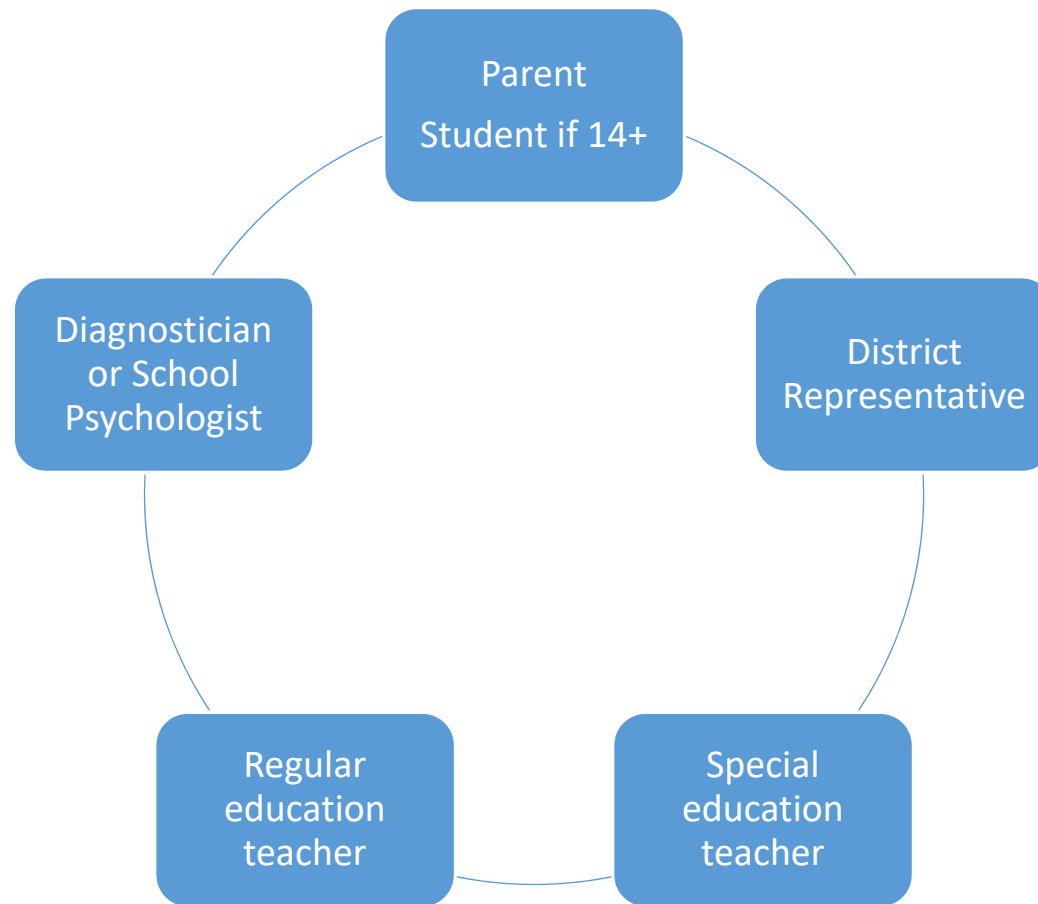
5+ Notice Required



Work with parent's schedule

# ARD Committee Members

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# Individualized Education Program

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Present levels of academic achievement and functional performance (PLAFP); and

Measurable annual goals (academic and functional goals).

