

### **3.14 *What are the District's obligations to children transitioning from IDEA Part C Early Intervention Services (EIS) to IDEA Part B Early Childhood Special Education (ECSE)?***

Weslaco ISD coordinates with [Texas Health and Human Services Commission \(THHSC\)](#)<sup>1</sup> or its local designees—the Early Intervention Agency—to notify parents or guardians of children in the District who are at least 3 years of age but younger than 6 years of age and who are potentially eligible for enrollment in Weslaco ISD's IDEA Part B Early Childhood Special Education (ECSE) program of the availability of the program.<sup>2</sup> Additionally, at least 90 days before the 3<sup>rd</sup> birthday of a child with a disability under Part C EIS, who may be eligible for preschool special education and related services under Part B, the Early Intervention Agency—must notify the District that the child will shortly reach the age of eligibility for Weslaco ISD's ECSE program.<sup>3</sup> Weslaco ISD's Child Find Representative is an appropriate contact to receive such notice.

If a child is potentially eligible for Weslaco ISD's ECSE program, with family approval, a transition conference will be convened by the Early Intervention Agency, with an invitation to the District, not fewer than 90 days and not more than 9 months before the child's 3<sup>rd</sup> birthday, to discuss any potential special education and related services the child could receive from the District.

If the Early Intervention Agency determines that the child is eligible for [Early Intervention Services \(EIS\)](#) more than 45 but less than 90 days before the child's 3<sup>rd</sup> birthday and if that child may be eligible for ECSE services under Part B, the Early Intervention Agency, as soon as possible after determining the child's eligibility, must notify Weslaco ISD that the child on his 3<sup>rd</sup> birthday will reach the age of eligibility for the District's ECSE program.<sup>4</sup> Weslaco ISD's Child Find Representative is an appropriate contact to receive such notice.

Weslaco ISD's Child Find Representative shall ensure that an IEP is in effect for an IDEA B eligible child with a disability who had previously received IDEA Part C services by the child's 3<sup>rd</sup> birthday while complying with the procedures in **EVALUATIONS: Section 2.0** above. If a child's 3<sup>rd</sup> birthday occurs during the summer, the student's ARD committee shall determine the date when services will begin.<sup>5</sup>

If Weslaco ISD knows that a child served in Part C via an *Individualized Family Service Plan* (IFSP) developed by the Early Intervention Agency and referred to IDEA Part B will turn 3 over the summer and that appropriate Weslaco ISD personnel won't be available to conduct evaluations and hold ARD committee meetings during the summer, appropriate evaluation personnel shall

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<sup>1</sup> 34 CFR § 303.22

<sup>2</sup> Tex. Ed. Code § 29.009

<sup>3</sup> 34 CFR § 303.209(b)(1)(i); [Early Childhood Transition FAQs](#) (OSEP 2009).

<sup>4</sup> 34 CFR § 303.209 (b)(1)(ii).

<sup>5</sup> 34 CFR § 300.101

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ensure that required activities such as conducting the evaluations, and convening the ARD committee meeting occurs before the end of the school year.<sup>6</sup>

When the Early Intervention Agency provides notification to Weslaco ISD of a potentially eligible child fewer than 90 days before the student's 3<sup>rd</sup> birthday, the Early Intervention Agency must provide a written explanation to the District stating the reason for the delay. Weslaco ISD's Child Find Representative is an appropriate contact to receive such notice. If notification is given between 45-89 days before the student's 3<sup>rd</sup> birthday, appropriate evaluation personnel shall ensure that eligibility is determined as soon as possible.

If a student with a disability was served under IDEA Part C via an *IFSP*, the student's *IFSP* may serve as the *IEP* of a child with a disability aged 3 through 5 (or, at the discretion of the state educational agency, a 2-year-old child with a disability who will turn age 3 during the school year), if the *IFSP* was developed in accordance with ARD committee procedures, is consistent with state policy, and agreed to by Weslaco ISD and the student's parents or guardians.<sup>7</sup>

If a student's *IFSP* was incorrectly developed by the Early Intervention Agency and Weslaco ISD and the parent or guardian agree to use the *IFSP* in lieu of an *IEP*, Weslaco ISD shall modify the *IFSP* so that it meets the requirements for an *IEP*.<sup>8</sup>

While IDEA Part B requires coordination to assure the continuity of services, it does not compel Weslaco ISD to provide all the same services in an *IEP* that were in a student's *IFSP*.

