Lions, and Tigers and the TEA Strategic Plan, Oh My: What LSSPs Need to Know

Region 4 ESC Guidance on TEA Special Education Strategic Plan

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Introduction

- Students who are currently:
  - Identified under Section 504
  - Receiving dyslexia services
  - Receiving RtI services
  - Or whose parents requested an evaluation but the evaluation was denied

Purpose

- The purpose of this document is to:
  - Provide a framework for data gathering and data analysis in order to assist districts in decision-making regarding which students should be referred for special education evaluation.
  - Provide legal case synopses regarding Child Find and compensatory education decisions that have been made.
  - It is anticipated that several forms in the document can be used by districts to develop their own procedures.

DoE Corrective Action Plan
- 3 IDEA Violations
  - Locate and identify
  - FAPE
  - Supervisory and Monitoring
- This document focuses on #1 and #2 of the IDEA violations

TEA Special Education Strategic Plan
- The Plan consists of 5 components:
  - 1. State Monitoring
  - 2. Identification, Evaluation, and Offer of FAPE (Child Find)
  - 3. Training, Support, and Development
  - 4. Student, Family, and Community Engagement
  - 5. Technical Assistance Networks and Structures
- This document focuses on #2 of the 5 components of the Strategic Plan
Bottom Line: The 2 Questions

- Is there reason to suspect that the student has a disability condition recognized under IDEA?

- Is there reason to suspect that because of the disability the student needs special education and related services?

How do you decide?

**Not by**

**Myths**

- “He has to be in RTI longer for us to evaluate.”
- “She cannot receive dyslexia and SPED services simultaneously.”

- Preconceived notions
  - “He won’t qualify.”

- District history
  - “It’s how we have always done it.”

- Emotional reactions
  - “It’s due to his home life.”

How do you decide?

**But by**

Gathering data -

A lot of data across multiple domains (e.g., grades, STAAR, discipline history, accommodations, interventions, progress monitoring, etc.)

- Systematically analyzing the data, especially looking for trends within and across the data

- Realize that there is no status quo – only individual data-based decision-making

- Being objective
**New Era**

- Gather and systematically analyze information
- Equal consideration of RtI, 504, Dyslexia, Special Education
- Simultaneous not sequential considerations

**Technically,**

- For students in Section 504 and Dyslexia, a disability condition has been identified, BUT
- Knowledge of a disability alone is not sufficient to trigger a Child Find duty. This knowledge must be coupled with a reasonable suspicion that, because of the disability, the student needs special education and related services.

**I-CASED FRAMEWORK**

- Identify Students
- Collect Information
- Analyze Data
  - Consider data to make decisions – could be referral to RtI, 504, IDEA
  - If decision is to refer for PE, then special education evaluation is conducted
- Special Education Evaluation
- Eligibility Determination, and if eligible
- Determine Programming and Possible Additional or Compensatory Services
Step 1: What groups of students should be considered?

A mandatory review of students in RtI, Section 504, and Dyslexia is not required. However, it is from this population that most “missed” referrals would come, therefore districts may want to adopt a proactive approach. If so, districts can take a global look at students in these three target groups and a fourth group - those whose parents requested evaluation but were denied.

For districts who choose to do so, it is recommended that:

- a list of the students in the target groups be developed;
- for each student, basic information would be obtained (use readily available and easily accessible information at this step); and
- the list be reviewed to ascertain if particular students should be prioritized for further data collection and analysis to determine possible referral for special education evaluation.

Districts will need to determine the initial data to be used for prioritizing based on their unique populations. Page 10 has a list of possible data sources to consider.
Step 1
IDENTIFY STUDENTS

- Districts may choose to do this at the central administration level only.
- For large districts, it may be more efficient to take place at the campus level.
- If done at campus level, coordinators/directors would meet with campus staff to explain the purpose and provide guidance for the process.

