



TPCSA Model Board Policy Series

Module 6 – Special Education

Richard Milburn Academy

13003 Jones Maltsberger Rd.

San Antonio, Texas 78123

830-557-6181

www.rmaschools.org

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PG-6.1 NONDISCRIMINATION

Sec. 1. NONDISCRIMINATION POLICY

No qualified student with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any service, program, or activity provided or offered by Richard Milburn Academy. 42 U.S.C. § 12132; 29 U.S.C. § 794(a); 34 C.F.R. § 104.4(a).

Sec. 2. FREE APPROPRIATE PUBLIC EDUCATION

Eligible students with disabilities shall enjoy the right to a free appropriate public education (“FAPE”), which may include instruction in the regular classroom, instruction through special teaching, or instruction through approved contracts. Instruction shall be supplemented by the provision of related services when appropriate. Tex. Educ. Code § 29.003(a).

FAPE means special education and related services that:

1. Have been provided at public expense, under public supervision and direction, and without charge;
2. Meet standards set out by Texas Education Agency (“TEA”);
3. Include an appropriate preschool, elementary school, or secondary school education; and
4. Are provided in conformity with the student’s individualized education program (IEP).

20 U.S.C. § 1401(9); 34 C.F.R. § 300.13, 300.17, 300.36.

Sec. 3. LEAST RESTRICTIVE ENVIRONMENT

Richard Milburn Academy shall ensure that, to the maximum extent possible, children with disabilities shall be educated with children who are not disabled. Special classes, special schooling, or other removal of children with disabilities from the regular educational environment shall occur only when the nature or severity of the child’s disability is such that education in regular classes with the use of supplementary aids and services cannot be satisfactorily achieved. 20 U.S.C. § 1412(a)(5); 34 C.F.R. § 300.114(a)(2).

Sec. 4 DISCIPLINE

All disciplinary actions regarding students with disabilities shall be determined in accordance with applicable federal regulations, Texas Education Code Chapter 37, and 19 TEX. ADMIN. CODE § 89.1053. 19 TEX. ADMIN. CODE § 89.1050(g).

Sec. 5 INSTRUCTIONAL ARRANGEMENTS AND SETTINGS

Instructional arrangements and settings shall be based on the individual needs and IEPs of eligible students receiving special education services. Instructional arrangements and settings include:

1. Mainstream: services provided in the regular classroom in accordance with the student’s IEP;
2. Homebound: services provided at home or hospital bedside;
3. Hospital class: services provided in a classroom, hospital facility, or residential care and treatment facility not operated by Richard Milburn Academy;
4. Speech therapy: speech therapy services provided, whether in a regular education classroom or

- other setting;
5. Resource room/services: services provided in a setting other than the regular classroom for less than 50% of the regular school day;
 6. Self-contained (mild, moderate, or severe) regular campus: services provided to a student who is in a self-contained program for 50% or more of the regular school day on a regular school campus;
 7. Off home campus: services provided in an inter-district program, through Richard Milburn Academy personnel in a non-Richard Milburn Academy facility, or at a Richard Milburn Academy campus that provides only special education and related services.
 8. Nonpublic day school: services provided through a contractual agreement with a nonpublic school;
 9. Vocational adjustment class/program: services provided to a student who is placed on a job with regularly scheduled direct involvement by special education personnel in the implementation of the student's IEP;
 10. Residential care and treatment facility (not Richard Milburn Academy resident): services provided to students who reside in care and treatment facilities and whose parents do not reside within the boundaries of Richard Milburn Academy;
 11. State supported living center: services provided to a student who resides at a state supported living center when the services are provided at the state supported living center location; or
 12. Other program options, including contracts with other districts and programs approved by TEA.

19 TEX. ADMIN. CODE § 89.63(c), (f).

Sec. 6 RELATED SERVICES

“Related services” means transportation, and such developmental, corrective, and other supportive services as may be required to assist a child with a disability to benefit from special education, including the early identification and assessment of disabling conditions in children.

The term includes speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, school nurse services designed to enable a child with a disability to receive a FAPE as described in the child's IEP, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services, except that medical services shall be for diagnostic and evaluation purposes only.

The term does not include a medical device that is surgically implanted, the optimization of the device's functioning, or the replacement of such device. 20 U.S.C. § 1401(26); 34 C.F.R. § 300.34.

PG-6.2 ADMINISTRATION

Sec. 1. APPLICABILITY OF TEXAS EDUCATION CODE

An open-enrollment charter school is subject to a prohibition, restriction, or requirement, as applicable, imposed by Title 2 (Public Education) of the Tex. Educ. Code, or a rule adopted under Title 2 (Public Education) of the Tex. Educ. Code relating to special education programs. (TEX. EDUC. CODE § 12.104(b)(2)(F)).

Richard Milburn Academy shall comply with the requirements for monitoring compliance with federal and state laws relating to special education pursuant to Tex. Educ. Code § 29.010.

Sec. 2. ASSURANCE

Open-enrollment charter schools must submit a plan to the Texas Education Agency that provides assurances that the charter school has in effect policies, procedures and programs that are consistent with the State and Federal policies and procedures governing special education. (20 U.S.C. §1413(a); 34 C.F.R. §§ 300.200-.201)

Sec. 3. PUBLIC EDUCATION INFORMATION MANAGEMENT SYSTEM (PEIMS)

“Most of the data TEA requests from school districts and charter schools are gathered using the Public Education Information Management System (“PEIMS”). PEIMS data are used for the Academic Excellence Indicator System (“AEIS”), Foundation School Program (“FSP”), statistical purposes, federal reporting, legislative requests, and audit purposes. Through PEIMS, schools report data including student demographic and academic performance, student attendance, personnel information, financial data, and organizational information.” *Texas Open-Enrollment Charter School Handbook*, p. 46 (TEA, Division of Charter School Administration, September 2011).

Sec. 4. APPLICABILITY OF TITLE RELATING TO THE PEIMS

An open-enrollment charter school is subject to a prohibition, restriction, or requirement, as applicable, imposed by Title 2 (Public Education) of the Tex. Educ. Code, or a rule adopted under Title 2 (Public Education) of the Tex. Educ. Code, relating to the PEIMS to the extent necessary to monitor compliance with Subchapter D (Open-Enrollment Charter School), Chapter 12, Tex. Educ. Code. (TEX. EDUC. CODE §12.104(b)(2)(A)).

The Superintendent or designee shall prepare required PEIMS submissions in accordance with PEIMS Data Standards and Module 10 of the Financial Accountability System Resource Guide. The Superintendent or designee may collaborate with the regional education service center in preparing and timely submitting PEIMS reports.

Sec. 5. CONTRACTS FOR SERVICES; RESIDENTIAL PLACEMENT

Richard Milburn Academy may contract with a public or private facility, institution, or agency inside or outside of this State for the provision of services to students with disabilities. Each contract for residential placement must be approved by the Commissioner. The Commissioner may approve a residential placement contract only after at least a programmatic evaluation of personnel qualifications, adequacy of physical plant and equipment, and curriculum content. The Commissioner may approve either the whole or a part of a facility or program. (TEX. EDUC. CODE §29.008(a)).

When a student, including one for whom the State is managing conservator, is placed primarily for care or treatment reasons in a private residential facility that operates its own private education program, none of the costs may be paid from public education funds. If a residential placement primarily for care or treatment reasons involves a private residential facility in which the education program is provided by the open-enrollment charter school, the portion of the costs that includes appropriate education services, as determined by the admission, review, and dismissal (“ARD”) committee, shall be paid from State and Federal education funds. (TEX. EDUC. CODE § 29.008(c)).

If Richard Milburn Academy contracts for the provision of education services rather than providing the services, Richard Milburn Academy shall oversee the implementation of the student’s individualized education program (“IEP”) and shall annually reevaluate the appropriateness of the arrangement. An approved facility, institution, or agency with whom Richard Milburn Academy contracts shall periodically report to Richard Milburn Academy on the services the student has received or will receive in accordance with the contract as well as diagnostic or other evaluative information that Richard Milburn Academy

requires in order to fulfill its obligations under Subchapter A (Special Education), Chapter 29, Tex. Educ. Code. (TEX. EDUC. CODE § 29.008(d)).

Sec. 6. FACILITIES

Any construction of new facilities or alteration of existing facilities with authorized Individuals with Disabilities Education Act (“IDEA”) program funds must comply with the requirements of:

- Appendix A of Part 36 of Title 28, Code of Federal Regulations (commonly known as the *Americans with Disabilities Accessibility Guidelines for Buildings and Facilities*); and
- Appendix A of Subpart 101-19.6 of Title 41, Code of Federal Regulations (commonly known as the *Uniform Federal Accessibility Standards*).

Sec. 7. ADMINISTRATION OF EQUIPMENT

The ARD committee must consider whether the student needs assistive technology devices (“ATDs”) as part of the student’s special education, related services, or supplementary aids and services. On a case-by-case basis, the use of school-purchased ATDs in the student’s home or in other settings is required if the student’s ARD committee determines that the student needs access to those devices in order to receive free appropriate public education. (34 C.F.R. §§ 300.105; 300.324(a)(2)(v); 20 U.S.C. § 1414(d)(3)(B)(v)).

Assistive technology means any device or equipment used to improve or maintain the function capabilities of a student with a disability. Assistive technology does not include a medical device that is surgically implanted. (34 C.F.R. §§ 300.5-300.6).

Richard Milburn Academy may transfer an ATD in accordance with TEX. EDUC. CODE, § 30.0015. The transfer agreement must include the standards in TEX. EDUC. CODE § 30.0015, including the following:

- 1) The transferor and transferee must represent and agree that the terms of the transfer are based on the fair market value of the ATD, determined in accordance with generally accepted accounting principles.
- 2) The informed consent of the parent of the student with a disability, or the adult student, for whom the ATD is being transferred must be obtained before the transfer of an ATD pursuant to TEX. EDUC. CODE § 30.0015. The procedures employed by Richard Milburn Academy in obtaining informed consent shall be consistent with the procedures employed by the school to obtain parental consent under 34 C.F.R. § 300.300. Consistent with 34 C.F.R., § 300.505(c), informed parental or adult student consent need not be obtained if the school can demonstrate that it has taken reasonable measures to obtain that consent, and the student’s parent or the adult student has failed to respond. To meet the reasonable measures requirement, the school must use procedures consistent with those described in 34 C.F.R. § 300.322(d).
- 3) If the transfer is a sale, then the sale of the ATD shall be evidenced by a “Uniform Transfer Agreement” which includes the following:
 - a the names of the transferor and the transferee (which may be any individual or entity identified in TEX. EDUC. CODE, § 30.0015(b));
 - b the date of the transfer;
 - c a description of the ATD being transferred;
 - d the terms of the transfer (including the transfer of warranties, to the extent applicable); and
 - e the signatures of authorized representatives of both transferor and transferee. (19

TEX. ADMIN. CODE § 89.1056).

Sec. 8. SPECIAL EDUCATION TEACHER DEFINED

When used with respect to any public elementary school or secondary school special education teacher teaching in a State, such term means that—the teacher has obtained full State certification as a special education teacher (including certification obtained through alternative routes to certification), or passed the State special education teacher licensing examination, and holds a license to teach in the State as a special education teacher, except that when used with respect to any teacher teaching in a public charter school, the term means that the teacher meets the requirements set forth in the State’s public charter school law.

Sec. 9. COMPLIANCE WITH FEDERAL AND STATE PERSONNEL STANDARDS FOR INDIVIDUALS SERVING CHILDREN WITH DISABILITIES

Richard Milburn Academy shall ensure that personnel standards for all individuals serving children with disabilities are met in accordance with the IDEA and its procedures.

Richard Milburn Academy recognizes that both the Every Student Succeeds Act “ESSA” and the IDEA provide that charter school teachers must meet the requirements set forth in the State’s public charter school law. 20 U.S.C. §§ 6311(g)(2)(J); 20 U.S.C. § 1401(10)(B)(i). In Texas, that means that the charter school special education teacher must be certified.

Richard Milburn Academy shall make an ongoing good-faith effort to recruit and hire appropriately and adequately certified and/or licensed personnel to provide a wide range of special education and related services to students with disabilities who are eligible for special education services. Special education staffing needs come from the individualized decisions made by the ARD committee.

Richard Milburn Academy shall ensure that all personnel necessary to carry out the requirements of the IDEA are appropriately and adequately certified and/or licensed, prepared and assigned.

Richard Milburn Academy adopts as policy the provisions under State and Federal law concerning personnel, including:

Charter school teachers must only meet the requirements of the State’s public charter school law, which differ from the requirements for Texas teacher certification. In Texas, State law does not require a teacher employed by an open-enrollment charter school to be certified unless the teacher is assigned to teach in special education or bilingual education programs, in which case the appropriate State certification is required. The minimum qualification under State law for a teacher at an open-enrollment charter school, other than a special education or bilingual education teacher, is a bachelor’s degree. However, the governing body of Richard Milburn Academy may set the qualifications for teachers at a standard above what State law requires.

The open-enrollment charter school shall not employ a person as a teacher unless that person holds a bachelor’s degree. (TEX. EDUC. CODE § 12.129(a)). In an open-enrollment charter school that serves youth referred to or placed in a residential trade center by a local or state agency, a person may be employed as a teacher for a noncore vocational course without holding a baccalaureate degree if the person has demonstrated subject matter expertise related to the subject taught, such as professional work experience, formal training and education, holding a relevant active professional industry license, certification, or registration, or any combination of work experience, training and education, and industry license, certification, or registration, and received at least 20 hours of classroom management training as determined by the governing body of the open-enrollment charter school. (TEX. EDUC. CODE § 12.129(b)).

All special education and related service personnel shall be certified, endorsed, or licensed in the area or areas of assignment in accordance with 34 C.F.R. § 300.156; TEX. EDUC. CODE §§ 21.002, 21.003, and 29.304; or appropriate state agency credentials. (19 TEX. ADMIN. CODE § 89.1131(a)).

Sec. 10. NOTICE TO PARENTS – QUALIFICATIONS

The Superintendent or designee shall provide to the parent or guardian of each student enrolled in Richard Milburn Academy written notice of the qualifications of each teacher employed by Richard Milburn Academy.

Additionally, the Superintendent or designee shall, at the beginning of each school year, notify the parents of each student attending Richard Milburn Academy that the parents may request, and Richard Milburn Academy shall provide the parents on request (and in a timely manner), information regarding the professional qualifications of the student’s classroom teachers, including, at a minimum, the following:

1. Whether the teacher has met state qualification and licensing criteria for the grade levels and subject areas in which the teacher provides instruction.
2. Whether the teacher is teaching under emergency or other provisional status through which state qualification or licensing criteria have been waived.
3. Whether the teacher is teaching in the field of discipline of the certification of the teacher.
4. Whether the student is provided services by paraprofessionals and, if so, their qualifications.

Richard Milburn Academy shall also provide timely notice to each individual parent or adult student that the student has been assigned, or has been taught for four or more consecutive weeks by, a teacher who does not meet applicable state certification standards or licensure requirements at the grade level and subject area in which the teacher has been assigned.

PG-6.3 ADMISSION, REVIEW AND DISMISSAL COMMITTEE

Sec. 1. ADMISSION, REVIEW AND DISMISSAL COMMITTEES

Richard Milburn Academy shall establish an admission, review and dismissal (“ARD”) committee for each eligible student with a disability and for each student for whom a full and individual initial evaluation is conducted. The ARD committee shall be the individualized education program (“IEP”) team defined at 34 C.F.R. § 300.321.

Sec. 2. ARD COMMITTEE RESPONSIBILITIES

The ARD committee and Richard Milburn Academy are responsible for:

1. Evaluating, reevaluating, and determining eligibility for special education and related services;
2. Placement of students with disabilities, including disciplinary changes in placement;
3. Development of student IEPs;
4. Development and implementation of service plans for students who have been placed by their parents in private schools and who have been designated to receive special education and related services;
5. Compliance with the least restrictive environment standard;

6. Compliance with state requirements for reading diagnosis and state assessments;
7. Development of personal graduation plans;
8. Development of accelerated instruction under TEX. EDUC. CODE § 28.0211 and intensive programs of instruction under TEX. EDUC. CODE § 28.0213;
9. Evaluation, placement, and coordination of services for students who are deaf, hard of hearing, blind, or visually impaired; and
10. Determining eligibility for extracurricular activities, under TEX. EDUC. CODE §33.081.