Accommodations

Placement

Behavioral Intervention Plans

Related services

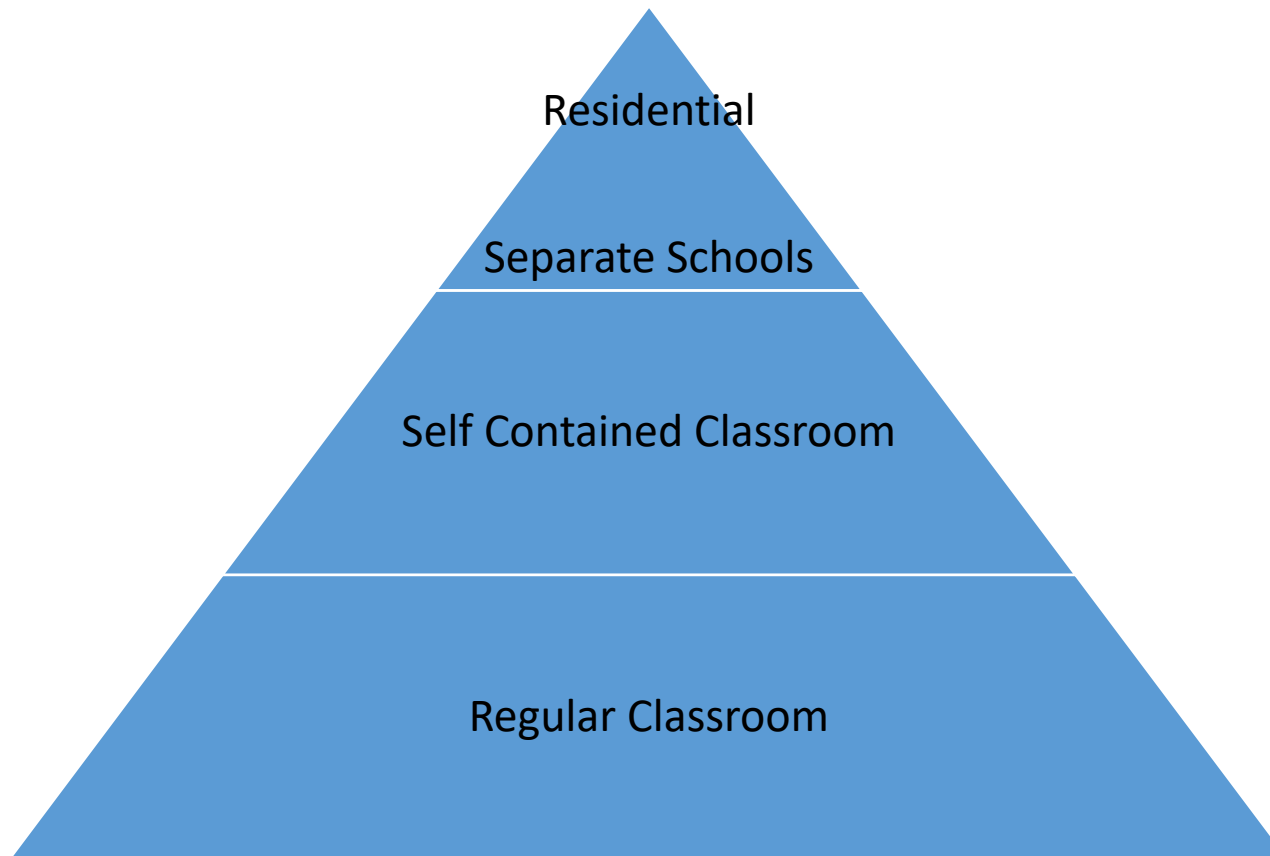
Transition services

Standard Assessment Accommodation or Need for Alternate Assessment



# Placement in the Least Restrictive Environment (LRE)

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# Placement in the Least Restrictive Environment (LRE)

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*Daniel R.R. v. State Board of Education*, 5<sup>th</sup> Circuit enunciated four factors for determining whether a child is sufficiently mainstreamed:

- 1) Whether the school district took steps to modify the general education program and to provide supplementary aids and services to the student;
- 2) Whether the student was receiving any educational benefit from the general education placement;
- 3) Whether the student's overall educational experience was beneficial; and
- 4) Whether the student's presence in the general education classroom was fair to the rest of the class.

# School Discipline

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# BREAKING SCHOOLS' RULES:

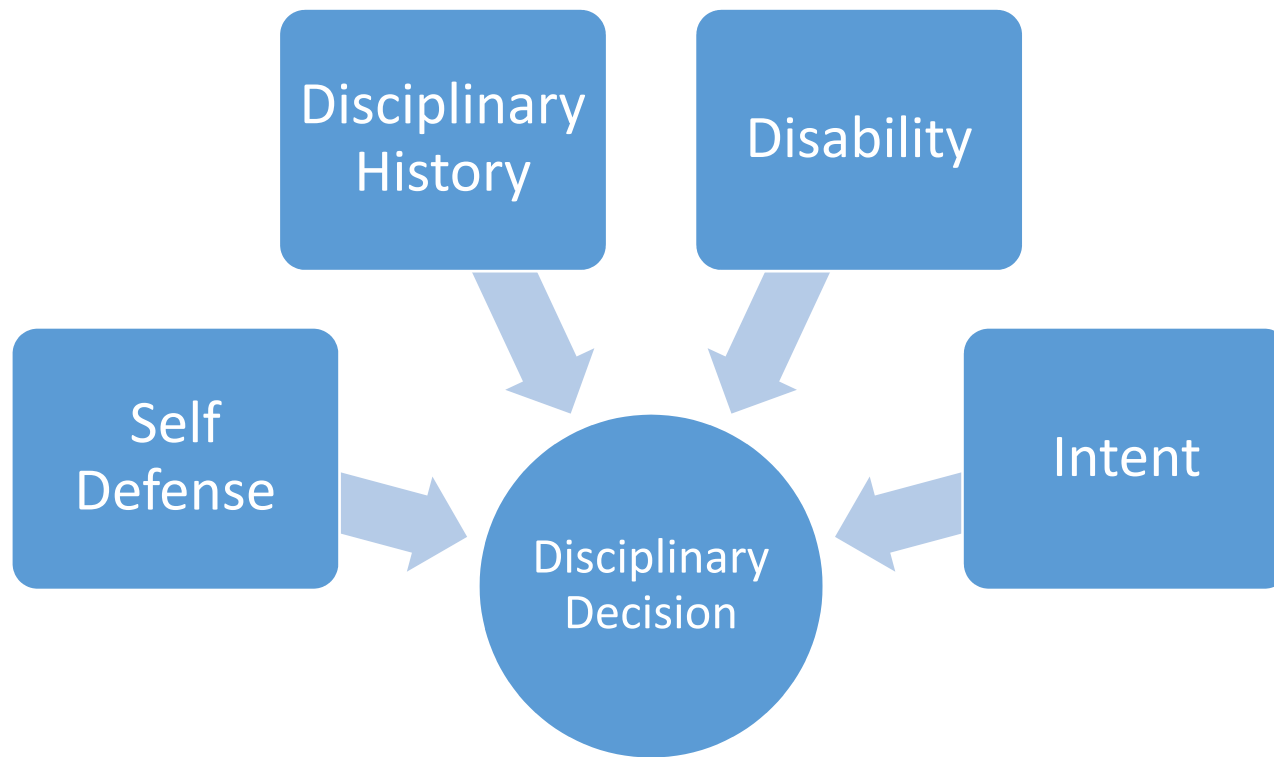
A Statewide Study of How School Discipline Relates  
to Students' Success and Juvenile Justice Involvement

JUSTICE★CENTER  
THE COUNCIL OF STATE GOVERNMENTS

PPRI Public Policy  
Research Institute

# All Disciplinary Decisions Require Common Sense Considerations TEC § 37.001(a)

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# Texas Bans Most Out of School Suspension for Pre-K to 2<sup>nd</sup> Grade

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- Governor Abbott Signed HB 674 into Law.
- Prohibits discretionary out-of-school suspensions for Pre-K through 2nd graders. The bill does not impact removals for extremely disruptive behavior or serious offenses.