### **3.15 *Are there limitations on the right to FAPE?***

If the parent of a student enrolled in Weslaco ISD or seeking to be enrolled in the District does not provide consent for the student's full individual and initial evaluation, or the parent fails to respond to a request to provide consent, Weslaco ISD may, but is not required to, pursue the initial evaluation of the child by utilizing the procedural safeguards under IDEA. Weslaco ISD will use reasonable efforts to obtain parental consent. Weslaco ISD will also document its efforts to obtain parental consent, and maintain such documentation in the student's special education file. The level of effort shall be appropriate to the situation. The actions of Weslaco ISD when seeking parental consent will reflect genuine effort and will include more than one effort or means. If the parent or guardian does not provide consent for the student's full individual and initial evaluation after the District has requested and sought to obtain such consent, the District does not violate its *Child Find* and FAPE obligations to the student if the District

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<sup>6</sup> [Early Childhood Transition FAQs](#) (OSEP 2009)

<sup>7</sup> 34 CFR § 300.323 (b)(1); 20 USC § 1414 (d)(2)

<sup>8</sup> 34 CFR § 300.323 (b); U.S. Department of Education, 71 Fed. Reg. 46679 (2006)

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declines to pursue the evaluation under these circumstances by requesting a due process hearing to override the parent's lack of consent.<sup>9</sup>

The Weslaco ISD shall obtain informed consent from the parent or guardian of a student before the initial provision of special education and related services to the student. Weslaco ISD will not construe consent for initial evaluation as consent for initial provision of special education and related services. The appropriate evaluation personnel, or special education teacher shall make reasonable efforts to obtain informed consent from the parent or guardian for the initial provision of special education and related services; however, if the parent or guardian fails to respond to a request for, or refuses to consent to, the initial provision of special education and related services, Weslaco ISD cannot seek to override the parent's refusal to consent to the initial provision of special education and related services to the student. If the parent does not provide informed written consent for the initial provision of special education and related services, Weslaco ISD will not be considered to be in violation of the requirement to make FAPE available to the student because of the failure to provide the student with the special education and related services for which the parent refuses to or fails to provide consent. Weslaco ISD is also not required to convene an ARD committee meeting or develop an IEP for the student.<sup>10</sup>

If, at any time subsequent to the initial provision of special education and related services, the parent or guardian of a student revokes consent in writing for the continued provision of special education and related services, Weslaco ISD:

- may not continue to provide special education and related services to the student, but shall provide **Prior Written Notice, including [TEA's Notice of Procedural Safeguards](#), before** ceasing the provision of special education and related services;
- may not use the dispute resolution procedures in IDEA in order to obtain agreement or a ruling that the services may be provided to the student;
- will not be considered to be in violation of the requirement to make FAPE available to the student because of the failure to provide the student with further special education and related services; and
- is not required to convene an ARD committee meeting or develop an IEP for further provision of special education and related services.<sup>11</sup>

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<sup>9</sup> 34 C.F.R. § 300.300(a)(3)

<sup>10</sup> 34 C.F.R. § 300.300(b)(3)

<sup>11</sup> 34 C.F.R. § 300.300(b)(4)

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Unless a parent or guardian has enrolled a student in private school as described in Section 3.6, above, that student's enrollment in a private school relieves Weslaco ISD of any responsibility for the provision of a FAPE, but the student may be considered for proportionate share services.<sup>12</sup> Likewise, students attending a homeschool program are not entitled to FAPE but may be considered for proportionate share services. TEA, and therefore Weslaco ISD, does not regulate, index, monitor, approve, register, or accredit the programs available to parents who choose to home school. This is consistent with the Texas Supreme Court decision rendered in *Texas Education Agency v. Leeper*.<sup>13</sup>

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<sup>12</sup> 19 TEX. ADMIN. CODE § 89.1096

<sup>13</sup> *Texas Education Agency v. Leeper*, 893 S.W.2d 432 (Tex. 1994)