19 TEX. ADMIN. CODE. § 89.1050(a); 34 C.F.R. §§ 300.116(a), 300.321(a); *19 TAC 89.1050(a)*.

Sec. 3. COMMITTEE MEMBERS

Richard Milburn Academy shall ensure that each ARD committee meeting includes all of the following:

1. The parents of a child with a disability;
2. At least one regular education teacher of the child (if the child is, or may be, participating in the regular education environment) who must, to the extent practicable, be a teacher who is responsible for implementing a portion of the student's IEP;
3. At least one special education teacher, or where appropriate, at least one special education provider of the child;
4. A representative of Richard Milburn Academy who:
 - a. Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;
 - b. Is knowledgeable about the general education curriculum; and
 - c. Is knowledgeable about the availability of Richard Milburn Academy's resources;
5. An individual who can interpret the instructional implications of evaluation results, who may be a member of team described in Section 3(2)-(6);
6. At the discretion of the parent or Richard Milburn Academy, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate;
7. The child, whenever appropriate;
8. To the extent appropriate, with the consent of the parent(s) or a student who has reached the age of majority, a representative of any participating agency that is likely to be responsible for providing or paying for transition services;
9. A representative from career and technical education ("CTE"), preferably the teacher, when considering initial or continued placement of a student in CTE;
10. For a child who is an emergent bilingual student, a member of the child's language-proficiency assessment committee ("LPAC");
11. For a child with an auditory impairment, including deaf-blindness, a teacher who is certified in the education of children with auditory impairments; and
12. For a child with a visual impairment, including deaf-blindness, a teacher who is certified in the education of children with visual impairments.

19 TAC 89.1050.

A Richard Milburn Academy member of the ARD committee shall not be required to attend an IEP meeting, in whole or in part, if the parent and Richard Milburn Academy agree in writing that the attendance is not necessary because the member's area of the curriculum or related services is not being modified or discussed during the meeting.

A Richard Milburn Academy member of the ARD committee may be excused from attending an IEP meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's

area of curriculum or related services if the parent, in writing, and Richard Milburn Academy consent to the excusal and the member submits, in writing, to the parent and the ARD committee, input into the development of the IEP before the meeting.

20 U.S.C. § 1414(d)(1)(C); 34 C.F.R. § 300.321(e).

a) Transition Meeting Membership

If the ARD committee is meeting to consider postsecondary goals and the transition services needed to assist the student in reaching those goals, Richard Milburn Academy shall invite:

1. The student. If the student does not attend, Richard Milburn Academy shall take other steps to ensure that the student's preferences and interests are considered.
2. To the extent appropriate, and with the consent of the parent or student who has reached the age of majority, a representative of any other agency that is likely to be responsible for providing or paying for transition services.

34 C.F.R. § 300.321(b).

Sec. 4. PARENTAL INVOLVEMENT

Richard Milburn Academy shall take steps to ensure that one or both of the parents of a student with a disability are present at each ARD committee meeting or are afforded the opportunity to participate, including:

1. Notifying the parents of the meeting early enough to ensure that they will have an opportunity to attend (the notice shall include all information required by applicable regulation); and
2. Scheduling the meeting at a mutually agreed time and place.

34 C.F.R. § 300.322(a)–(b); 19 TEX. ADMIN. CODE § 89.1050.

Sec. 5. ALTERNATIVE PARTICIPATION METHODS

If neither parent can attend an ARD committee meeting, Richard Milburn Academy must use other methods to ensure parent participation, including individual or conference telephone calls. 20 U.S.C. § 1414(f); 34 C.F.R. § 300.322(c).

An ARD committee meeting may be conducted without a parent in attendance if Richard Milburn Academy is unable to convince the parents that they should attend. In such event, Richard Milburn Academy must keep a record of its attempts to arrange a mutually agreed time and place, such as:

1. Detailed records of telephone calls made or attempted and the results of those calls;
2. Copies of correspondence sent to the parents and any responses received; and
3. Detailed records of visits made to the parent's home or place of employment and the results of those visits.

34 C.F.R. § 300.322(d).

Sec. 6. ARD COMMITTEE MEETINGS

Richard Milburn Academy shall initiate and conduct ARD committee meetings for the purpose of

developing, reviewing, and revising the IEP of a student with a disability. The committee shall review each student's IEP periodically, and, if appropriate, revise the IEP. A meeting must be held for this purpose at least once a year. The ARD committee must also determine the child's placement once per year.

If the student has a behavioral intervention plan ("BIP") as part of the child's IEP, the ARD committee must review the BIP at least annually and more frequently if appropriate to address the safety of the student, the safety of others, or changes in the child's circumstances that may impact the child's behavior in accordance with TEC 29.005(h).

A meeting does not include informal or unscheduled conversations involving Richard Milburn Academy personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision. A meeting also does not include preparatory activities that Richard Milburn Academy personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting. 20 U.S.C. § 1414(d)(4); 34 C.F.R. §§ 300.116(b)(1), 300.324(b), (c)(1); 300.501(b)(3).

a) Meeting at Parent Request

Upon receipt of a written request for an ARD committee meeting from a parent, the Richard Milburn Academy must (1) schedule and convene a meeting; or (2) within five school days, provide the parent with written notice explaining why the district refuses to convene a meeting. 19 TEX. ADMIN. CODE § 89.1050(e).

b) Transfer Students

If a student transfers to Richard Milburn Academy, and the student had a previous IEP in place, Richard Milburn Academy shall provide the student with a free appropriate public education ("FAPE"), including services comparable to those described in the previous IEP, in consultation with the parents, until:

1. In the case of a student who transfers within the state, Richard Milburn Academy adopts the previous IEP or develops, adopts, and implements a new IEP.
2. In the case of a student who had an IEP in effect in another state, Richard Milburn Academy conducts an evaluation, if determined necessary by Richard Milburn Academy, and develops, adopts, and implements a new IEP, if appropriate.

20 U.S.C. § 1414(d)(2)(C)(i); 34 C.F.R. § 300.323(e), (f).

c) Transfer of Records

Richard Milburn Academy shall take reasonable steps to promptly obtain the child's records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the child, from the child's previous district. 20 U.S.C. § 1414(d)(2)(C)(ii); 34 C.F.R. § 300.323(g).

d) Military Dependents

Richard Milburn Academy shall initially provide comparable services to a military student with disabilities based on his or her current IEP. This does not preclude Richard Milburn Academy from performing subsequent evaluations to ensure appropriate placement of the student. Tex. Educ. Code § 162.002 Art. V, § C.

Sec. 7. ELIGIBILITY DETERMINATIONS

The group of qualified professionals that determines whether a child is a child with a disability and the child's educational needs is the ARD committee.

Evaluations and eligibility determinations shall adhere to the requirements set forth in the IDEA, the Texas Education Code, and their implementing regulations. For additional information, *see* PG-6.14 through 6.16.

19 TAC 89.1040(b), 89.1050(a)(5); 34 CFR 300.306(a)(1).

Richard Milburn Academy shall provide a copy of the evaluation report and the documentation of determination of eligibility at no cost to the parent. 20 U.S.C. § 1414(b)(4)(B); 34 C.F.R. § 300.306(a).

The ARD committee must make its decisions regarding a student's initial eligibility determination and, when appropriate, the student's IEP and placement within the timeframes prescribed by state and federal law.

Sec. 8. INDIVIDUALIZED EDUCATION PROGRAM

Richard Milburn Academy shall develop, review, and revise an IEP for each child with a disability, and Richard Milburn Academy shall have an IEP in effect for each child with a disability at the beginning of each school year.

20 U.S.C. 1412(a)(4),(d)(2)(A); 34 CFR 300.320(a).

The term "individualized education program" or "IEP" means a written statement for each child with a disability that includes:

1. A statement of the child's present levels of academic achievement and functional performance;
2. A statement of measurable annual goals, including academic and functional goals;
3. A description of how the child's progress toward the annual goals will be measured and when periodic reports on the progress of the child will be provided;
4. A statement of the specific special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child;
5. A statement of the program modifications or supports for school personnel that will be provided for the child;
6. An explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in extracurricular and nonacademic activities;
7. The projected dates for initiation of services and modifications and the anticipated frequency, location, and duration of these services and modifications;
8. A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on state or system-wide assessments;
9. If the ARD committee determines that the child must take an alternative assessment instead of a particular regular state or system-wide assessment, a statement of why the child cannot participate in the regular assessment and why the particular assessment selected is appropriate for the child;
10. Beginning not later than the first IEP to be in effect when the child is 16, or younger if determined appropriate by the ARD committee, and updated annually thereafter, a statement of appropriate,

measurable postsecondary goals and transition services needed to assist the child in reaching those goals; and

11. Beginning not later than one year before the child reaches the age of 17, a statement that the child has been informed of the rights that will transfer to the child upon reaching the age of majority.

20 U.S.C. § 1414(d); 34 C.F.R. § 300.320; 19 TEX. ADMIN. CODE § 89.1055.

Sec. 9. TRANSLATING IEPs

If the child's parent is unable to speak English, Richard Milburn Academy shall:

1. Provide the parent with a written or audio-taped copy of the child's IEP translated into Spanish if Spanish is the parent's native language; or
2. If the parent's native language is a language other than Spanish, make a good faith effort to provide the parent with a written or audiotaped copy of the child's IEP translated into the parent's native language.

TEX. EDUC. CODE § 29.005(d).

Sec. 10. AUTISM/PERVASIVE DEVELOPMENTAL DISORDERS

For students with autism/pervasive developmental disorders, the following strategies shall be considered by the ARD committee, based on peer-reviewed, research-based educational programming practices to the extent practicable and, when needed, addressed in the IEP:

1. Extended educational programming;
2. Daily schedules reflecting minimal unstructured time and active engagement in learning activities;
3. In-home training and community-based training or viable alternatives that assist the student with the acquisition of social/behavioral skills;
4. Positive behavior support strategies based on relevant information;
5. Beginning at any age, futures planning for integrated living, work, community, and educational environments that considers skills necessary to function in current and post-secondary environments;
6. Parent/family training and support, provided by qualified personnel with experience in Autism Spectrum Disorders ("ASD");
7. Suitable staff-to-student ratio appropriate to identified activities and as needed to achieve social/behavioral progress based on the child's developmental and learning level (acquisition, fluency, maintenance, generalization) that encourages work towards individual independence;
8. Communication interventions, including language forms and functions that enhance effective communication across settings;
9. Social skills supports and strategies based on social skills assessment/curriculum and provided across settings;
10. Professional educator/staff support; and
11. Teaching strategies based on peer-reviewed, research-based practices for students with ASD.

If the ARD committee determines that services are not needed in one or more of the areas in 1–11 above, the IEP shall include a statement reflecting that decision and the basis upon which the determination was made. 19 TEX. ADMIN. CODE § 89.1055(e)–(f).

Sec. 11. VISUAL IMPAIRMENT

Richard Milburn Academy shall adopt written procedures as required in Tex. Educ. Code § 30.002(c)(10) for providing special education services to students with visual impairments, if such services are necessary. *19 TEX. ADMIN. CODE § 89.1075(b)*.

An IEP for a student with a visual impairment must include instruction in braille unless the student's ARD committee determines and documents that braille is not an appropriate literacy medium for the student, based on an evaluation of the student's appropriate literacy media and literacy skills and the student's current and future instructional needs. *Tex. Educ. Code § 30.002*.

Sec. 12. STUDENTS WHO ARE DEAF OR HARD OF HEARING

Richard Milburn Academy must develop an IEP for students who are deaf or hard of hearing in which the students have an education in which their unique communication mode is respected, used, and developed to an appropriate level of proficiency. *Tex. Educ. Code § 29.303*.

Sec. 13. COLLABORATIVE PROCESS

All members of the ARD committee shall have the opportunity to participate in a collaborative manner in developing the IEP. Decisions concerning the required elements of the IEP shall be made by agreement of the required members, if possible. The ARD committee may agree to an annual IEP or an IEP of shorter duration.

a) Recess

When agreement about all required elements of the IEP is not achieved, the parent or adult student who disagrees shall be offered a single opportunity to have the ARD committee recess for a period not to exceed ten school days. This recess is not required when:

1. The student's presence on campus represents a danger of physical harm to the student or others;
2. The student has committed an expellable offense; or
3. The student has committed an offense that may lead to placement in a disciplinary alternative education program.

These requirements do not prohibit the members of the ARD committee from recessing an ARD committee meeting for reasons other than failure of the parents and Richard Milburn Academy to reach agreement about all required elements of an IEP.

During the recess, the ARD committee members shall consider alternatives, gather additional data, prepare further documentation, and/or obtain additional resource persons to enable the ARD committee to reach agreement.

The date, time, and place for continuing the ARD committee meeting shall be determined by agreement before the recess.

19 TAC 89.1050(g).

When an ARD committee agrees to recess and reconvene due to a lack of mutual agreement about one or more required IEP elements, the parent or Richard Milburn Academy may request an independent facilitator from the Texas Education Agency in accordance with 19 TAC 89.1197 and TEC 29.020.

b) No Agreement Reached

If, after the ten-day recess, the ARD committee still cannot reach agreement, Richard Milburn Academy shall implement the IEP that it has determined to be appropriate for the student. A written statement of the basis for the disagreement shall be included in the IEP. Each ARD committee member who disagrees with IEP is entitled to include a statement of disagreement in the IEP.

TEC 29.005(c); 19 TAC 89.1050(g).

When Richard Milburn Academy implements an IEP with which the parents, or an adult student disagree, it shall provide prior written notice in compliance with applicable regulations and Richard Milburn Academy policy.

19 TEX. ADMIN. CODE § 89.1050.

Sec. 14. IEP MODIFICATION

After a student's annual ARD committee meeting, changes to an IEP may be made either by the entire ARD committee or by amending the IEP by agreement, rather than redrafting the entire IEP.

To do so, the parent and Richard Milburn Academy must agree to not convene an ARD committee meeting to amend the IEP and Richard Milburn Academy must develop a written document to amend or modify the IEP.

Upon request, a parent shall be provided with a revised copy of the IEP with amendments incorporated.

Decisions regarding eligibility, changes of placement, and manifestation determination reviews may not be conducted through the amendment process.

34 CFR 300.324(a)(4),(6).

To the extent possible, Richard Milburn Academy shall encourage the consolidation of reevaluation meetings for the child and other ARD committee meetings for the child. 20 U.S.C. § 1414(d)(3)(D)–(F); 34 C.F.R. § 300.324(a)(4)–(a)(6).

Sec. 15. LEAST RESTRICTIVE ENVIRONMENT

Richard Milburn Academy shall ensure that, to the maximum extent possible, children with disabilities shall be educated with children who are not disabled. Special classes, special schooling, or other removal of children with disabilities from the regular educational environment shall occur only when the nature or severity of the child's disability is such that education in regular classes with the use of supplementary aids and services cannot be satisfactorily achieved. 20 U.S.C. § 1412(a)(5); 34 C.F.R. § 300.114(a)(2).

Sec. 16. EXTENDED SCHOOL YEAR SERVICES

Richard Milburn Academy shall ensure that ESY services are available as necessary to provide a student with a disability with a FAPE.

ESY services must be provided only if the ARD committee determines, on an individual basis, that the services are necessary for a FAPE. Richard Milburn Academy may not limit ESY services to particular categories of disability or unilaterally limit the type, amount, or duration of ESY services. 34 C.F.R. § 300.106; 19 TEX. ADMIN. CODE § 89.1065.

Sec. 17. GRADUATION

A student receiving special education services who successfully completes the requirements of his or her IEP, including performance on a state assessment required for graduation, shall receive a high school diploma. A student's ARD committee shall determine if the student will be required to meet satisfactory performance on an assessment for purposes of graduation. 19 TEX. ADMIN. CODE § 101.3023(a).

Sec. 18. STATE ASSESSMENTS

The TEA shall develop or adopt appropriate criterion-referenced alternative assessment instruments to be administered to each student in a special education program for whom a state assessment instrument adopted under Tex. Educ. Code § 39.023(a), even with allowable accommodations, would not provide an appropriate measure of student achievement, as determined by the student's ARD committee, including assessment instruments approved by the Commissioner that measures growth. The assessment instruments developed or adopted, including the assessment instruments approved by the Commissioner, must, to the extent allowed under federal law, provide a district with options for the assessment of students.

The TEA may not adopt a performance standard that indicates that a student's performance on the alternate assessment does not meet standards if the lowest level of the assessment accurately represents the student's developmental level as determined by the student's ARD committee.

The student's ARD committee shall determine whether any allowable modification is necessary in administering to the student a required end-of-course ("EOC") assessment instrument under Tex. Educ. Code § 39.023(c), and whether the student is required to achieve satisfactory performance on an EOC assessment instrument to receive a high school diploma.