Students to be Included

**RtI**
- Any student receiving Tier 2 interventions
- Any student receiving Tier 3 interventions
- If the interventions are not designated by Tier, any student receiving supplementary interventions outside of the typical interventions provided by the general education classroom teacher

**504**
- Students who have a 504 plan and are receiving accommodations
- Students who have protection under 504 but no plan was necessary

**Dyslexia**
- Students who were evaluated for Dyslexia and are receiving dyslexia intervention through general education, but not eligible for special education

**Parent Request**
- Written requests made by parents and denied through a Notice of Refusal*

Sample List (page 11)

<table>
<thead>
<tr>
<th>Name of Student or ID #</th>
<th>Grade</th>
<th>RtI Date Services Began</th>
<th>504 Date Services Began</th>
<th>Dyslexia Date Services Began</th>
<th>Parent Request Date</th>
<th>Date Denied</th>
<th>Condition/Diagnosis or Area of Intervention or None</th>
</tr>
</thead>
<tbody>
<tr>
<td>Julia</td>
<td>2nd</td>
<td>√ 9/1/17</td>
<td>√ 12/2/17</td>
<td>12/14/17</td>
<td>ADHD</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Scott</td>
<td>3rd</td>
<td>√ 11/10/17</td>
<td></td>
<td></td>
<td>No condition/diagnosis Tier 2 for Math</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Marisol</td>
<td>3rd</td>
<td>√ 1/12/18</td>
<td>√ 1/12/18</td>
<td>1/12/18</td>
<td>Dyslexia</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Antonio</td>
<td>1st</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>None</td>
<td></td>
</tr>
</tbody>
</table>

Practical Considerations - Prioritizing
Practice Considerations - Data

Step 2

- Table 1: Types of Data: Rationale (Pages 14-16)
- Table 2: Data Sources (Pages 17-19)
- Appendix E: Data Checklist
- How far back the district should look is dependent on the claim of the referral agent

Step 3

- Is there reason to suspect the student has a disability condition?
  - Yes
    - Document basis for determination. Review current services and make changes to facilitate progress.
  - No
    - Is there reason to suspect that because of a disability the student needs special education?
      - Yes
        - Consider focused assessment (e.g., Dyslexia, 504)
Step 3

- Table 3 (Pages 23-31)
- Appendix E: Guiding Questions

### Decision-Making

- The decision to refer a student for a special education evaluation is a complex process.
- Multiple sources of data are needed to support a referral decision.
- The use of data analysis is to prevent overreliance on one data source and to promote objective decision-making.
- In a data-based decision-making process:
  - No one data source can be used to make the decision.
  - For each data source, the context of the data must be considered.
  - Data are interrelated.

### Examples (Page 21)

- It is not sufficient to decide that because the student has passing grades he cannot be referred (use of 1 data source). The grades may be based on retaking tests or homework in which he receives help (context). The student may be receiving numerous accommodations (interrelated data sources).
- It is not sufficient to decide that a student should be referred because he has several discipline referrals (use of 1 data source). The referrals may be due to dress code violations (context). The student may be performing well in advanced classes (interrelated data sources).

### Step 3

- Overarching consideration – when determining if there is an indication of a need, consider impact on access and progress in general education.
- Consider Level of Impact
  - Typical for age
  - Some issues, but does not adversely affect access and progress in the general education curriculum
- Example – Accommodations (Page 27)
Important Triggers (pages 33-34)

<table>
<thead>
<tr>
<th>Category</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Outside evaluations and diagnoses</td>
<td>An external evaluation or other documentation that provides a diagnosis must be carefully considered. This provides a basis of knowledge for the presence of a condition.</td>
</tr>
<tr>
<td>Hospitalizations</td>
<td>This is particularly important if the student is absent for many days. It is also critical to discern whether the hospitalization is due to physical or mental health reasons.</td>
</tr>
<tr>
<td>Increase in number and types of accommodations</td>
<td>Adding more types of accommodations may signify so much support that the content, methodology or delivery of instruction is affected.</td>
</tr>
<tr>
<td>Slow or poor progress in intervention</td>
<td>Interventions have an expected trajectory for progress and the student’s progress is monitored based on that trajectory. Slow or poor progress may signify the lack of response to intervention which in turn is suggestive of a need to evaluate.</td>
</tr>
<tr>
<td>Below average grade-level performance</td>
<td>Students who are well below grade level on benchmarks and state assessments, especially those who show declines across time, may need evaluation to assist in determining cognitive strengths and weaknesses that facilitate or inhibit learning.</td>
</tr>
<tr>
<td>Discipline referrals</td>
<td>Information regarding an increase in the number of discipline referrals, the severity of infractions, and the number of days the student is out of class for disciplinary reasons is important in suspecting an emotional or behavioral disorder.</td>
</tr>
<tr>
<td>Grades</td>
<td>Grades represent achievement in grade-level curriculum and are important indicators of progress. However, grades must be considered in context and may not represent actual grade-level achievement.</td>
</tr>
<tr>
<td>Attendance</td>
<td>Attendance represents continuity in exposure to instruction and the pattern is important to consider. Both number of and reasons for absences must be considered.</td>
</tr>
</tbody>
</table>