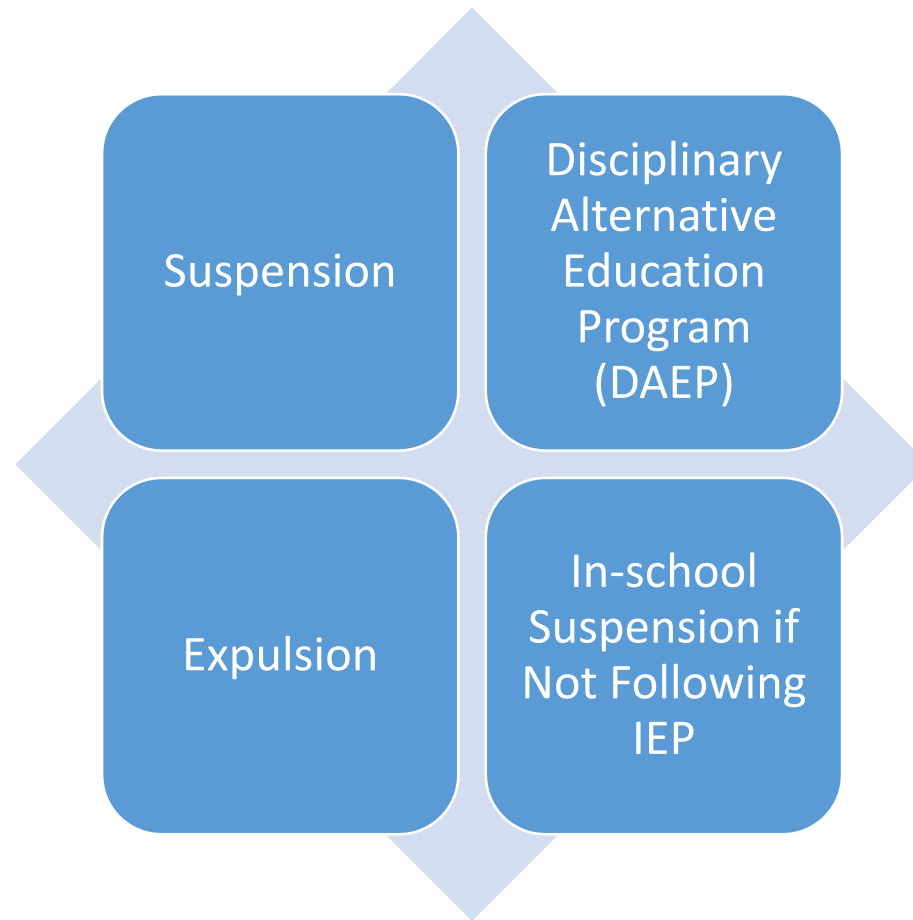
## IDEA Provides More Protection > 10 days 34 CFR 300.536 (a).

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- Removal from class for more than 10 consecutive school days; OR
- Removals form a pattern (because they total 10+ days/ year, the behavior is substantially similar, and removals are close in time.