Sec. 19. TRANSPORTATION

Richard Milburn Academy shall provide special transportation with federal funds only when the ARD committee determines that the condition of the student warrants the service in order for the student to receive the special education and related services (if any) set forth in the IEP. 19 TEX. ADMIN. CODE § 89.1096(e).

Sec. 20. TRANSITIONING SERVICES

a) Definitions

"Transition services" means a coordinated set of activities for a child with a disability that:

1. Is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child to facilitate the child's movement from school to post-school activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation.
2. Is based on the individual child's needs, taking into account the child's strengths, preferences, and interests; and includes:
 - a. Instruction;
 - b. Related services;
 - c. Community experiences;
 - d. The development of employment and other post-school adult living objectives; and
 - e. If appropriate, acquisition of daily living skills and provision of a functional vocational evaluation.

20 U.S.C. § 1401(34); 34 C.F.R. § 300.43.

b) Individual Transition Planning

In accordance with Tex. Educ. Code §§ 29.011 and 29.0111, not later than when a student reaches 14 years of age, the ARD committee must consider, and if appropriate, address the following issues in the IEP:

1. Appropriate student involvement in the student's transition to life outside the public school system;
2. If the student is younger than 18 years of age, appropriate parental involvement in the student's transition;
3. If the student is at least 18 years of age, appropriate parental involvement in the student's transition, if the parent is invited to participate by the student or Richard Milburn Academy;
4. Any postsecondary education options;
5. A functional vocational evaluation;
6. Employment goals and objectives;
7. If the student is at least 18 years of age, the availability of age-appropriate instructional environments;
8. Independent living goals and objectives; and
9. Appropriate circumstances for referring a student or the student's parents to a governmental agency for services.

In accordance with 34 C.F.R. § 300.320(b), beginning not later than the first IEP to be in effect when the student turns 16 years of age, or younger if determined appropriate by the ARD committee, and updated annually thereafter, the IEP must include the following:

1. Appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and
2. The transition services, including courses of study, needed to assist the student in reaching the postsecondary goals developed under paragraph (1) of this subsection.

20 U.S.C. §§ 1414(d)(1)(A)(i)(VIII), 1414(d)(6); 34 C.F.R. § 300.320(b); TEX. EDUC. CODE § 29.0111; 19 TEX. ADMIN. CODE § 89.1055(h), (j).

Richard Milburn Academy shall post the transition and employment guide on the Richard Milburn Academy website if Richard Milburn Academy maintains a website; provide written information and, if necessary, assistance to a student or parent regarding how to access the electronic version of the guide at: (A) the first meeting of the student's ARD committee at which transition is discussed; and (B) the first committee meeting at which transition is discussed that occurs after the date on which the guide is updated. Upon request, Richard Milburn Academy shall provide a printed copy of the guide to a student or parent. Tex. Educ. Code § 29.0112.

c) Graduation

Graduation with a regular high school diploma under 19 TEX. ADMIN. CODE § 89.1070(b)(1), (b)(2)(D), (f)(1), (f)(2), or (f)(3)(D) terminates a student's eligibility for special education services. For students who receive a diploma according to 19 TEX. ADMIN. CODE § 89.1070(b)(2)(A), (B), or (C) or (f)(3)(A), (B), or (C), the ARD committee shall determine needed educational services upon the request of the student or parent to resume services, as long as the student meets the age requirements.

Graduation from high school with a regular diploma constitutes a change in placement that requires prior

written notice to parents.

Richard Milburn Academy is not required to conduct an evaluation before termination of eligibility due to graduation from secondary school with a regular high school diploma or due to exceeding the age eligibility for a FAPE under state law.

Richard Milburn Academy shall provide the child with a summary of the child's academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child's postsecondary goals.

20 U.S.C. § 1414(c)(5); 34 C.F.R. §§ 300.102(a)(3), 300.305(e)(2); 19 TEX. ADMIN. CODE § 89.1070.

Sec. 21. IMPROVEMENT PLANS/BEHAVIOR INTERVENTION PLANS

The ARD committee may determine that a behavior improvement plan or a behavioral intervention plan ("BIP") is appropriate for a student with an IEP. If deemed appropriate, the BIP shall be included as part of the student's IEP and provided to each teacher with responsibility for educating the student.

If a BIP is included as part of a student's IEP, the ARD committee shall review the plan at least annually and more frequently if appropriate to address:

1. changes in a student's circumstances that may impact the student's behavior, such as:
 - a. the placement of the student in a different educational setting;
 - b. an increase or persistence in disciplinary actions taken regarding the student for similar types of behavioral incidents;
 - c. a pattern of unexcused absences; or
 - d. an unauthorized unsupervised departure from an educational setting; or
2. the safety of the student or others.

Education Code 29.005(g),(h).

Sec. 22. COVID-19 SPECIAL EDUCATION RECOVERY ACT

a) IEP Supplement Applicability

Not later than May 1, 2022, Richard Milburn Academy shall prepare a supplement to be included with the IEP developed under Education Code 29.005(b) for each child who was enrolled in Richard Milburn Academy's special education program during the 2019-2020 school year or the 2020-2021 school year.

b) Required Content

The supplement must include information indicating:

1. if applicable, whether the written report of the child's full individual and initial evaluation under Education Code 29.004 was completed during the 2019-2020 school year or the 2020-2021 school year and, if so, whether the report was completed by the date required under section 29.004;
2. if applicable, whether the child's initial IEP was developed under Education Code 29.005(b) during the 2019-2020 school year or the 2020-2021 school year and, if so, whether the program was developed by the date required under 34 CFR 300.323(c)(1);

3. whether the provision of special services to the child under an IEP during the 2019-2020 school year or the 2020-2021 school year was interrupted, reduced, delayed, suspended, or discontinued; and
4. whether compensatory educational services are appropriate for the child based on the information under (1)-(3) above or any other factors.

c) Exception

Education Code 29.0052 does not apply to a child if during the 2020-2021 school year the child's IEP documents the information described in Subsections (b)(1)-(4) above.

Education Code 29.0052.

Sec. 23. SUPPLEMENTAL SPECIAL EDUCATION SERVICES PROGRAM

The Texas Education Agency ("TEA") shall establish and administer a supplemental special education services program under Chapter 29, Education Code, Subchapter A-1 ("the SSES Program"). The SSES Program provides a grant of not more than \$1,500 to the parent of an eligible student for purchase certain supplemental special education services and supplemental special education instructional materials.

a) ARD Committee Duties

For a student who has been approved to participate in the SSES Program, the ARD committee shall meet and provide to the parent:

1. Information regarding the types of supplemental special education services available under the SSES Program and provided by TEA-approved providers for which an account maintained under Education Code 29.042(b) may be used; and
2. Instructions regarding accessing the SSES Program account.

Education Code 29.048(b).

b) ARD Committee Prohibited Considerations

The ARD committee shall not consider a student's receipt of services under the SSES Program when developing the student's IEP.

Education Code 29.048(a).

PG-6.4 ADULT STUDENT

SEC. 1. AGE OF MAJORITY – TRANSFER OF RIGHTS

Not later than one year before the 18th birthday of a student with a disability, Richard Milburn Academy shall:

1. Provide to the student and the student's parents:
 - a. Written notice regarding the transfer of rights; and
 - b. Information and resources regarding guardianship, alternatives to guardianship, including a supported decision-making agreement under Texas Estates Code, Chapter 1357, and other supports and services that may enable the student to live independently; and
2. Ensure that the student's individualized education program ("IEP") includes a statement that

Richard Milburn Academy provided the required notice, information, and resources.

When a student reaches the age of majority (18 years of age), Richard Milburn Academy shall provide written notice to the student and the student's parents of the transfer of parental rights. The notice must include the information required above.

This notice is separate and distinct from the requirement that, beginning at least one year before the student reaches the age of 18, the student's IEP include a statement regarding transfer of parental rights.

If a student with a disability or the student's parent requests information regarding guardianship or alternatives to guardianship, Richard Milburn Academy shall provide the student or parent information and resources on supported decision-making agreements under Texas Estates Code, Chapter 1357.

A student with a disability who is 18 years of age or older or whose disabilities of minority have been removed for general purposes under Chapter 31, Family Code, shall have the same right to make educational decisions as a student without a disability. All other rights accorded to parents under Chapter 29, Subchapter A of the Texas Education Code or 20 U.S.C. § 1415 transfer to the student.

(34 C.F.R. § 300.520; Tex. Educ. Code § 29.017(a), (c), (c-1), (c-2); 19 Tex. Admin. Code § 89.1049(c)).

PG-6.6 CHILD FIND DUTY

SEC. 1. CHILD FIND

Richard Milburn Academy shall ensure that all children residing within Richard Milburn Academy's boundaries who have disabilities, regardless of the severity of their disabilities, and who are in need of special education and related services are identified, located, and evaluated. This requirement applies to all children with disabilities, including:

1. Homeless children;
2. Children who are wards of the state;
3. Children attending private schools;
4. Highly mobile children (including migrant children); and
5. Children who are suspected of being in need of special education but who are advancing from grade to grade.

20 U.S.C. § 1412(a)(3)(A); 34 C.F.R. § 300.111(a)(1)(i), (c).

SEC. 2. STUDENT RECORDS

After each student is enrolled in Richard Milburn Academy, Richard Milburn Academy will promptly request all student records from the student's previous school.

PG-6.7 CHILDREN WHO TRANSFER

Sec. 1 STUDENTS WHO TRANSFER WITH AN IEP DURING THE SAME SCHOOL YEAR

a) Texas Transfers

When a student transfers to Richard Milburn Academy from another school within Texas, Richard Milburn Academy shall provide a free appropriate public education ("FAPE") to the student. Richard Milburn Academy shall provide comparable services as those described in the individualized education program

("IEP") the student transferred with until Richard Milburn Academy adopts the student's IEP from the previous school, or develops, adopts and implements a new IEP.

34 CFR 300.323(e); 19 TAC 89.1050(j)(1).

b) Out-of-State Transfers

If the student with a disability transfers to Richard Milburn Academy from a school outside of Texas, Richard Milburn Academy shall provide the student with FAPE, including comparable services, until Richard Milburn Academy conducts an evaluation and develops, adopts, and implements a new IEP. (34 C.F.R. § 300.323).

A new IEP must be implemented within 30 school days from the date the student is verified as being a student eligible for special education services.

34 CFR 300.323(f); 19 TAC 89.1050(j)(2).

If a student transfers from Richard Milburn Academy, Richard Milburn Academy will furnish the student's special education records to the student's new school not later than the 10th working day after the date a request for the information is received by Richard Milburn Academy.

19 TAC 89.1050(j)(3).

Sec. 2 STUDENTS WHO TRANSFER WITH AN IEP DURING THE SUMMER

A student with a disability who has an IEP in place from a previous in- or out-of-state LEA and who enrolls in a new LEA during the summer is not considered a transfer student for the purposes of 34 CFR 300.323(e) or (f) and corresponding state law and/or regulations.

The new LEA must; (1) implement the IEP from the previous LEA in full on the first day of class of the new school year; or (2) must convene an ARD committee meeting during the summer to revise the student's IEP for implementation on the first day of class of the new school year.

19 TAC 89.1050(j)(4).

PG-6.8 CLOSING THE GAP

Sec. 1. BILINGUAL EDUCATION PROGRAM

Richard Milburn Academy shall identify Limited English Proficient (LEP) students based on state criteria. Richard Milburn Academy shall provide an appropriate Bilingual Education (BE) or English as a Second Language (ESL) program conducted by teachers certified for such courses. (Tex. Educ. Code Chapter 29, Subchapter B; 19 TEX. ADMIN. CODE §§ 89.1201-1265; *Education Code 29.060(a)*).

Sec. 2. STUDENT WITH DISABILITIES AND EMERGENT BILINGUAL STUDENTS

Richard Milburn Academy shall ensure that an emergent bilingual student with limited English proficiency who also qualifies for special education services as a student with a disability under the

Individuals with Disabilities Education Act (IDEA) is not refused services in a bilingual education or English as a second language program solely because the student has a disability. (19 TEX. ADMIN.CODE § 89.1230).

Sec. 3. APPLICABILITY OF TITLE RELATING TO BILINGUAL EDUCATION

An open-enrollment charter school is subject to a prohibition, restriction, or requirement, as applicable, imposed by Title 2 (Public Education) of the Texas Education Code, or a rule adopted under Title 2 (Public Education) of the Texas Education Code, relating to bilingual education under Subchapter B (Bilingual Education and Special Language Programs), Chapter 29, Texas Education Code. (TEX. EDUC. CODE § 12.104(b)(2)(G)). Richard Milburn Academy adopts the requirements of Subchapter B (Bilingual Education and Special Language Programs), Chapter 29, Texas Education Code pursuant to TEX. EDUC. CODE § 12.104(b)(2)(G).

Sec. 4. ESTABLISHMENT OF BILINGUAL EDUCATION AND SPECIAL LANGUAGE PROGRAM

Richard Milburn Academy shall establish a BE or ESL program as required by TEX. EDUC. CODE § 29.053 (Establishment of Bilingual Education and Special Language Programs) and in accordance with the procedures established by the Texas Education Agency (“TEA”), unless otherwise excepted under TEX. EDUC. CODE § 29.054 (Exception). (TEX. EDUC. CODE § 29.053).

Sec. 5. LANGUAGE PROFICIENCY ASSESSMENT COMMITTEES

Richard Milburn Academy shall further establish a Language Proficiency Assessment Committee (“LPAC”) that complies with TEX. EDUC. CODE § 29.063. The LPAC shall select the appropriate assessment option for each English language learner (ELL) in accordance with this subchapter. For each ELL who receives special education services, the student's admission, review, and dismissal (“ARD”) committee in conjunction with the student’s LPAC shall select the appropriate assessments. The LPAC shall document the decisions and justifications in the student's permanent record file, and the ARD committee shall document the decisions and justifications in the student’s individualized education program. Assessment decisions shall be made on an individual student basis and in accordance with administrative procedures established by the TEA. 19 Tex. Admin. Code § 101.1005(a).

Sec. 6. PROGRAM CONTENT; METHOD OF INSTRUCTION

Richard Milburn Academy’s bilingual education program’s content and instruction shall comply with TEX. EDUC. CODE § 29.055.

Sec. 7. ENROLLMENT OF STUDENTS IN PROGRAM

Richard Milburn Academy shall comply with the TEA criteria for identification, assessment, and classification of emergent bilingual students eligible for entry into the program or exit from the program. (TEX. EDUC. CODE § 29.056(a); *19 TAC 89.1226*).

The student’s parent or adult student must approve a student’s entry into the program, exit from the program, or placement in the program. The open-enrollment charter school or parent may appeal the decision under TEX. EDUC. CODE § 29.064. (TEX. EDUC. CODE § 29.056(a)).

Richard Milburn Academy, through its LPAC, shall evaluate and consider reenrollment of students who have transferred out of a bilingual education or special language program under TEX. EDUC. CODE § 29.056(h)

as required by TEX. EDUC. CODE § 29.0561.

Sec. 8. FACILITIES; CLASSES

Richard Milburn Academy shall ensure that bilingual education and special language programs are located in the regular public charter school rather than in separate facilities. (TEX. EDUC. CODE § 29.057).

Sec. 9. ENROLLMENT OF STUDENTS WHO ARE NOT EMERGENT BILINGUAL STUDENTS

Richard Milburn Academy ensures that enrollment of students who are not emergent bilingual may occur only if the requirements of TEC §29.058 are met. (TEC §29.058).

Sec. 10. COOPERATION AMONG SCHOOLS

Richard Milburn Academy may cooperate with other schools to provide a bilingual education or special language program. (TEC §29.059).

Sec. 11. BILINGUAL EDUCATION AND SPECIAL LANGUAGE PROGRAM TEACHERS

Richard Milburn Academy shall ensure that bilingual education and special language program teachers are properly certified. (TEX. EDUC. CODE § 29.061).

Sec. 12. APPEALS

A parent of a student enrolled in a bilingual education or special language program may appeal to the Commissioner of Education if Richard Milburn Academy fails to comply with the requirements established by law or by the TEA. If the parent disagrees with the placement of the student in the program, the parent may appeal that decision to the Board. Appeals shall be conducted in accordance with procedures adopted by the Commissioner of Education under Title 19, Chapter 157 of the Texas Administrative Code. (TEX. EDUC. CODE § 29.064; 19 Tex. Admin. Code § 89.1240).

Sec. 13. PEIMS REPORTING REQUIREMENTS

Richard Milburn Academy shall meet Public Education Information Management System (PEIMS) Reporting Requirements with respect to its bilingual education or special language programs. (TEX. EDUC. CODE § 29.066).