Step 3

- Are there any data that tip the decision toward evaluation?
- Summary and Determination

Step 4

- If the decision is to propose an evaluation through special education, the district must seek consent from the parent to evaluate within a reasonable time.
- While a reasonable time is not defined in the IDEA, a conservative timeline would be within 15 school days – this is consistent and in alignment with the timeline for responding to a written parent request.
- 19 TAC §89.1011 – Full Individual and Initial Evaluation (FIIE)
- 34 C.F.R. §300.304 – Evaluation Procedures
- 19 TAC §89.1040 – Eligibility Criteria
**Implications for Evaluators**

- This is not the time to do less.
- It is highly recommended that consent for the FIIE be obtained in a face-to-face meeting with the parent.
- This is the time to have a real multidisciplinary team and approach to the evaluation.
- The FIIE and the resulting decision of the presence of a disability condition will come under much scrutiny.
- If the student is found eligible, the FIIE will be used to assist in the determination of need for additional or compensatory services.

**Implications for Evaluators**

- Evaluations must be comprehensive and provide a review of all previous data gathered on the student, including interventions that have been implemented and the student’s progress in these interventions;
- provide a thorough discussion of the student’s current levels of functioning and how this compares to expectations; and
- provide an analysis and synthesis of what these data signify — data cannot just be in the FIIE, they must be interpreted.

**Implications for Evaluation Staff**

- Do not cut corners
- Evaluators should be aware that the information in the FIIE will be one source of data used to determine additional or compensatory services
- Must be able to defend a DNQ
- Use appropriately credentialed staff (TSBEP letter in Appendix D)
- If contractors are used are they using your district’s model for determining conditions [e.g., LD, ED, ...]? Based on NASP Guidelines: Regardless of whether personnel are employed or contracted, it is the responsibility of the unit to ensure the same level and quality of services as those provided by personnel from within the unit. [Unit=district in this context]
- Endrew F. standard for an appropriate IEP
Step 5

Does the student have a disability condition recognized under IDEA?

Does the student need special education (specially designed instruction)?

Specially designed instruction (SDI) means adapting, as appropriate, the content, methodology, or delivery of instruction to address the unique needs of the student that result from their disability and to ensure access to the general curriculum so that the student can meet the educational standards that apply to all children.

Content. Content is the standard set by the state. In Texas, that is the Texas Essential Knowledge and Skill (TEKS). When determining SDI, the members of the ARD committee should consider how the student is accessing the general education curriculum (i.e., accommodations, modifications, or prerequisite skills), and whether adaptations to the content are needed as a result of the disability. If the answer is “yes,” the content needs to be adapted as a result of the disability, then the committee must determine how the content should be adapted.

Methodology. Methodology refers to any educational practice or approach that is evidence-based/best practices. Each methodology has its own principles and components. For a student receiving special education services, it is not required to document the specific title/name of the methodology within the IEP. Rather, the specific components of the methodology necessary as a result of the student’s disability should be defined within the IEP. These components are what become the SDI for the student and ultimately implemented via special education services.

Delivery of instruction. Delivery of instruction is the application and implementation of the evidence-based/best practices that are needed as a result of the disability. Once described and documented within the IEP, these elements become the student’s SDI.
One perspective on this is that when a student with a disability requires or must have whatever evidence-based practice(s) the teacher is using as a result of the student's disability then it becomes SDI. The fact that it may not appear that a student is receiving anything “different” than his or her general education peers or that a student may be doing the same work as everyone else in the class does not in and of itself preclude those strategies from being SDI for a student.

OSERS Letter (Appendix D) – Specially Designed Instruction

If the SDI consideration is being made prior to referral (Step 3), the team making the referral should review all of the available data and based on that data determine if it is reasonable to suspect that a student may require adaptations as a result of the suspected disability.

Decision vs. Suspicion - At the point prior to referral (Step 3), the threshold is suspicion, which is lower, because an FIIE has not been completed.

