

**Amended Special Education Investigative Report
December 1, 2020**

[REDACTED]

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FY: 2020-2021

Complaint: [REDACTED]

On October 21, 2020, the Texas Education Agency (TEA) received a reconsideration request from the complainant requesting a reconsideration of the October 9, 2020 investigative report.

Procedural History

In the August 14, 2020 letter of complaint, the complainant raises the following allegations.

Allegation One: Did the local educational agency (LEA) ensure that the student's individualized education program (IEP) team made his/her eligibility determination in accordance with 34 CFR §300.306, 34 CFR §300.311, and 19 TAC §89.1040, specifically as a student with a specific learning disability (SLD)?

Allegation Two: Did the LEA ensure that it considered the student's independent educational evaluation in accordance with 34 CFR §300.502?

Allegation Three: Did the LEA provide the parent with prior written notice in accordance with 34 CFR §300.503 when the parent requested a full individual and initial evaluation for the student?

[REDACTED]

[REDACTED]

Based on the record, TEA finds that the LEA did not meet the requirements set out above when the IEP teams found that the student did not qualify for special education services.

When finding whether a student qualifies for special education, the IEP team must first determine whether the student meets criteria for one of the 13 disabilities set out in the IDEA. If the student does meet those criteria, the IEP team must then determine whether the student requires special education and related services by reason of that disability.

In the student's case, s/he met eligibility criteria as a student with a specific learning disability (dyslexia). The LEA ensured that it drew upon information from a variety of sources when making this determination.

However, based on the data available to the student's February 2020 IEP team, the IEP team made an incorrect determination when deciding that the student did not have an educational need for special education services. While the student's report card indicates that the student was making progress on his/her goals, the IEP team was required to consider the student's performance and progress data as a whole. Based on the information the IEP team had available at the time that it met, the student was not making progress in reading and, in fact, was projected to continue to remain below grade level and well below the LEA's grade-level mean in reading through winter 2021.

Additionally, the student's FIE report, which was considered by the IEP team in making the student's eligibility determination, provided the IEP team with concerning information. The report reads in part below.

The student has not yet participated in a reading program which not only addresses phonemic awareness and phonics skills, but also vocabulary, fluency, and reading comprehension. Therefore, it is least restrictive environment to participate a reading intervention program available through general education services prior to considering placement in special education.

A student's referral or eligibility determination cannot be delayed for the student to participate in intervention services. Yet, in the respective student's case, although the IEP team had sufficient data to determine that the student required special education as a result of his/her disability, it appears the LEA believed that the student could not be found eligible for special education because s/he had not participated in all available general education services. (Ex. Take Flight)

Allegation One is substantiated.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Identified Noncompliance

Based on the evidence and current state and federal requirements, TEA finds the following noncompliance.

The LEA does not always ensure that eligibility determinations are made in accordance with 34 CFR §300.306, 34 CFR §300.311, and 19 TAC §89.1040.

Required Corrective Actions

In accordance with 34 CFR §300.151, TEA must address: (1) how to remediate the denial of those services based on the needs of the student and (2) appropriate future provision of services for all students with disabilities when resolving a complaint in which appropriate services were not provided. TEA requires the following corrective actions of the LEA.

For the student subject to this complaint:



For all students with disabilities in the LEA:

The LEA shall review its policies and related guidelines pertaining to the noncompliance cited in this report to determine if revision is necessary to prevent the noncompliance from reoccurring. If the LEA revises its policies and related guidelines, the LEA must provide written notice of revised policies/guidelines to LEA staff affected by the revisions.

The LEA must provide staff development to the individuals who were involved in or contributed to the noncompliance and to the administrators of the campus subject to the complaint to provide guidance to address the noncompliance cited in this report, including:

- making eligibility determinations regarding specific learning disabilities.
- *The Dyslexia Handbook*
<https://tea.texas.gov/academics/special-student-populations/dyslexia-and-related-disorders>
- Frequently Asked Questions: Dyslexia and Related Disorders: March 2019
<https://tea.texas.gov/sites/default/files/Dyslexia%20FAQ%20March%202019.pdf>
- The US Department of Education, Office of Special Education and Rehabilitative Services (OSERS) Dear Colleague letter, October 23, 2015
<https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/guidance-on-dyslexia-10-2015.pdf>

Additionally, by **December 31, 2020**, the LEA must conduct a folder review of all students on the campus subject to the complaint who were evaluated for a specific learning disability between February 6, 2020, and the end of the 2019-2020 school year to determine whether IEP teams made appropriate determinations related to students' eligibility for special education services. The individuals who conduct the required folder reviews will not be employees of the campus subject to the complaint or have had anything to do with the respective students' evaluations and eligibility determinations. The results of the folder review will be submitted to TEA by January 22, 2021.

Required submission:

By **January 22, 2021**, the LEA must provide TEA with the following documentation demonstrating implementation of the corrective actions.

- The results of the folder review.
- A copy of service logs or other documentation showing the implementation of the compensatory services.
- A copy of any revised portions of special education policies and related guidelines.
- A copy of any relevant memoranda and/or guidance letters issued to staff.
- Provide a copy of the training agenda describing the information presented in the staff development and a listing of the individuals, indicating their positions, who participated in the staff development.