PG-6.9 CONSENT AND PRIOR WRITTEN NOTICE

Sec. 1. CONSENT

Consent means that:

1. The parent or adult student has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication;
2. The parent or adult student understands and agrees in writing to the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and

3. The parent or adult student understands that the granting of consent is voluntary on the part of the parent or adult student and may be revoked at any time. A revocation of consent is not retroactive.

If the parent or adult student revokes consent in writing for the child's or adult student's receipt of services after the child or adult student is initially provided special education and related services, Richard Milburn Academy is not required to amend the child's or adult student's education records to remove any references to the child's or adult student's receipt of services because of the revocation of consent. 34 C.F.R. § 300.9.

Sec. 2. LANGUAGE OF NOTICES

The procedural safeguards and prior notices described below must be written in a language understandable to the general public. The notice must be provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so. 34 C.F.R. §§ 300.503(c), 300.504(d).

a) Electronic Delivery of Notices

A parent of a child or adult student with a disability may elect to receive required notices by electronic mail, if Richard Milburn Academy makes that option available. 34 C.F.R. § 300.505.

Sec. 3. NOTICE OF PROCEDURAL SAFEGUARDS

Richard Milburn Academy shall provide a copy of the procedural safeguards to parents or adult student only once per year, except that a copy also shall be given to the parents or adult student:

1. Upon initial referral or parental or adult student request for evaluation;
2. Upon receipt of the first state complaint and upon receipt of the first due process complaint in a school year;
3. On the date of a decision to make a disciplinary removal that is a change in placement; and
4. Upon request by a parent or adult student.

Richard Milburn Academy may also place a current copy of the procedural safeguards notice on its Internet website.

a) Contents of Notice

The notice shall include a full explanation of the procedural safeguards relating to:

1. Independent educational evaluations;
2. Prior written notice;
3. Parental consent;
4. Access to educational records;
5. Opportunity to present and resolve complaints through the due process complaint and state complaint procedures, including:
 - a. The time period in which to file a complaint,
 - b. The opportunity for Richard Milburn Academy to resolve the complaint; and

- c. The difference between the due process complaint and the state complaint procedures, including the jurisdiction of each procedure, what issues may be raised, filing and decisional timelines, and relevant procedures.
 - 6. The availability of mediation;
 - 7. The child’s placement during pendency of any due process proceedings;
 - 8. Procedures for children who are subject to placement in an interim alternative educational setting;
 - 9. Requirements for unilateral placement by parents of children in private schools at public expense;
 - 10. Hearings on due process complaints, including requirements for disclosure of evaluation results and recommendations;
 - 11. Civil actions, including the time period in which to file such actions; and
 - 12. Attorneys’ fees.
- 20 U.S.C. § 1415(a)–(b), (d); 34 C.F.R. § 300.504(c).

Sec. 4. PRIOR WRITTEN NOTICE AND CONSENT

Richard Milburn Academy shall provide prior written notice to the parents within a reasonable time before the school proposes to initiate or change, or refuses to initiate or change, the identification, evaluation, or educational placement of a child or the provision of a FAPE to the child.³⁴ *CFR 300.503(a)*.

Notice must be provided to the parent in the parent’s native language or other mode of communication at least five school days before Richard Milburn Academy proposes or refuses the action, unless the parent agrees to a shorter time frame. *19 TAC 89.1050(h)*.

a) Contents of Notice

The notice must include:

- 1. A description of the action proposed or refused by Richard Milburn Academy;
- 2. An explanation of why Richard Milburn Academy proposes or refuses to take the action;
- 3. A description of each evaluation procedure, assessment, record, or report Richard Milburn Academy used as a basis for the proposed or refused action;
- 4. A statement that the parents or adult student have protection under the procedural safeguards and, if this notice is not an initial referral for evaluation, the means by which a copy of the procedural safeguards can be obtained;
- 5. Sources for parents or adult student to contact to obtain assistance in understanding the Individuals and Disabilities Education Act (“IDEA”) rules;
- 6. A description of other options the admission, review and dismissal (“ARD”) committee considered and the reasons why those options were rejected; and
- 7. A description of other factors relevant to Richard Milburn Academy’s proposal or refusal.

34 C.F.R. § 300.503(b).

b) Consent to Initial Evaluation

Before Richard Milburn Academy conducts an initial evaluation, it shall provide prior written notice, including a description of any evaluation Richard Milburn Academy proposes to conduct, and obtain informed consent for the evaluation from the parents or adult student. 20 U.S.C. § 1414(a)(1)(D), (E); 34 C.F.R. § 300.304(a).

c) Consent to Services

Richard Milburn Academy shall seek informed consent from the parent or adult student before providing special education and related services to the student. 20 U.S.C. § 1414(a)(1)(D).

d) Consent to Reevaluation

Richard Milburn Academy shall obtain informed parental consent before conducting any reevaluation of a child with a disability, except that such informed parental consent need not be obtained if Richard Milburn Academy can demonstrate that it has taken reasonable measures to obtain such consent and the parent has failed to respond. 20 U.S.C. 1414(c)(3).

e) Psychological Examinations and Tests

On request of a child's parent, before obtaining the parent's consent under 20 U.S.C. Section 1414 for the administration of any psychological examination or test to the child as part of the evaluation of the child's need for special education, Richard Milburn Academy shall provide to the child's parent:

1. The name and type of the examination or test; and
2. An explanation of how the examination or test will be used to develop an appropriate Individualized Education Program ("IEP") for the child.

If Richard Milburn Academy determines that an additional examination or test is required for the evaluation of a child's need for special education after obtaining consent from the child's parent, Richard Milburn Academy shall provide the information above to the parent regarding the additional examination or test and shall obtain additional consent for the examination of test. *Education Code 29.0041(a), (b)*.

Sec. 5. CONSENT TO EXCUSE MEMBER FROM ATTENDING ARD COMMITTEE MEETING

A Richard Milburn Academy member of the ARD committee may be excused from attending an individualized education program ("IEP") meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of curriculum or related services if the parent or adult student, in writing, and Richard Milburn Academy consent to the excusal and the member submits, in writing, to the parent and the ARD committee, input into the development of the IEP before the meeting.

Sec. 6. PARENTAL OR ADULT STUDENT CONSENT TO ACCESS PUBLIC BENEFITS

Richard Milburn Academy shall obtain informed consent from the parent each time that access to a parent's private insurance proceeds or to public benefits or an insurance program is sought. (34 C.F.R. § 300.154(d)(2)(iv)(A)).

Sec. 7. PARENTAL OR ADULT STUDENT CONSENT FOR TRANSFER OF ASSISTIVE TECHNOLOGY DEVICES

Richard Milburn Academy shall obtain informed consent from the parent, or the adult student if the adult student has the legal capacity to enter into a contract before transferring an assistive technology device through a transfer agreement that incorporates the standards of the state.

Sec. 8. OTHER CONSENT REQUIREMENTS

Parental consent is not required before Richard Milburn Academy may:

1. review existing data as part of the student's evaluation or a reevaluation; or
2. give the student a test or other evaluation that is given to all students unless, before that test or evaluation, consent is required from parents of all students. 34 C.F.R. § 300.300(d).

PG-6.10 COORDINATOR OF FUNDS TO PURCHASE INSTRUCTIONAL MATERIALS

Instructional materials adopted by Richard Milburn Academy must be provided to students at no cost.

If Richard Milburn Academy chooses to coordinate with the National Instructional Materials Access Center (NIMAC) when purchasing print instructional materials, it must acquire the print instructional materials in the same manner and subject to the same conditions as the Texas Education Agency acquires print instructional materials.

If Richard Milburn Academy chooses not to coordinate with the NIMAC when purchasing print instructional materials, it will provide instructional materials to blind persons or other persons with print disabilities in a timely manner and shall provide assurance of compliance with this policy to the Texas Education Agency.

PG-6.11 DISCIPLINE OF STUDENTS WITH DISABILITIES

PART I: DISCIPLINE OF STUDENTS WITH DISABILITIES UNDER SECTION 504

Sec. 1. STUDENTS WITH DISABILITIES UNDER SECTION 504

Richard Milburn Academy shall conduct an evaluation in accordance with 34 C.F.R. 104.35(b) before taking any action with respect to any significant change in placement of a student with a disability who needs or is believed to need special education and related services. *34 CFR 104.35(a)*.

Richard Milburn Academy may take disciplinary action pertaining to the use or possession of illegal drugs or alcohol against any student with a disability who is currently engaging in the illegal use of drugs or alcohol to the same extent that Richard Milburn Academy would take disciplinary action against nondisabled students. The due process procedures afforded under Section 504 do not apply to such disciplinary action. *29 U.S.C. 705(20)(C)(iv)*.

PART II: DISCIPLINE OF STUDENTS RECEIVING SPECIAL EDUCATION SERVICES

Sec. 2. SPECIAL EDUCATION STUDENTS

Except as set forth below, the placement of a student with a disability who receives special education services may be made only by a duly constituted admission, review, and dismissal ("ARD") committee. Any disciplinary action regarding the student shall be determined in accordance with federal law and

regulations.

1. functional behavioral assessments (“FBAs”);
2. positive behavioral interventions, strategies, and supports;
3. behavioral intervention plans/behavior improvement plans (“BIPs”); and
4. the manifestation determination review (“MDR”).

Education Code 37.004(b).

Sec. 3. REMOVAL FOR TEN DAYS OR LESS

A student with a disability who violates the Richard Milburn Academy Student Code of Conduct may be moved from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than ten consecutive school days, to the extent those alternatives are applied to children without disabilities. *20 U.S.C. 1415(k)(1)(B); 34 C.F.R. 300.530(b)(1).*

Services During Removal for Ten Days or Less. Richard Milburn Academy is required to provide services during the period of removal if Richard Milburn Academy provides services to a child without disabilities who is similarly removed. *34 C.F.R. 300.530(d).*

Sec. 4. SUBSEQUENT REMOVALS OF TEN DAYS OR LESS

Richard Milburn Academy personnel may remove the student for additional removals of not more than ten consecutive school days in that same school year for separate incidents of misconduct, as long as those removals do not constitute a change in placement. *under 34 CFR 300.536. 34 C.F.R. 300.530(b)(1).*

Services During Subsequent Removals of Ten Days or Less. After a student has been removed from his or her current placement for ten school days in the same school year, during any subsequent removal of ten consecutive school days or less, school personnel, in consultation with at least one of the student’s teachers, shall determine the extent to which services are needed so as to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student’s individualized education program (“IEP”). *20 U.S.C. 1415(k)(1)(D); 34 C.F.R. 300.530(d)(4).*

Sec. 5. NOTICE OF PROCEDURAL SAFEGUARDS

Not later than the date on which the decision to take the disciplinary action is made, Richard Milburn Academy shall notify the student’s parents or adult student of the decision and of all procedural safeguards. *20 U.S.C. 1415(k)(1)(H).*

Sec. 6. CHANGES IN PLACEMENT

Any disciplinary action that would constitute a change in placement may be taken only after the student’s ARD committee conducts a manifestation determination review. (“MDR”)

For purposes of disciplinary removal of a student with a disability, a change in placement occurs if a student is:

- 6.11.1 Removed from the student's current educational placement for more than ten consecutive school days; or
- 6.11.2 Subjected to a series of removals that constitute a pattern because:
 - 6.11.2.1 The series of removals total more than ten school days in a school year;
 - 6.11.2.2 The student's behavior is substantially similar to the student's behavior in the previous incidents that resulted in the series of removals; and
 - 6.11.2.3 Additional factors exist, such as the length of each removal, the total amount of time the student is removed, and the proximity of the removals to one another.

Richard Milburn Academy determines, on a case-by-case basis, whether a pattern of removals constitutes a change in placement. Richard Milburn Academy's determination is subject to review through due process and judicial proceedings. *34 C.F.R. 300.536*.

Richard Milburn Academy personnel may consider any unique circumstances on a case-by-case basis when determining whether to order a change in placement for a student who violates the Student Code of Conduct. *20 U.S.C. 1415(k)(1)(A)*.

Sec. 7. MANIFESTATION DETERMINATION

Within ten school days of any decision to change the placement of a student because of a violation of the Student Code of Conduct, Richard Milburn Academy, parents or adult student, and relevant members of the ARD committee (as determined by the parent and Richard Milburn Academy) shall provide procedural safeguards to the parent or adult student and shall review all relevant information in the student's file, including the student's IEP, any teacher observations, and any relevant information provided by the parents to determine whether the conduct in question was:

1. Caused by, or had a direct and substantial relationship to, the student's disability; or
2. The direct result of Richard Milburn Academy's failure to implement the IEP.

If Richard Milburn Academy, the parent or adult student, and relevant members of the ARD committee determine that either of the above is applicable, the conduct shall be determined to be a manifestation of the student's disability.

20 U.S.C. 1415(k)(1)(E); 34 C.F.R. 300.530(e).

a) Not a Manifestation

If the determination is that the student's behavior was not a manifestation of the student's disability, school personnel may apply the relevant disciplinary procedures to the student in the same manner and for the same duration as for students without disabilities. The ARD committee shall determine the interim alternative educational setting.

20 U.S.C. 1415(k)(1)(C), (k)(2); 34 C.F.R. 300.530(c).

i. Services During Removal

The student must:

1. Continue to receive educational services so as to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals in the student's IEP.

2. Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.

These services may be provided in an interim alternative educational setting. *34 C.F.R. 300.530(d)(1)–(2).*

b) Manifestation

If Richard Milburn Academy, the parents, and relevant members of the ARD committee determine that the conduct was a manifestation of the student’s disability, the ARD committee shall:

1. Conduct a functional behavioral assessment (“FBA”), unless Richard Milburn Academy had conducted an FBA before the behavior that resulted in the change in placement occurred, and implement a behavioral intervention plan (“BIP”) for the student; or
2. If a BIP has already been developed, review the BIP and modify it, as necessary, to address the behavior.

Except as provided for SPECIAL CIRCUMSTANCES, below, the ARD committee shall return the student to the placement from which the student was removed, unless the parent, and Richard Milburn Academy agree to a change in placement as part of the modification of the BIP.

20 .S.C. 1415(k)(1)(F); 34 C.F.R. 300.530(f).

i. Special Circumstances

Richard Milburn Academy personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the student’s disability, if the student:

1. Carries or possesses a weapon to or at school, on school premises, or to or at a school function under the jurisdiction of Texas Education Agency (the “TEA”) or Richard Milburn Academy; or
2. Knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school, on school premises, or at a school function under the jurisdiction of the TEA or Richard Milburn Academy;
3. Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of the TEA or Richard Milburn Academy.

20 U.S.C. 1415(k)(1)(G); 34 C.F.R. 300.530(g).

The ARD committee shall determine the interim alternative education setting.

c) Services During Removal

The student must:

1. Continue to receive educational services so as to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals in the student’s IEP.
2. Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.

These services may be provided in an interim alternative educational setting. *34 C.F.R. 300.530(d)(1).*

Sec. 8. APPEALS

A parent who disagrees with a placement decision or the manifestation determination may request a hearing. Additionally, Richard Milburn Academy may request a hearing if it believes that maintaining a current placement of a student is substantially likely to result in injury to the student or others.

a) Placement During Appeals

When an appeal has been requested by a parent or Richard Milburn Academy, the student shall remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the student's assignment to the alternative setting, whichever occurs first, unless the parent and Richard Milburn Academy agree otherwise.

20 U.S.C. 1415(k)(3)(A); 34 C.F.R. 300.532(a); 19 TAC 89.1151.

Sec. 9. REPORTING CRIMES

Federal law does not prohibit Richard Milburn Academy from reporting a crime committed by a student with a disability to appropriate authorities. If Richard Milburn Academy reports a crime, Richard Milburn Academy shall ensure that copies of the special education and disciplinary records of the student are transmitted for consideration by the appropriate authorities to whom Richard Milburn Academy reported the crime. Richard Milburn Academy may transmit records only to the extent permitted by the Family Educational Rights and Privacy Act ("FERPA"). *20 U.S.C. 1415(k)(6); 34 C.F.R. 300.535.*

Sec. 10. STUDENTS NOT YET IDENTIFIED

A student who has not been determined to be eligible for special education and related services and who has engaged in behavior that violated the Student Code of Conduct may assert any of the protections provided for in the Individuals with Disabilities Education Act if Richard Milburn Academy had knowledge that the student had a disability before the behavior that precipitated that disciplinary action occurred. *20 U.S.C. 1415(k)(5)(A); 34 C.F.R. 300.534(a).*

a) School Knowledge

Richard Milburn Academy shall be deemed to have knowledge that a student has a disability if, before the behavior that precipitated the disciplinary action occurred:

1. The parent of the student expressed concern in writing to Richard Milburn Academy supervisory or administrative personnel, or to the teacher of the student, that the student was in need of special education and related services;
2. The parent requested an evaluation of the student for special education and related services; or
3. The student's teacher, or other Richard Milburn Academy personnel, expressed specific concerns about a pattern of behavior demonstrated by the student directly to the special education director or to other Richard Milburn Academy supervisory personnel.