# Examples of Disciplinary Placements

## FAPE Still Required for Removal > 10 Days

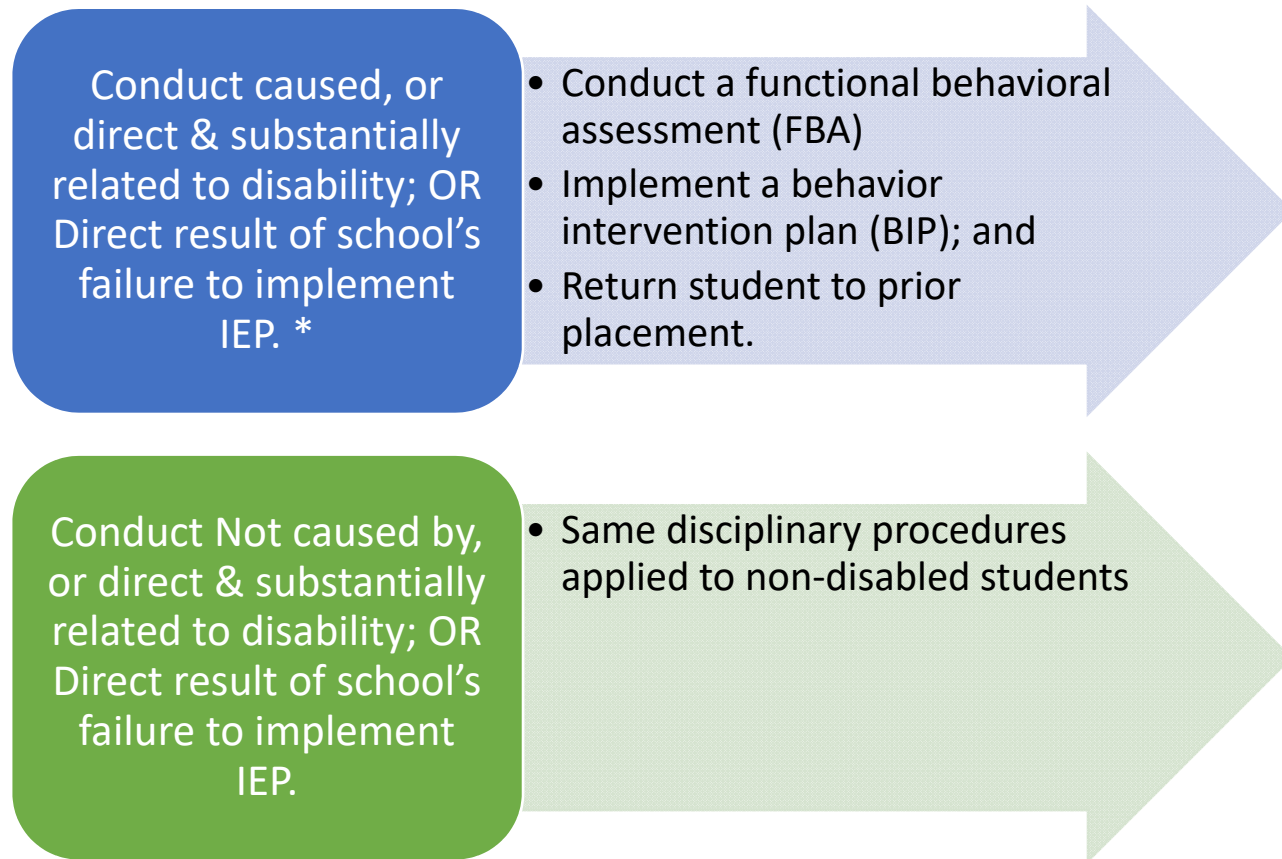




# Manifestation Determination Review by ARD

## 34 CFR 300.530 (e)(1).

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\*Exception. Drugs, weapons, or substantial bodily injury allow placement in DAEP for 45 Days even if manifestation of disability.

# Functional Behavioral Assessment

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- Evaluations used to develop positive behavioral supports and a Behavior Intervention Plan (BIP)
  - Attempts to determine function of unacceptable behavior, what the student “gets” or “avoids” through behavior.
  - Identifies strategies to reduce triggers and replace problem behaviors.

# Where Does the Information in an FBA Come From?

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- **Direct observation made by the evaluator (preferably psychologist or BCBA)** in the environments where the behavior(s) typically occur. Evaluator should spend at least a few days observing student in these settings.
- Student interview (and reinforcement surveys)
- Teacher interviews (and written input)
- Review of special education records and disciplinary data

# Behavior Intervention Plan (BIP)

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- Based on Evaluation Data, including an FBA
- Must include positive supports and interventions (these should be described in the FBA)

## BIP Tips

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- Be specific about each behavior at issue
  - “Jane is aggressive” is not specific.
  - “Jane hits other students at recess when she does not get her way” is specific.
- Target a few key behaviors with specific, individualized interventions
  - “Give Jane an opportunity to exercise control” is not specific.
  - “Give Jane the opportunity to choose the recess activity. Give Jane the opportunity to lead the class discussion” are specific interventions.

# Restraint and Seclusion

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- Seclusion: Banned
  - No confinement in locked box, closet, or room TEC § 37.0021.
- Restraint: Restricted
  - Only in emergency situations, with threat of: (A) imminent, serious physical harm to the student or others; or (B) imminent, serious property destruction (meaning expensive property). 19 T.A.C. §89.1053
  - Notice Requirements See 89.1053(e)
  - Staff Training Requirements See 19 T.A.C. 89.1053(d)



# Restraint and Seclusion

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- Seclusion: Banned
  - Students may not be confined in a locked box, locked closet, or locked room that: (A) is designed solely to seclude a person; and (B) contains less than 50 square feet of space. Texas Education Code § 37.0021.
- Restraint: Restricted
  - Only allowed in emergency situations, in which student's behavior poses a threat of: (A) imminent, serious physical harm to the student or others; or (B) imminent, serious property destruction (meaning expensive property). 19 T.A.C. §89.1053
  - Notice Requirements See 89.1053(e)
  - Staff Training Requirements See 19 T.A.C. 89.1053(d)

# The Big Decision

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- At end of meeting, parents sign that they attended & check “agree” or “disagree.” Attorneys sign they attended but don’t 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 services.
- If parents disagree, they should be offered reconvene ARD within 10 school days.
- One year statute of limitations unless exception applies.



# Resources

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- Disability Rights Texas
  - [www.dr.tx.org](http://www.dr.tx.org)
- Texas Education Agency (TEA)
  - Parent Resource Guide <http://www.tea.state.tx.us/special.ed/resources/>
  - Complaints, Mediations, Due Process Hearings  
<http://www.tea.state.tx.us/special.ed/medcom/compinfo.html>