Information provided in TEA Dyslexia letter (Appendix D)

The letter has been interpreted differently by attorneys

TEA panel at TCASE specifically said No – not every student in dyslexia needs to have an FIIE

TEA panel did say to review students receiving services and make data-based decisions

Dyslexia services could be SDI depending on circumstances but are not automatically SDI
**Child Find Appendix A (Page 3) Important Points**

- District frequently has knowledge of a disability, but this is not sufficient to trigger the Child Find duty. This must be coupled with a reasonable suspicion that because of the disability, the child needs special education (reasonable educator suspicion).
- District cannot rely solely on grades or grade-to-grade promotion to determine that FIE is not warranted. Must consider multiple factors including social and behavioral needs.
- A student may be receiving accommodations but no Child Find duty arises – one issue here is effectiveness – if effective and student is making progress in the general curriculum, then no reason to suspect need for special education.
- Child Find is a continuing obligation – data at one point in time may not raise the double suspicion of disability and need. However, circumstances may change to lead to that suspicion.

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**Step 6**

**DETERMINE PROGRAMING AND POSSIBLE ADDITIONAL OR COMPENSATORY SERVICES**

- The TEA Special Education Strategic Plan (2018) states that for each student who should have been evaluated previously, and who is now evaluated and found to be eligible for special education and related services, the ARD committee “must determine whether additional services are required for that student, taking into account the supports and services previously provided” (p. 18).
- This determination is made based on all of the data gathered.
  - Pre-referral information
  - FIE
  - Previous supports and services
  - Actual grade level functioning compared to expected grade-level functioning (peer performance)

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**Additional/Compensatory Services based on a claim for referral prior to current school year (pp.45-46)**

- Must be considered for a student when the referring source claims that the student should have been evaluated previously and who is now evaluated and found eligible
- Not automatic
- Takes into account previous services and supports provided
- Goal is to place student in the position that the student would be in had the district provided the needed services in the first place
- Result of analysis by ARD committee after eligibility has been determined and the IEP has been created
- Remember, the IEP is reasonably calculated to enable the student to make progress that is appropriate in light of the child’s unique circumstances
- If this is an issue/claim, analysis and consideration prior to ARD is strongly advised
Analyzing an Additional/Compensatory Services based on a claim for referral prior to current school year

- Referring source claims that student should have been evaluated previously.
- Student evaluated and qualifies for special education.
- Develop a program that provides FAPE now.
- Consider prior supports and services provided to the student and remaining guiding questions.
- Are additional/compensatory services warranted?
  - If yes, develop a plan to include in the IEP with implementation timeline.

Step 6 Guiding Questions (pages 46-47)

- What supports and services were previously provided to the student? (p. 46 has examples)
- Were the supports and services designed to address the needs identified in the IFIE (e.g., a behavior contract had been developed to address task avoidance/completion; accommodations had been in place to facilitate attention; student attended summer school for reading intervention)?
- What were the results of the supports and services on the ability of the student to access and make progress in the general curriculum? If effective, then there may be no need to add additional services to the IEP.
- What do the data show regarding the referral for evaluation? (summary documentation for guiding questions in step 3)

Step 6 Guiding Questions (pages 46-47)

- Were the supports and services similar to, more or less than what has now been developed in the IEP?
- As a result of the disability, what is a reasonable expectation for a learning rate for the student?
- What are the constraints on learning/behavior due to the disability?
- What supports and services could be added to the IEP to increase academic/behavioral progress beyond what the IEP has put in place for the next year? (Consider tutoring before and after school or a summer program to move the student ahead on the IEP, not to simply maintain progress as would be the goal of an ESY program.)
- Would the same or similar services have been put in place if the student had been identified previously?

Compensatory Services based on a claim for referral prior to current school year - Appendix B

- Forms of Compensatory Services
  - Can involve many types of services
  - Generally prospective services
  - Can also include reimbursement for private services
  - Can also include extending services beyond age 21

- Amount of Compensatory Services
  - Quantitative approach (1-1 calculation for amount of time)
  - Qualitative approach (individualized, fact-specific; flexible; designed to address amount of services required to place the student in the same position he would have been if IDEA had not been violated)
  - Hybrid
3 Major Decision Points

- Referral
- Eligibility
- Additional/Compensatory Services based on a claim for referral prior to current school year

Link to FINAL Guidance Document


Access to:
- Guidance Document for TEA Special Education Strategic Plan
- Presentation Handout
- Order Form