20 U.S.C. 1415(k)(5)(B); 34 C.F.R. 300.534(b).

b) Exceptions

Richard Milburn Academy shall not be deemed to have knowledge that the student had a disability if:

1. The parent has not allowed an evaluation of the student;

2. The parent has refused services; or
3. The student has been evaluated and it was determined that the student did not have a disability.

20 U.S.C. 1415(k)(5)(C); 34 C.F.R. 300.534(c).

If Richard Milburn Academy does not have knowledge, before taking disciplinary measures, that a student has a disability, the student may be subjected to the same disciplinary measures applied to students without disabilities who engaged in comparable behaviors.

However, if a request is made for an evaluation during the time period in which the student is subjected to disciplinary measures, the evaluation shall be conducted in an expedited manner. Until the evaluation is completed, the student shall remain in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.

20 U.S.C. 1415(k)(5)(D); 34 C.F.R. 300.534(d).

PG. 6.12 DISTRICT AND CAMPUS IMPROVEMENT PLANS

It is the policy of Richard Milburn Academy to annually conduct a comprehensive needs assessment and to develop district and campus improvement plans, if required by state and federal funding requirements.

PG. 6.13 DYSLEXIA

Sec. 1. DYSLEXIA AND RELATED DISORDERS

The Board shall ensure that procedures for identifying and providing appropriate instructional services to students for dyslexia and related disorders are implemented by Richard Milburn Academy. These procedures shall be implemented in accordance with the most recently updated version of the State Board of Education's *Dyslexia Handbook: Procedures Concerning Dyslexia and Related Disorders (Dyslexia Handbook)*.

Sec. 2. PARENTAL NOTIFICATIONS AND CONSENT

Anytime a child is suspected to have dyslexia or a related disorder and may need dyslexia intervention services, the LEA must seek parental consent for a Full Individual Initial Evaluation (FIIIE) under the IDEA. The process of seeking informed parental consent under the IDEA must include proper prior written notice and be accompanied by the notice of procedural safeguards.

Richard Milburn Academy shall provide to parents of children suspected to have dyslexia or a related disorder a copy of or link to the electronic version of the most recently updated version of the State Board of Education's *Dyslexia Handbook: Procedures Concerning Dyslexia and Related Disorders (Dyslexia Handbook)*.

Parents and guardians of students with dyslexia or a related disorder must be informed of all services and options available to the student, including general education interventions under response to intervention and multi-tiered systems of support modules as required by Section 26.0081 of the Education Code.

Sec. 3 . IDENTIFICATION AND TESTING

A process for early identification, intervention, and support for students at risk for dyslexia and related disorders must be available, as outlined in the *Dyslexia Handbook*.

Richard Milburn Academy may not use early intervention strategies, including multi-tiered systems of support, to delay or deny the provision of a full and individual evaluation to a child suspected of having a specific learning disability, including dyslexia or a related disorder.

Sec 4. PERSONNEL QUALIFICATIONS

Highly trained individuals must deliver dyslexia instruction. Teachers who provide dyslexia intervention for students are not required to hold a specific license or certification. However, these educators must at a minimum have additional documented dyslexia training aligned to 19 TAC §74.28(c) and must deliver the instruction with fidelity. A provider of dyslexia instruction does not have to be certified as a special educator when serving a student who also receives special education and related services if that provider is the most appropriate person to offer dyslexia instruction.

Sec. 5. TREATMENT AND SERVICES

Richard Milburn Academy shall provide each identified student access at his or her campus to instructional programs and to the services of a teacher trained in dyslexia and related services. Richard Milburn Academy may, with the approval of each student's parents or guardians, offer additional services at a centralized location, so long as such centralized services do not preclude each student from receiving services at his or her campus.

a) Reading Program

Richard Milburn Academy shall purchase a reading program or develop its own reading program for students with dyslexia and related disorders that is aligned with the descriptors found in the *Dyslexia Handbook*.

Teachers who screen and treat these students must be trained in instructional strategies that utilize individualized, intensive, multi-sensory, phonetic methods and a variety of writing and spelling components described in the *Dyslexia Handbook*. The professional development activities specified by each school and/or campus planning committee shall include these instructional strategies.

b) Reassessment

Unless otherwise provided by law, a student determined to have dyslexia during testing or accommodated because of dyslexia may not be retested for dyslexia for the purpose of reassessing the student's need for accommodations until Richard Milburn Academy reevaluates the information obtained from previous testing of the student.

Sec. 6. PARENT EDUCATION PROGRAM

Richard Milburn Academy shall develop and provide a parent education program for parents and guardians of students with dyslexia and related disorders. This program should include:

- Awareness of characteristics of dyslexia and related disorders;
- Information on testing and diagnosis of dyslexia;
- Information on effective strategies for teaching dyslexic students; and
- Awareness of information on modification, especially modifications allowed on

standardized testing.

TEX EDUC. CODE § 38.003; 19 TEX. ADMIN. CODE § 74.28.

Sec. 7. REPORTING

Richard Milburn Academy must report through the Public Education Information Management System to the Texas Education Agency the number of students enrolled who are identified as having dyslexia

PG-6.14 ELIGIBILITY CRITERIA

Sec. 1. ELIGIBILITY CRITERIA

A student that is at least three years old but not more than 21 years of age may be eligible for special education services if the student is found to have a disability in one of the following categories, and by reason of disability, has need for special education and related services:

1. Autism
2. Deaf-blindness
3. Deaf or hard of hearing
4. Emotional disturbance;
5. Intellectual Disability;
6. Multiple disabilities
7. Orthopedic impairment;
8. Other health impairment;
9. Specific learning disability
10. Speech impairment
11. Traumatic brain injury;
12. Visual impairment
13. Noncategorical

34 CFR 300.306(a)(5), 300.8; 19 TAC 89.1040(a).

Additionally, a student is eligible to participate in Richard Milburn Academy's special education program if the student is not more than 21 years of age and has a visual or auditory impairment that prevents the student from being adequately or safely educated in public school without the provision of special services. (TEX. EDUC. CODE § 29.003).

Sec. 2. DETERMINING ELIGIBILITY

Following the completion of the full and individual initial evaluation, the student's admission, review, and dismissal ("ARD") committee must make an eligibility determination. The ARD committee members reviewing evaluations and date to determine eligibility must include a licensed specialist in school psychology ("LSSP"), an educational diagnostician, or other appropriately certified or licensed practitioner with experience, and a licensed or certified professional for a specific eligibility category defined below. (19 TEX. ADMIN. CODE § 89.1040).

When interpreting evaluation data for the purpose of determining if a student is a student with a disability under 34 C.F.R. § 300.8, and the educational needs of the student, Richard Milburn Academy shall:

1. Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior; and
2. Ensure that information obtained from all of these sources is documented and carefully considered.

If a student is determined to be a student with a disability and needs special education and related services, the ARD committee must develop an individualized education program ("IEP") for the student in accordance with 34 C.F.R. §§ 300.320 - 300.324. and corresponding state law. (34 C.F.R. § 300.306).

A student must not be determined to be a child with a disability if:

1. The determinant factor for that determination is:
 - a. lack of appropriate instruction in reading, including in the essential components of reading instruction;
 - b. lack of appropriate instruction in math; or
 - c. limited English proficiency/status as an emergent bilingual student; or
2. The child does not otherwise meet the eligibility criteria and 34 CFR 300.8(a).

34 CFR 300.306(b).

For children aged three through nine, or any subset of that age range, may be a child with a disability if the student is:

1. experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: Physical development, cognitive development, communication development, social or emotional development, or adaptive development; and
2. needs special education and related services. (34

C.F.R. § 300.8(b)).

Sec. 3. AUTISM

A student with autism is one that meets the criteria outlined in 34 C.F.R. § 300.8(c)(1) of the IDEA. It also includes students with pervasive developmental disorders. (19 TEX. ADMIN. CODE § 89.1040(c)(1)).

Under IDEA, autism is a developmental disability significantly affecting a student's verbal and nonverbal communication and social interactions that adversely affects a student's educational performance. Engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences are often associated with autism. Characteristics of autism are generally evident before age three. A child who manifests the characteristics of autism after age three could be identified as having autism if the student meets the above criteria also defined in 34 C.F.R. § 300.8(c)(1)(i).

A student does not meet the eligibility category for autism if a student's educational performance is

adversely affected primarily because the student has an emotional disturbance, as defined above and in 34 C.F.R. § 300.8(c)(4). (34 C.F.R. § 300.8(c)(1)).

The written evaluation determining eligibility under autism must include recommendations for behavior interventions. (19 TEX. ADMIN. CODE § 89.1040(c)(1)).

Sec. 4. DEAF-BLINDNESS

A student is eligible under deaf-blindness if identified with hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for students with deafness or students with blindness. (34 C.F.R. § 300.8(c)(2)).

In addition to the Individuals with Disabilities Education Act (“IDEA”) requirements, a student may be eligible if a student is found to:

1. meet the eligibility criteria for auditory impairment specified in subsection 19 TEX. ADMIN. CODE § 89.1040(c)(3) and visual impairment specified in subsection 19 TEX. ADMIN. CODE § 89.1040 (c)(12);
2. meet the eligibility criteria for a student with a visual impairment and has a suspected hearing loss that cannot be demonstrated conclusively, but a speech/language therapist, a certified speech and language therapist, or a licensed speech language pathologist indicates there is no speech at an age when speech would normally be expected;
3. have documented hearing and visual losses that, if considered individually, may not meet the requirements for auditory impairment or visual impairment, but the combination of such losses adversely affects the student's educational performance; or
4. have a documented medical diagnosis of a progressive medical condition that will result in concomitant hearing and visual losses that, without special education intervention, will adversely affect the student's educational performance.

(19 TEX. ADMIN. CODE § 89.1040(c)(2)).

Sec. 5. DEAF OR HARD OF HEARING

A student who is deaf or hard of hearing is one who has been determined to meet the criteria for deafness as stated in 34 CFR 300.8(c)(3), or for students who are deaf or hard of hearing as defined in 34 CFR 300.8(c)(5).

The student’s evaluation must include an otological examination performed by an otologist or by a licensed medical doctor, with documentation that an otologist is not reasonably available. Richard Milburn Academy shall also conduct an audiological evaluation by a licensed audiologist. The evaluation must include a description of the implications of the hearing loss for the student's hearing in a variety of circumstances with or without recommended amplification. (34 C.F.R § 300.8(c)(5); 19 TEX. ADMIN. CODE § 89.1040(c)(3)).

Sec. 6. EMOTIONAL DISTURBANCE

A student may be eligible for services as a student with an emotional disturbance if they exhibit one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a

child's educational performance:

1. An inability to learn that cannot be explained by intellectual, sensory, or health factors;
2. An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;
3. Inappropriate types of behavior or feelings under normal circumstances;
4. A general pervasive mood of unhappiness or depression; or
5. A tendency to develop physical symptoms or fears associated with personal or school problems.

Emotional disturbance includes schizophrenia, but does not include children who are socially maladjusted, unless it is determined that they have an emotional disturbance. A written evaluation must include recommendations for behavior intervention strategies. (34 C.F.R. § 300.8(c)(4); 19 TEX. ADMIN. CODE § 89.1040(c)(4)).

Sec. 7. INTELLECTUAL DISABILITY

A student qualifies as a student with an intellectual disability if the student has significantly sub-average general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a student's educational performance. (34 C.F.R. § 300.8(c)(6); 19 TEX. ADMIN. CODE § 89.1040(c)(5)).

Sec. 8. MULTIPLE DISABILITIES

A student may qualify as a student with multiple disabilities if they are identified to have a combination of impairments (such as intellectual disability-blindness or intellectual disability-orthopedic impairment) and the combination causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. Multiple disabilities does not include deaf-blindness. (34 C.F.R. § 300.8(c)(7)).

The impairments must be: (a) expected to continue indefinitely; and (b) the impairments must severely limit performance in two or more of the following:

1. psychomotor skills;
2. self-care skills;
3. communication;
4. social and emotional development, or
5. cognition.

A student who qualifies for more than one impairment, that does not severely impair performance in one of the above categories, or is not expected to continue indefinitely, does not qualify as a student with multiple disabilities. (19 TEX. ADMIN. CODE § 89.1040(c)(6)).

Sec. 9. ORTHOPEDIC IMPAIRMENT

A severe orthopedic impairment, including impairments caused by congenital anomaly, impairments caused by disease (e.g., poliomyelitis, bone tuberculosis), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures). If the impairment adversely impacts a student's educational performance, the student is eligible under this category. (34 C.F.R. § 300.8(c)(8); 19 TEX.

ADMIN. CODE § 89.1040(c)(7).

The multidisciplinary team determining eligibility under the criteria for an orthopedic impairment must include a licensed physician.

Sec. 10. OTHER HEALTH IMPAIRMENT (“OHI”)

A student with OHI is one who has been determined to meet the criteria for OHI due to chronic or acute health problems.

19 TAC 89.1040(c)(8).

OHI means having limited strength, vitality, or alertness that adversely affects a child’s educational performance.

34 CFR 300.8(c)(9)(i).

The term “health problems” includes:

1. Asthma;
2. Attention Deficit Disorder or Attention Deficit Hyperactivity Disorder;
3. Diabetes;
4. Epilepsy;
5. Heart Condition;
6. Hemophilia;
7. Lead poisoning;
8. Leukemia;
9. Nephritis;
10. Rheumatic Fever;
11. Sickle Cell Anemia; or
12. Tourette Syndrome.

19 TAC 89.1040(c)(8); 34 CFR 300.(c)(9)(i).

“Limited alertness” includes a heightened alertness to environmental stimuli that results in limited alertness with respect to the educational environment.

34 CFR 300.8(c)(9).

In determining eligibility, Richard Milburn Academy shall must include a licensed physician on the multidisciplinary team.

19 TAC 89.1040(c)(8).

Sec. 11.. SPECIFIC LEARNING DISABILITY

Specific learning disability (or “SLD” includes a disorder in one or more of the basic psychological

processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations.

SLD includes conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. (34 C.F.R. § 300.8(c)(10)).

A specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of intellectual disability, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

34 CFR 300.8(c)(10); 19 TAC 89.1040(c)(9).

In addition to being identified as having a disorder that impacts a basic psychological process, Richard Milburn Academy shall also show that the student does not achieve adequately for the student's age or meet state-approved grade-level standards in oral expression, listening comprehension, written expression, basic reading skill, reading fluency skills, reading comprehension, mathematics calculation, or mathematics problem solving when provided appropriate instruction, as indicated by performance on multiple measures such as in-class tests; grade average over time (e.g. six weeks, semester); norm- or criterion- referenced tests; statewide assessments; or a process based on the child's response to scientific, research-based intervention.

Richard Milburn Academy's evaluation must also show that the student:

1. does not make sufficient progress when provided a process based on the student's response to scientific, research-based intervention (as defined in 20 U.S.C. § 7801(37)), as indicated by the student's performance relative to the performance of the student's peers on repeated, curriculum-based assessments of achievement at reasonable intervals, reflecting student progress during classroom instruction; or
2. the student exhibits a pattern of strengths and weaknesses in performance, achievement, or both relative to age, grade-level standards, or intellectual ability, as indicated by significant variance among specific areas of cognitive function, such as working memory and verbal comprehension, or between specific areas of cognitive function and academic achievement.

(19 TEX. ADMIN. CODE § 89.1040(c)(9)).

Prior to identifying a student as one with a learning disability, Richard Milburn Academy shall ensure that the suspected disability is not due to lack of educational opportunity or lack of appropriate instruction. Richard Milburn Academy shall consider data that shows the student has received appropriate instruction in math and reading in the general education setting. Richard Milburn Academy shall also consider documentation of repeated assessments of achievement at reasonable intervals, reflecting formal evaluation of student progress during instruction. This may include, but is not limited to, RTI progress results, in-class tests on grade-level curriculum, or other regularly administered assessments. Intervals are considered reasonable if consistent with the assessment requirements of a student's specific instructional program. (19 TEX. ADMIN. CODE § 89.1040(c)(9)).

For more information related to SLD and dyslexia, see PG.-2.27.

Sec. 12. SPEECH IMPAIRMENT

A communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a child's educational performance. The evaluation team shall include a certified speech and hearing therapist, a certified speech and language therapist, or a licensed speech/language pathologist. (34 C.F.R. § 300.8(c)(11); 19 TEX. ADMIN. CODE § 89.1040(c)(10)).

Sec. 13. TRAUMATIC BRAIN INJURY

An acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a student's educational performance. Traumatic brain injury applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. Traumatic brain injury does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma.

Richard Milburn Academy shall include a licensed physician, and a licensed specialist in school psychology (LSSP), an educational diagnostician, or other appropriately certified or licensed practitioner with experience and training in this area to review the data and determine eligibility. (19 TEX. ADMIN. CODE § 89.1040(11)).

Sec. 14. VISUAL IMPAIRMENT

A child with a visual impairment is one who has been determined to meet the criterion for visual impairment.

34 CFR 300.8(c)(13); 19 TAC 89.1040(c)(12).

The term "visual impairment including blindness" means an impairment in vision that, even with correction, adversely affects the student's educational performance and includes both partial sight and blindness. (34 C.F.R. § 300.8(c)(13)).

Evaluation, eligibility, and ARD committee requirements shall adhere to federal and state law.

34 CFR 300.8(c)(13); Education Code 30.002(c-1); 19 TAC 89.1040(c)(12).

Sec. 15. NONCATEGORICAL

A student between the ages of 3-5 who is evaluated as having an intellectual disability, an emotional disturbance, a specific learning disability, or autism may be described as noncategorical early childhood.

19 TAC 89.1040(c)(13).

PG-6.15 REFERRAL FOR POSSIBLE SPECIAL EDUCATION SERVICES

Sec. 1. REFERRAL FOR FULL AND INDIVIDUAL INITIAL EVALUATION

Referral of students for a full and individual initial evaluation for possible special education services shall be a part of Richard Milburn Academy's overall general education referral or screening system. Either a parent, the Texas Educational Agency ("TEA"), another state agency, or Richard Milburn Academy may initiate a request for an initial evaluation.

a) Obligation to Refer

Before referral, students experiencing difficulty in the general classroom should be considered for all support services available to all students. If a student continues to experience difficulty in the general classroom after the provision of interventions, Richard Milburn Academy personnel must refer the student for a full and individual initial evaluation. 20 U.S.C. § 1414(a)(1); 34 C.F.R. § 300.301; 19 TEX. ADMIN. CODE § 89.1011.

b) Parent or adult student Request

If a parent or adult student submits a written request for a full individual and initial evaluation of a student, Richard Milburn Academy shall, not later than the 15th school day after the date Richard Milburn Academy receives the request:

1. Provide the parent or adult student with prior written notice of its proposal to conduct an evaluation consistent with 34 C.F.R. § 300.503, a copy of the procedural safeguards notice required by 34 C.F.R. § 300.504, and an opportunity to give written consent for the evaluation; or
2. Provide the parent or adult student with prior written notice of its refusal to conduct an evaluation consistent with 34 C.F.R. § 300.503, and a copy of the procedural safeguards notice required by 34 C.F.R. § 300.504.

20 U.S.C. § 1414(a)(1); 34 C.F.R. § 300.301; 19 TEX. ADMIN. CODE § 89.1011(a), (b); TEX. EDUC. CODE § 29.004(c).

Sec. 2. NOTICE OF RIGHTS

Richard Milburn Academy shall provide written notice to a student's parent or guardian within a reasonable time before proposing or refusing to initiate the identification, evaluation, or educational placement of a student or the provision of a free appropriate public education ("FAPE"). 20 U.S.C. § 1415(b)(3); 34 C.F.R. § 300.503(a).

Sec. 3. INITIAL EVALUATION

Richard Milburn Academy shall conduct a full and individual initial evaluation before the initial provision of special education and related services. 20 U.S.C. § 1414(a)(1)(A).

Richard Milburn Academy shall ensure that evaluations of children who transfer from one district to another in the same academic year are coordinated with the children's prior and subsequent schools, as necessary and as expeditiously as possible, to ensure prompt completion of evaluations. 20 U.S.C. § 1414(b)(3)(D).

The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services. 20 U.S.C. § 1414(a)(1)(E).

a) Consent for Initial Evaluation

Richard Milburn Academy shall make reasonable efforts to obtain informed parental consent before conducting an initial evaluation unless the student is an adult and does not have a Power of Attorney or guardianship in place. At that time the adult student could provide initial consent.

If the parent does not provide consent for an initial evaluation or fails to respond to a request to provide consent, Richard Milburn Academy may—but is not required to—pursue the initial evaluation by utilizing due process procedures, except to the extent inconsistent with state law relating to such parental consent.

Parental consent to initial evaluation shall not be construed as consent for placement for special education and related services. 20 U.S.C. § 1414(a)(1)(D)(i)(1); 34 C.F.R. § 300.300.

b) Wards of the State

If the child is a ward of the state and is not residing with the child’s parent, Richard Milburn Academy shall make reasonable efforts to obtain the informed consent from the parent for an initial evaluation, unless:

1. Richard Milburn Academy cannot discover the whereabouts of the parent, despite reasonable efforts to do so;
2. The rights of the parent have been terminated; or
3. The rights of the parent to make educational decisions have been subrogated and an individual appointed by a judge to represent the student has given consent for an initial evaluation.

20 U.S.C. § 1414(a)(1)(D)(iii); 34 C.F.R. § 300.300(a)(2).

Sec. 4. PROVIDING ASSISTANCE TO STUDENTS WHO HAVE LEARNING DIFFICULTIES OR NEED SPECIAL EDUCATION SERVICES

If a student is experiencing learning difficulties, the parent may contact their child’s campus principal to learn about Richard Milburn Academy’s overall general education referral or screening system for support services. This system links students to a variety of support options, including referral for a special education evaluation. Students having difficulty in the regular classroom should be considered for tutorial, compensatory, and other academic or behavior support services that are available to all students, including a process based on Response to Intervention (“RtI”). The implementation of RtI has the potential to have a positive impact on Richard Milburn Academy’s ability to meet the needs of all struggling students.

At any time, a parent is entitled to request an evaluation for special education services by presenting a written request to Director of Special Education Services or to a Richard Milburn Academy administrative employee. Richard Milburn Academy must, within 15 school days of receiving the request, either (1) give the parent an opportunity to give written consent for the evaluation or (2) refuse to provide the evaluation and provide the parent with written notice that explains why the child will not be evaluated. This written notice will include a statement that informs the parents of their rights if they disagree with Richard Milburn Academy. Additionally, the parent will receive a copy of the *Notice of Procedural Safeguards – Rights of Parents of Students with Disabilities*.

If consent for evaluation is obtained, Richard Milburn Academy must generally complete the evaluation and report within 45 school days of the date Richard Milburn Academy receives the written consent. Richard Milburn Academy must give a copy of the evaluation report to the parent.

Sec. 5. NOTIFICATION TO PARENTS REGARDING INTERVENTION STRATEGIES

Each school year, Richard Milburn Academy shall notify a parent of each child or adult student, other than a child or adult student enrolled in a special education program, who receives assistance from the Richard Milburn Academy for learning difficulties, including through the use of intervention strategies that Richard Milburn Academy provides to the child or adult student. The notice must:

1. Be provided when the child or adult student begins to receive the assistance for that school year;
2. Be written in English or, to the extent practicable, the parent's or adult student's native language; and
3. Include:
 - a. A reasonable description of the assistance that may be provided to the child or adult student, including any intervention strategies that may be used;
 - b. Information collected regarding any intervention in the base tier of a multi-tiered system of supports that has previously been used with the child or adult student;
 - c. An estimate of the duration for which the assistance, including through the use of intervention strategies, will be provided;
 - d. The estimated time frames within which a report on the child's or adult student's progress with the assistance, including any intervention strategies used, will be provided to the parent or adult student; and
 - e. A copy of a written explanation of the options and requirements for providing assistance to students who have learning difficulties or who need or may need special education. The explanation must state that a parent or adult student is entitled at any time to request an evaluation of the parent's child or adult student for special education services or for aids, accommodations, or services under Section 504 of the Rehabilitation Act.

The notice under this policy may be provided to a child's parent or adult student at a Section 504 meeting.

A parent or adult student is entitled to access to all written records of Richard Milburn Academy concerning the parent's child or adult student, including attendance records, test scores, grades, disciplinary records, counseling records, psychological records, applications for admission, health and immunization information, teacher and school counselor evaluations, reports of behavioral progress, and records relating to assistance provided for learning difficulties, including information collected regarding any intervention strategies used with the child or adult student.

PG-6.16 EVALUATION

Sec. 1. FULL AND INDIVIDUAL EVALUATION (FIE)

Richard Milburn Academy shall ensure that upon completion of the administration of such tests and other evaluation materials administered according to the evaluation procedures of the Individuals with Disabilities Education Act ("IDEA"), and preparation of the written report, the admission, review and dismissal ("ARD") committee determines if the student is a student with a disability under state and federal standards.

Richard Milburn Academy shall conduct a full and individual initial evaluation (“FIE”) prior to providing special education and related services to any student. All students must be evaluated in accordance with the IDEA and the Texas Education Code.

Richard Milburn Academy shall have procedures in place to ensure that testing and evaluation materials and procedures utilized for the purposes of evaluation and placement of students with disabilities are selected and administered so as to not be racially, culturally, or gender discriminatory. Assessment and procedures shall be provided and administered in the student’s native language or most proficient mode of communication and in the form most likely to yield accurate information on what the student knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to do so. (34 C.F.R. § 300.301; TEX. EDUC. CODE § 29.310).

All implementing assessment procedures must differentiate between language proficiency and handicapping condition. Additionally, placement procedures must ensure that placement in a bilingual education or English as a second language program is not refused solely because the student has a disability. (19 TEX. ADMIN. CODE § 89.1230).

No single procedure shall be the sole criterion for determining whether a student is a student with a disability or for determining an appropriate education program for a student with a disability. The evaluation must be sufficiently comprehensive to identify all of the student’s special education and related services’ needs. Each student must be evaluated in all suspected areas of disability. (34 C.F.R. §§ 300.301 and 300.304; TEX. EDUC. CODE § 29.310).

All assessments must be administered in accordance with the instructions provided and by a trained and knowledgeable person. (34 C.F.R. §§ 300.301 and 300.304).

Sec. 2. TIMELINE

If a student’s parent or adult student provides a written request for an evaluation to the school’s director of special education services or to a district administrative employee, Richard Milburn Academy shall, within 15 school days, (1) provide the parent with prior written notice of its proposal to conduct an evaluation, a copy of the procedural safeguards, and an opportunity to give written consent for the evaluation, or (2) provide prior written notice and procedural safeguards if the school is denying the request for evaluation. (TEX. EDUC. CODE § 29.004(c)).

A written FIE report must be completed not later than the 45th school day following the date on which Richard Milburn Academy receives written consent for the evaluation, signed by the student’s parent or adult student. If the student is absent for more than three days in that time period, the timeline must be extended by the number of days the student was absent. (TEX. EDUC. CODE § 29.004(a)).

This time frame shall not apply if:

1. A student enrolls in the current school after the relevant time frame has begun and before the previous school makes a determination as to whether the student has a disability, but only if the current school is making sufficient progress to ensure a prompt completion of the evaluation and the parent or adult student and current school agree to a specific time for completion of the evaluation; or
2. The parent or adult student repeatedly fails or refuses to produce the student for the evaluation. (34 C.F.R. § 300.301(d)).

Following the completion of the FIE, the ARD committee must meet within 30 calendar days from the date of completion to review and determine eligibility. (TEX. EDUC. CODE § 29.004).

If the 30th day falls during the summer and school is not in session, the student's ARD committee has until the first day of classes in the fall to finalize decisions concerning the student's initial eligibility determination, individualized education program ("IEP"), and placement, unless the full individual and initial evaluation indicates that the student will need extended school year services during that summer.

If the student is an English language learner, the language proficiency assessment committee (LPAC) must also attend the meeting to determine services. (19 TEX. ADMIN. CODE § 89.1050(c)(1)(J)).

If Richard Milburn Academy receives written consent for an FIE from a student's parent or adult student at least 35 but less than 45 school days before the last instructional day of the school year, the evaluation must be completed and the written report of the evaluation must be provided to the parent or adult student not later than June 30 of that year. The ARD committee must meet by the 15th school day of the following school year to consider the evaluation.

If Richard Milburn Academy receives written consent signed by a student's parent or adult student less than 35 school days before the last instructional day of the school year or if the school receives the written consent at least 35 but less than 45 school days before the last instructional day of the school year but the student is absent from school during that period on three or more days, the FIE must be completed not later than the 45th school day after receiving consent.

School days do not include days following the last instructional day of the spring term and before the first day of the fall term.

(TEX. EDUC. CODE § 29.004).

Sec. 3. SPECIFIC LEARNING DISABILITY EVALUATION

The Texas Education Agency ("TEA") cannot require Richard Milburn Academy to use the severe discrepancy between intellectual ability and achievement for determining whether a student has a specific learning disability. TEA must permit the use of a process based on the child's response to scientific, research-based intervention; and may permit the use of other alternative research-based procedures for determining whether a student has a specific learning disability. *(34 C.F.R. § 300.307).*

The evaluation process for specific learning disability includes an observation of the child in the learning environment, including the regular classroom setting, to document academic performance and behavior in the areas of difficulty. *34 C.F.R. § 300.310 (a).*

Sec. 4. FUNCTIONAL BEHAVIOR ASSESSMENT (FBA)

A functional behavior assessment ("FBA") may be necessary for a student whose behavior impedes their education. Prior to completing an FBA, Richard Milburn Academy shall get consent from the parent or adult student. *(34 C.F.R. §§ 300.9)*

If an ARD committee determines a change of placement is necessary due to the student's behavior, it must conduct an FBA and implement a behavioral intervention plan ("BIP"). If an FBA was already completed, the ARD committee must review and update the BIP. *(34 C.F.R. § 300.350(f)).*

Sec. 5. REVIEW OF EXISTING EVALUATION DATA (REED)

A Review of Existing Evaluation Data (REED) is required as part of an initial evaluation, if appropriate, and as part of any reevaluation. The REED must be conducted by the admission, review, and dismissal (“ARD”) committee members and other qualified professionals, as appropriate. The ARD committee members may conduct the review without a meeting.

The REED must include a review of the following:

- Evaluations and information provided by the parents of the student;
- Current classroom-based, local, or State assessments, and classroom-based observations; and
- Observations by teachers and related services providers.

On the basis of that review, and input from the student’s parents or adult student, the ARD committee members must identify what additional data, if any, are needed to determine:

- Whether the student is a student with a disability, and the educational needs of the student, or, in case of a reevaluation of a student, whether the student continues to have such a disability and the educational needs of the student;
- Whether the student needs special education and related services, or in the case of a reevaluation of a student, whether the student continues to need special education and related services;
- The present levels of academic achievement and related developmental needs of the student; and
- Whether any additions or modifications to the special education and related services are needed to enable the student to meet the measurable annual goals set out in the IEP of the student and to participate, as appropriate, in the general education curriculum.

Richard Milburn Academy shall administer any assessments or other evaluation measures needed to produce the data identified by the REED in accordance with applicable procedural requirements regarding notice and consent.

If additional data is not needed, the ARD committee must notify the parent of the determination decision and provide information about the parent’s right to request additional assessments to determine student needs and eligibility. (34 C.F.R. § 300.305).

Richard Milburn Academy shall conduct a reevaluation of the student if the school determines that the educational or related service needs, including improved academic achievement and functional performance, of the child warrant a reevaluation or if the child’s parent or teacher requests a reevaluation. A reevaluation may not occur more than once per year, unless agreed to by the school and the parent. A reevaluation must occur at least every three years, unless the school and parent agree the evaluation is unnecessary. (34 C.F.R. § 300.303).

Sec. 6. CHANGE IN ELIGIBILITY

Richard Milburn Academy shall evaluate a student with a disability before determining a student is no longer eligible for special education and related services.

An evaluation is not required if a student is no longer eligible due to graduation or exceeding the age eligibility in Texas. Richard Milburn Academy shall create a summary of performance and include recommendations on how to assist the student in meeting postsecondary goals. (34 C.F.R. § 300.305(e)).

Sec. 7. CONSIDERATION OF SERVICES PROVIDED IN REGULAR EDUCATION SETTING

To ensure that underachievement in the student suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the group of qualified professionals, as part of a full and individual evaluation, must consider:

- Data that demonstrate that prior to, or as part of, the referral process, the student was provided appropriate instruction in regular education settings, delivered by qualified personnel; and
- Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of progress during instruction, which was provided to the student's parents. (34 C.F.R. § 300.309(b)).

Sec. 8. COORDINATION OF EVALUATIONS WITH PRIOR AND SUBSEQUENT SCHOOLS

The school shall ensure that evaluations of students who transfer from one local education agency to another in the same academic year are coordinated with the student's prior and subsequent schools, as necessary and as expeditiously as possible, to ensure prompt completion of evaluations. (20 U.S.C. § 1414(b)(3)(D)).

Sec. 9. PSYCHOLOGICAL EXAMINATIONS AND TESTS

On request of a child's parent, before obtaining the parent's consent for the administration of any psychological examination or test to the child as part of the evaluation of the child's need for special education, Richard Milburn Academy shall provide to the child's parent:

1. The name and type of the examination or test; and
2. An explanation of how the examination or test will be used to develop an appropriate IEP for the child.

If Richard Milburn Academy determines that an additional examination or test is required for the evaluation of a child's need for special education, Richard Milburn Academy shall provide the information above to the parent or adult student regarding the additional examination or test and shall obtain additional consent for the examination or test. TEX. EDUC. CODE § 29.0041(a), (b).

If Richard Milburn Academy determines that an additional examination or test is required for the evaluation, Richard Milburn Academy shall provide the information required by TEX. EDUC. CODE § 29.0041(a) and shall obtain parental or adult student consent. If a parent or adult student does not give consent within 20 calendar days after the School provides the information, the parent's or adult student's consent is considered denied.

The time required for Richard Milburn Academy to provide information and seek consent may not be counted toward the timeframe for completion of an evaluation. TEX. EDUC. CODE § 29.0041.

Sec. 10. EXTENSION OF TIMELINES

For a specific learning disability, the timelines for evaluation under this policy may be extended by mutual written agreement of the student's parents and the ARD committee. (34 C.F.R. § 300.309(c)).

Sec. 11. EVALUATION CONDUCTED PURSUANT TO A SPECIAL EDUCATION DUE PROCESS HEARING

A special education hearing officer in an impartial due process hearing brought under 20 U.S.C. § 1415 may issue an order or decision that authorizes one or more evaluations of a student who is eligible for, or who is suspected as being eligible for, special education services. Such an order or decision authorizes the evaluation of the student without parental consent as if it were a court order for purposes of any State or federal law providing for consent by order of a court. (TEX. EDUC. CODE § 29.016).

Sec. 12. INDEPENDENT EDUCATIONAL EVALUATIONS

The parent of a student with a disability has the right to obtain an independent educational evaluation (“IEE”) of the parent’s child if the parent disagrees with the evaluation of the student that was obtained by Richard Milburn Academy.

If the parent requests an IEE, Richard Milburn Academy must provide the parent with information about where the parent may obtain an IEE and about Richard Milburn Academy’s criteria that apply to IEE.

Sec. 13. DEFINITIONS

An IEE means an evaluation conducted by a qualified examiner who is not employed by the school responsible for the education of a student.

Public expense means that Richard Milburn Academy either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent, consistent with the provisions of Part B of IDEA, which allow each State to use whatever State, local, Federal, and private sources of support are available in the State to meet the requirements of Part B of IDEA. (34 C.F.R. § 300.502).

Sec. 14. RIGHT TO EVALUATION AT PUBLIC EXPENSE

The parent has the right to request an IEE of the parent’s child at public expense if the parent disagrees with an evaluation of the student completed by Richard Milburn Academy.

If the parent requests an IEE, Richard Milburn Academy must respond to the parent by either:

1. without unnecessary delay, file a due process complaint to request a hearing to show that its evaluation of the student is appropriate; or
2. provide an IEE at public expense, unless Richard Milburn Academy demonstrates in a due process hearing that the evaluation of the student that the parent obtained did not meet Richard Milburn Academy’s criteria.

If Richard Milburn Academy requests a hearing and the final decision is that Richard Milburn Academy’s evaluation of the student is appropriate, the parent still has the right to an IEE, but not at public expense.

If the parent requests an IEE of the student, Richard Milburn Academy may ask why the parent objects to the evaluation of the student obtained by Richard Milburn Academy; however, Richard Milburn Academy may not require an explanation and may not unreasonably delay either providing the IEE of the student at public expense or filing a due process complaint to request a due process hearing to defend Richard Milburn Academy’s evaluation of the student.

The parent is entitled to only one IEE of the student at public expense each time Richard Milburn Academy conducts an evaluation of the student with which the parent disagrees. (34 C.F.R. § 300.502).

a) Parent or Adult Student-Initiated Evaluations

If the parent or adult student obtains an IEE of the student at public expense or the parent shares with Richard Milburn Academy an evaluation of the student that the parent or adult student obtained at private expense:

1. Richard Milburn Academy must consider the results of the evaluation of the student, if it meets Richard Milburn Academy's criteria for IEE, in any decision made with respect to the provision of a free appropriate public education to the student; and
2. the parent or adult student or Richard Milburn Academy may present the evaluation as evidence at a due process hearing regarding the student.

(34 C.F.R. § 300.502).

b) Requests for Evaluations by Hearing Officers

If a hearing officer requests an IEE of the student as part of a due process hearing, the cost of the evaluation must be at public expense.

Sec. 15. CRITERIA FOR OBTAINING IEE AT PUBLIC EXPENSE

The criteria under which the IEE is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the public agency uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an IEE.

a) Location

The evaluator conducting an IEE of a child with a disability at public expense must be located within a 100-mile radius of Richard Milburn Academy. This will allow the evaluator access to Richard Milburn Academy for observation of the student and access to the student's cumulative and special education eligibility folders.

b) Cost

Parents or adult student are free to select whomever they choose to perform the IEE, so long as the examiner meets Richard Milburn Academy's criteria. Richard Milburn Academy will pay a fee for an IEE that allows a parent to choose from among qualified professionals in the area.

Richard Milburn Academy will not pay unreasonably excessive fees. An unreasonably excessive fee is one which is 20% above the prevailing fees in the area as established by the Medicaid/Medicare Service Provider Manual for the specific test being considered.

Parents or adult student will be offered the opportunity to demonstrate to their child's ARD committee that unique circumstances exist which justify an IEE that does not meet Richard Milburn Academy criteria outlined in this document.

When evaluators have a sliding scale fee based on parent income, Richard Milburn Academy will pay the amount charged to the parent if the evaluator meets Richard Milburn Academy criteria or Richard Milburn

Academy has approved the IEE that does not meet Richard Milburn Academy criteria.

In the event a parent or adult student pursues an IEE independently or pursues an IEE provider that is not on Richard Milburn Academy independent evaluator list, Richard Milburn Academy will determine if the evaluator meets Richard Milburn Academy criteria prior to authorizing payment or reimbursement. If payment will be authorized, an original billing form and an original written report with original signature must be submitted to Richard Milburn Academy prior to payment.

Richard Milburn Academy will deny payment for an IEE conducted by an evaluator who does not meet Richard Milburn Academy criteria. Richard Milburn Academy will deny payment for an IEE that does not meet TEA criteria for the specific disability identified.

If a hearing officer requests an IEE as part of a hearing on a due process complaint, the cost of the evaluation must be at public expense.

Travel costs for evaluators will not exceed Richard Milburn Academy rates for travel as established by state guidelines.

A contract for an IEE between an evaluator and Richard Milburn Academy will not exceed one year. All terms will become void after the expiration date of one year.

c) Evaluator Criteria

The evaluator conducting the IEE must meet Richard Milburn Academy criteria and possess comparable credentials to the examiner that conducted the evaluation that is in dispute.

Evaluators must possess current licensure/certification to conduct the evaluation and must provide copies of his or her license or certification with the evaluation, if not previously provided.

Evaluators must comply with all requirements specified in state and federal law, including those outlined in the professional board responsible for providing the license or certification.

Evaluators must meet the examiner qualifications for the tests administered as outlined by the test producer.

The evaluator will have access to the student's cumulative folder and special education folders in gathering information about the student.

The evaluator will have the ability to interview teachers and observe the student in the educational setting.

Prior to conducting the assessment, the evaluator agrees to submit to a national criminal history review and to provide any and all information necessary to secure the national criminal history review, including fingerprints and photographs, or other information required by Tex. Educ. Code § 22.0834 concerning Contractor or Contractor's Subcontractors.

The evaluator agrees to conduct a thorough evaluation in the area(s) performed by Richard Milburn Academy with which the parent or adult student disagrees.

Copies of protocols must be provided to Richard Milburn Academy.

The report must comply with all federal and state requirements, including addressing the presence or absence

of a disability condition as defined under the IDEA and the Texas Education Code.

The evaluation must be provided to Richard Milburn Academy upon completion.

Except for the criteria described above, Richard Milburn Academy may not impose conditions or timelines related to obtaining an IEE at public expense. (34 C.F.R. § 300.502(e)).

PG-6.17 FUNDING – FEDERAL FUNDING COMPLIANCE IDEA, TITLE I

Sec. 1. COMPLIANCE

Richard Milburn Academy shall use Individuals with Disabilities Education Act (“IDEA”) Part B funds received to:

1. comply with the federal maintenance of effort (“MOE”) requirements;
2. supplement State, local and other Federal funds and not supplant such funds; and
3. pay the excess costs of providing special education and related services to children with disabilities and must be used to supplement State, local, and other Federal funds.

(34 C.F.R. § 300.202, 20 U.S.C. § 1413(a)(2)).

Sec. 2. REDUCING LEVEL OF EXPENDITURES

Funds provided to Richard Milburn Academy will not be used to reduce the level of expenditures for the education of students with disabilities made by Richard Milburn Academy below the level of those funds for the preceding year. (20 U.S.C. § 1423(a)(2)(A)(iii), Appendix E to Part 300).

Richard Milburn Academy may reduce the level of expenditures if the reduction is attributable to:

1. Voluntary departure, retirement, or departure for just cause of special education personnel;
2. A decrease in enrollment of students with disabilities;
3. The termination of the obligation of Richard Milburn Academy to provide a special education program to a particular student with a disability that is an exceptionally costly program because the child left Richard Milburn Academy, aged out of services, or no longer needs special education;
4. The termination of costly expenditures for long-term purchases; or
5. The assumption of cost by the high cost fund operated by the Texas Education Agency. (34

C.F.R. § 300.204).

Sec. 3. EXCESS EXPENDITURES

Having complied with MOE and excess costs requirements, Richard Milburn Academy will use IDEA Part B funds for the following activities:

1. For the costs of special education and related services, and supplementary aids and services, provided in a regular class or other education-related setting to the child with a disability in accordance with the individualized education program (“IEP”) of the child, even if nondisabled children benefit from such services;
2. To develop and implement coordinated, early intervening educational services in compliance with the Child Find and administration requirements, including:

- a. Early intervening services, which may include interagency financing structures, for children in kindergarten through grade 12 (with a particular emphasis on children in kindergarten through grade 3) who are not currently identified as needing special education or related services but who need additional academic and behavioral support to succeed in a general education environment;
 - b. Richard Milburn Academy may not use more than 15 percent of the amount received under IDEA Part B for any fiscal year, less any adjustments by Richard Milburn Academy to local fiscal effort, if any, in combination with other amounts, which may include amounts other than education funds, to develop and implement coordinated, early intervening services; and
3. To establish and implement cost or risk-sharing funds, consortia, or cooperatives for Richard Milburn Academy, or for Richard Milburn Academy's working in a consortium of which Richard Milburn Academy is a part, to pay for high-cost special education and related services.
 4. Richard Milburn Academy may use IDEA Part B funds to purchase appropriate technology for recordkeeping, data collection, and related case management activities of teachers and related services personnel providing services described in the IEP that is needed for the implementation of such case management activities.

(34 C.F.R. § 300.208).

Sec. 4. EARLY INTERVENING SERVICES

Funds made available for early intervening services, must supplement not supplant funds available under the ESEA. (34 C.F.R. § 300.226(e)).

Sec. 5. USE OF IDEA PART B FUNDS FOR TITLE 1 PROGRAMS

Notwithstanding any other provisions related to commingling of funds, Richard Milburn Academy may use IDEA Part B funds received for any fiscal year to carry out a Title 1, Part A school wide programs under the Elementary and Secondary Education Act ("ESEA"), except that the amount may not exceed:

- the amount received by the school under IDEA Part B for that fiscal year; divided by
- the number of students with disabilities in the jurisdiction of the school; and multiplied by
- the number of students with disabilities participating in the school wide program. (34

C.F.R. § 300.206; 20 U.S.C. § 1413).

Sec. 6. COMPLIANCE WITH FEDERAL FUNDING REQUIREMENTS: TITLE 1

To the extent required under Title 1 of the ESEA, Richard Milburn Academy shall ensure equity among school programs in staff/student ratios and in expenditures of money for curriculum materials and instructional supplies. "Staff" shall include teachers, administrators, and auxiliary personnel. In special programs, such as special education and bilingual education, a lower ratio may be maintained and more money may be spent as necessary to fulfill other legal requirements.

The parental involvement program shall be set up in accordance with requirements of Title 1 of the ESEA, as applicable. Parental involvement is encouraged and required in the planning and decision-making process for the school and for the campus.

PG-6.18 FUNDING – NONEDUCATIONAL SERVICES

Sec. 1. NONEDUCATIONAL COMMUNITY BASED SUPPORT SERVICES

Students with disabilities and their families may be eligible to receive noneducational community- based support services paid for by public funds.

The Texas Education Agency (TEA) is responsible for establishing procedures and criteria for the allocation of noneducational funds to open-enrollment charter schools for the provision of noneducational community-based support services to certain students with disabilities and their families so that those students may receive a free appropriate public education (“FAPE”) in the least restrictive environment. (TEX. EDUC. CODE § 29.013(a)).

Richard Milburn Academy shall use any funds allocated under TEX. EDUC. CODE § 29.013 only for eligible students with disabilities who would remain or would have to be placed in residential facilities primarily for educational reasons without the provision of noneducational community- based support services. (TEX. EDUC. CODE § 29.013(b)).

The support services may include in-home family support, respite care, and case management for families with a student who otherwise would have been placed by an open-enrollment charter school in a private residential facility. (TEX. EDUC. CODE § 29.013(c)).

The provision of services under TEX. EDUC. CODE § 29.013 does not supersede or limit the responsibility of other agencies to provide or pay for costs of noneducational community-based support services to enable any student with disabilities to receive a FAPE in the least restrictive environment. Specifically, services provided under TEX. EDUC. CODE § 29.013 may not be used for a student with disabilities who is currently placed or who needs to be placed in a residential facility primarily for noneducational reasons. Funds cannot be used to cover services already required through the student’s individual education program or for long-term care. (TEX. EDUC. CODE § 29.013(d)).

PG-6.19 FUNDING – SHARED SERVICES ARRANGEMENTS

Sec. 1. SHARED SERVICES ARRANGEMENT

Richard Milburn Academy may enter into a written contract to jointly operate its special education programs. Funds to which the cooperating schools/charter schools are entitled may be allocated to the schools/charter schools jointly as shared services arrangement units or shared services arrangement funds in accordance with the shared services arrangement schools/charters’ agreement, TEA General and Fiscal Guidelines and Texas Government Code Chapter 791 (interlocal agreements).

PG-6.20 FUNDING – STATE ALLOTMENTS

Sec. 1. STATE FUNDING: SPECIAL ALLOTMENTS

Richard Milburn Academy shall maintain records of students participating in special programs in accordance with the Commissioner of Education’s rules. (19 TEX. ADMIN. CODE § 129.21).

Sec. 2. SPECIAL EDUCATION ALLOTMENT

Each open-enrollment charter school will receive an annual allotment equal to the adjusted basic allotment multiplied by 1.1 for each student receiving special education and related services in a mainstream instructional arrangement. For each full-time equivalent student receiving special education and related services in average daily attendance in an instructional arrangement other than a mainstream instructional

arrangement, the open-enrollment charter school is entitled to an annual allotment equal to the adjusted basic allotment multiplied by a weight determined according to instructional arrangement as set forth in Tex. Educ. Code § 48.102.

Funds allocated under this section, other than an indirect cost allotment established under State Board of Education (“SBOE”) rule, must be used in the special education program under Subchapter A, Chapter 29. (TEX. EDUC. CODE § 48.102(h)).

Sec. 3. COMPENSATORY EDUCATION ALLOTMENT

Richard Milburn Academy must use funds allocated under TEX. EDUC. CODE § 48.104 for a purpose authorized in TEX. EDUC. CODE § 48.104(j-1), (k). (TEX. EDUC. CODE § 48.104).

Funds allocated under TEX. EDUC. CODE § 48.104 shall be used to fund supplemental programs and services designed to eliminate any disparity in performance on assessment instruments administered under Subchapter B (School-Based Health Centers), Chapter 39, Texas Education Code or disparity in the rates of high school completion between students at risk of dropping out of school, as defined by TEX. EDUC. CODE § 29.081 (Compensatory, Intensive, and Accelerated Instruction) and all other students. Specifically, the funds, other than an indirect cost allotment established under SBOE rule, which may not exceed 45 percent, may be used to meet the costs of providing a compensatory, intensive, or accelerated instruction program under TEX. EDUC. CODE § 29.081 or an alternative education program established under TEX. EDUC. CODE § (Disciplinary Alternative Education Programs) or to support a program eligible under Title I of the Elementary and Secondary Education Act of 1965, as provided by Pub. L. No. 103-382 and its subsequent amendments, and by federal regulations implementing that Act, at a campus at which at least 40 percent of the students are educationally disadvantaged. In meeting the costs of providing a compensatory, intensive, or accelerated instruction program under TEX. EDUC. CODE § 29.081, Richard Milburn Academy’s compensatory education allotment shall be used for costs supplementary to the regular education program, such as costs for program and student evaluation, instructional materials and equipment and other supplies required for quality instruction, supplemental staff expenses, salary for teachers of at-risk students, smaller class size, and individualized instruction. (TEX. EDUC. CODE § 48.104(k)).

Sec. 4. BILINGUAL EDUCATION ALLOTMENT

For each student in average daily attendance in a bilingual education or special language program under Subchapter B, Chapter 29, an open-enrollment charter school is entitled to an annual allotment equal to the adjusted basic allotment multiplied by 0.1. Funds allocated under this section, other than an indirect cost allotment established under SBOE rule, must be used in providing bilingual education or special language programs under Subchapter B, Chapter 29, and must be accounted for under existing agency reporting and auditing procedures. An open-enrollment charter school’s bilingual education or special language allocation may only be used for program and student evaluation, instructional materials and equipment, staff development, supplemental staff expenses, salary supplements for teachers, and other supplies required for quality instruction and smaller class size. (TEX. EDUC. CODE §§ 12.104(b)(3)(G) and 42.105).

Sec. 5. CAREER AND TECHNOLOGY EDUCATION ALLOTMENT

For each full-time equivalent student in average daily attendance in an approved career and technology education program in grades 7 through 12 or in career and technology education programs for students with disabilities in grades seven through 12, an open-enrollment charter school is entitled to:

1. an annual allotment equal to the adjusted basic allotment multiplied by a weight of 1.35; and
2. \$50 for each of the following in which the student is enrolled:
 - a. two or more advanced career and technology education classes for a total of three or more credits;
 - b. a campus designated as a P-TECH school under Section 29.566; or
 - c. a campus that is a member of the New Tech Network and that focuses on project-based learning and work-based education.

For purposes of this allotment, “full-time equivalent student” means 30 hours of contact a week between a student and career and technology education program personnel.

At least 55% of the funds allocated under this section must be used in providing career and technology education programs in grades 7 through 12. (TEX. EDUC. CODE § 48.106).

PG-6.21 GENERAL AND FISCAL GUIDELINES

Sec. 1. COMPLIANCE WITH GENERAL AND FISCAL GUIDELINES

Richard Milburn Academy must comply with the Texas Education Agency General and Fiscal Guidelines.

Sec. 2. CHARGING COSTS TO SPECIAL EDUCATION GRANT

Richard Milburn Academy may charge costs to a special education grant when those costs follow the Richard Milburn Academy’s local written procedures for allowability of costs and meet the following criteria:

- Are reasonable for the performance of the special education grant and are allocable under the applicable cost principles;
- Conform to limitations or exclusions set forth in applicable cost principles or the special education grant agreement as to types or amount of costs;
- Are consistent with policies and procedures that apply uniformly to federally or state- funded activities funded from other sources;
- Are accorded consistent treatment among all grant programs, regardless of funding source;
- Are not included as a cost or used to meet cost-sharing or matching requirements of any other federally or state-funded program in the current or a prior period; and
- Are adequately documented.

Sec. 3. REASONABLE COST

A cost can be considered reasonable if it meets the following standards:

- The cost is of a type generally recognized as ordinary and necessary for the operation of Richard Milburn Academy or grant performance;
- Restrictions or requirements are imposed for generally accepted sound business practices, arms-length bargaining, federal or state laws and regulations, and grant award terms and conditions;
- Consideration is given to market prices for comparable goods or services for the geographical area;
- Individuals are acting with prudence in the circumstances of responsibility to Richard Milburn Academy and federal and state government; and

- There are no significant deviations from established practices of Richard Milburn Academy that may unjustifiably increase grant costs.

a) Allocating Costs

A cost is allocable to the special education grant in accordance with relative benefits received if it is treated consistently with other costs incurred for the same purposes in like circumstance and if it meets the following:

- Is incurred specifically for the grant;
- Benefits both the grant and the other work and can be distributed in reasonable proportion to the benefits received; and
- Is necessary to the overall operation of Richard Milburn Academy and is assignable in part to the special education grant award in accordance with the principles of this framework.

PG-6.22 GRADUATION PLAN

Sec. 1. APPLICABILITY OF TITLE RELATING TO HIGH SCHOOL GRADUATION

Richard Milburn Academy is subject to a prohibition, restriction, or requirement, as applicable, imposed by Title 2 (Public Education) of the Texas Education Code, or a rule adopted under Title 2 (Public Education) of the TEX. EDUC. CODE, relating to high school graduation under TEX. EDUC. CODE § 28.025. (TEX. EDUC. § 12.104(b)(2)(E)).

Sec. 2. ARD COMMITTEE AND IEP

For each student who is at least 14 years of age and qualifies for special education, the admission, review, and dismissal (“ARD”) committee must begin transition planning. The ARD committee must also consider the student’s graduation plan and what state assessments are required for graduation. (TEX. EDUC. CODE § 29.0111; 19 TEX. ADMIN. CODE § 89.1070).

Sec. 3. SPECIAL EDUCATION ELIGIBILITY UPON GRADUATION

Graduation with a regular high school diploma terminates a student’s eligibility for special education and related services. Termination of eligibility based on graduation requires Richard Milburn Academy to complete a summary of performance in accordance with 34 C.F.R. § 300.305(e)(3), and prior written notice must be provided to the parent. (34 C.F.R. § 300.102).

A student who receives a diploma, but took one or more classes with a modified curriculum, may request the ARD committee determine needed educational services as long as the student meets the age eligibility requirements. Modified curriculum is defined as curriculum or content that is reduced in amount or complexity of the required Texas Essential Knowledge and Skills (“TEKS”). (19 TEX. ADMIN. CODE § 89.1070).

Sec. 4. GRADUATION REQUIREMENTS UNDER THE FOUNDATION HIGH SCHOOL PROGRAM

A student with a disability that receives special education services and who enters 9th grade in or after the 2014-2015 school year, may receive a regular high school diploma if the student:

1. Demonstrates mastery of the required states standards;

2. Completes the credit requirements under the Foundation High School Program; or
3. Achieves satisfactory performance on the required state assessment unless the ARD committee determines that satisfactory performance on the required state assessment is not necessary for graduation.

A student who receives special education services entering 9th grade in 2014-2015 or after may also earn a high school diploma if the student meets the above requirements and successfully completes the individualized education program (“IEP”) and meets one of the following:

1. consistent with the IEP, the student obtains full-time employment and masters sufficient self-help skills to enable the student to maintain employment without direct or ongoing educational support;
2. consistent with the IEP, demonstrated mastery of specific employability skills and self- help skills that do not require ongoing educational support;
3. has access to services that are not within the legal responsibility of Richard Milburn Academy or educational options for which the student has been prepared for by the academic program; or
4. no longer meets eligibility requirements

(19 TEX. ADMIN. CODE § 89.1070; TEX. EDUC. CODE § 28.025).

Sec. 5. ENDORSEMENTS UNDER THE FOUNDATION HIGH SCHOOL PROGRAM

A student receiving special education services, may receive an endorsement if the student:

1. Completes the requirements for graduation under the Foundation High School Program and completes the additional credits requirements in mathematics, science, and elective courses required for an endorsement with or without modified curriculum; or
2. Completes the courses required for the endorsement without modified curriculum; and
3. Performs satisfactorily on the state assessment.

A student who is in 11th or 12th grade in 2014-2015, 2015-2016, or 2016-2017 school years who took each of the required assessments, but failed to achieve satisfactorily on no more than two assessments is eligible for an endorsement if the student meets the other endorsement requirements.

For students receiving special education services, if the student wants to use a course to satisfy both the Foundation High School Program requirements and for the endorsement requirement, the course must be completed without modified curriculum.

(19 TEX. ADMIN. CODE § 89.1070; TEX. EDUC. CODE § 28.025).

Sec. 6. TRANSITIONING TO THE FOUNDATION HIGH SCHOOL PROGRAM

For students who entered 9th grade prior to the 2014-2015 school year, a student may receive a diploma under the Foundation High School Program if the student’s ARD committee determines the student should take courses under the Foundations program and the student completes the requirements.

A student transitioning may also receive an endorsement if he or she meets the requirements.

A student who is in 11th or 12th grade in the 2014-2015, 2015-2016, or 2016-2017 school years and transitioning to the Foundation High School Program, who took each of the required assessments, but failed to achieve satisfactorily on no more than two assessments may graduate if the student met the other

graduation requirements.

(19 TEX. ADMIN. CODE § 89.1070; TEX, EDUC. CODE § 28.025).

Sec. 7. SUBSTITUTIONS UNDER THE FOUNDATION HIGH SCHOOL PROGRAM

a) Language other than English

If the ARD committee determines that a student with a disability is unable to complete two credits in the same language other than English, the ARD committee may determine to:

1. substitute a combination of two credits from ELA, math, science, or social studies; or
2. substitute two credits of CTE, technology applications, or other academicelectives. (TEX.

EDUC. CODE § 74.12(b)(5)(D)(i); § 28.025(b-14)(1).

b) Physical Education

In accordance with State Board of Education (“SBOE”) rules, a student who is unable to participate in physical activity due to disability or illness is allowed to substitute one credit in English language arts, mathematics, science, or social studies or one academic elective credit for the required physical education credit. A credit allowed to be substituted may not also be used by the student to satisfy a graduation requirement other than completion of the physical education credit. The determination regarding a student’s ability to participate in physical activity must be made by:

- The student’s ARD committee, if the student receives special education services under the IDEA and Texas Education Code Chapter 29;
- The student’s 504 committee, if the student does not receive special education services under the IDEA or Texas Education Code Chapter 29, Subchapter A but is covered by Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794; or
- If each of the described committees is inapplicable, a committee established by the school of persons with appropriate knowledge regarding the student.

(TEX. EDUC. CODE § 28.025(b-11)).

Credits allowed as a substitution for the language and PE requirement may not be used to satisfy other graduation credit requirements.

(TEX. EDUC. CODE § 28.025(b-11) and (b-14)).

Sec. 8. DISTINGUISHED ACHIEVEMENT, RECOMMENDED, AND MINIMUM HIGH SCHOOL PROGRAM

A student receiving special education services who entered 9th grade before the 2014-2015 school year, may graduate with a regular diploma if the student:

1. Demonstrates mastery of the state standards;
2. Completes credit requirements for graduation under the recommended or distinguished program; and
3. Achieves satisfactory performance on the required state assessment.

A student who is in 11th or 12th grade in 2014-2015, 2015-2016, or 2016-2017 school years and who took each of the required assessments, but failed to achieve satisfactorily on no more than two assessments may graduate under the recommended or distinguished program if the student met the other graduation requirements.

A student receiving special education services who entered 9th grade before the 2014-2015 school year, may also graduate with a regular diploma if the student:

1. Demonstrates mastery of the state standards;
2. Completes credit requirements for graduation under the minimum program; and
3. Participates in or satisfactorily performs on the required state assessment as determined by the ARD committee.

A student receiving special education services who entered 9th grade before the 2014-2015 school year, may also graduate with a regular diploma if the student:

1. Demonstrates mastery of the state standards through courses, one or more of which contained modified content and is aligned with the requirements under the minimum high school program;
2. Completes credit requirements for graduation under the minimum program;
3. Participates in or satisfactorily performs on the required state assessment as determined by the ARD committee; and
4. Successfully completes the IEP and meets one of the following conditions:
 - a. consistent with the IEP, the student obtains full-time employment and masters sufficient self-help skills to enable the student to maintain employment without direct or ongoing educational support;
 - b. consistent with the IEP, demonstrated mastery of specific employability skills and self-help skills that do not require ongoing educational support;
 - c. has access to services that are not within the legal responsibility of Richard Milburn Academy or educational options for which the student has been prepared for by the academic program; or
 - d. No longer meets eligibility requirements.

19 Tex. Admin. Code § 89.1070.

Sec. 9. HIGH SCHOOL DIPLOMA AND CERTIFICATE; ACADEMIC ACHIEVEMENT RECORD

Richard Milburn Academy does issue a certificate of coursework completion to a student who successfully completes the curriculum requirements identified by the SBOE under TEX. EDUC. CODE § 28.025(a) but who fails to comply with TEX. EDUC. CODE § 39.025 (Secondary-Level Performance Required) relating to exit-level assessment requirements. Richard Milburn Academy does allow a student who receives a certificate to participate in a graduation ceremony with students receiving high school diplomas. (TEX. EDUC. CODE § 28.025(d)).

Sec. 10. CERTIFICATE OF ATTENDANCE

Richard Milburn Academy does issue a Certificate of Attendance to a student who receives special education services under the Individuals with Disabilities Education Act (“IDEA”), and who has completed four years of high school but has not completed the student's IEP. Richard Milburn Academy shall allow a student who receives a certificate to participate in a graduation ceremony with students receiving high school diplomas. A student may participate in only one graduation ceremony. Receiving a Certificate of

Attendance does not preclude a student from receiving a diploma. (TEX. EDUC. CODE § 28.025(f)).

PG-6.23 PARENT

Sec. 1. FOSTER PARENT

A foster parent may act as a parent of a child with a disability, as authorized under 20 U.S.C. § 1415(b) and its subsequent amendments, if:

1. the Department of Family and Protective Services (“DFPS”) is appointed as the temporary or permanent managing conservator of the child;
2. the rights and duties of the department to make decisions regarding education provided to the child under Texas Family Code § 153.371, have not been limited by court order; and
3. the foster parent agrees to:
 - a. participate in making special education decisions on the child’s behalf; and
 - b. complete a training program that complies with minimum standards established by the Texas Education Agency (“TEA”) rule.

(TEX. EDUC. CODE § 29.015(a)).

A foster parent who will act as a parent of a child with a disability must complete a training program before the next scheduled admission, review, and dismissal (“ARD”) committee meeting for the child but not later than the 90th day after the date the foster parent begins acting as the parent for the purpose of making special education decisions. (TEX. EDUC. CODE §29.015(b)).

Richard Milburn Academy may not require a foster parent to retake a training program to continue serving as a child’s parent or to serve as the surrogate parent for another child if the foster parent has completed a training program to act as a parent of a child with a disability provided by:

1. the DFPS;
2. a school district;
3. an education service center; or
4. any other entity that receives federal funds to provide special education training to parents.

A foster parent who is denied the right to act as a parent under TEX. EDUC. CODE § 29.015 by an open-enrollment charter school may file a complaint with the TEA in accordance with federal law and regulations. (TEX. EDUC. CODE § 29.015(c)).

Richard Milburn Academy shall provide notice to the student’s educational decision-maker and caseworker regarding events that may significantly impact the education of a student, including:

1. requests or referrals for an evaluation under Section 504, Rehabilitation Act of 1973 (29 U.S.C. § 794), or special education under TEX. EDUC. CODE § 29.003;
2. ARD committee meetings;
3. manifestation determination reviews required by TEX. EDUC. CODE § 37.004(b);
4. any disciplinary actions under Texas Education Code Chapter 37 for which parental notice is required;
5. citations issued for Class C misdemeanor offenses on school property or at school-sponsored activities;
6. reports of restraint and seclusion required by Tex. Educ. Code § 37.0021; and
7. use of corporal punishment as provided by Tex. Educ. Code § 37.0011.

(TEX. EDUC. CODE § 25.007).

As a condition to receiving funds under Title I, Part A, Richard Milburn Academy shall collaborate with the state or local child welfare agency to:

- a. ensure that children in foster care needing transportation to the school of origin will promptly receive transportation in a cost-effective manner and in accordance with 42 U.S.C. § 675(4)(A) and to the extent required by law; and
- b. ensure that, if there are additional costs incurred in providing transportation to maintain children in foster care in their schools of origin, Richard Milburn Academy will, to the extent required by law, provide transportation to the school of origin if:
 - i. the local child welfare agency agrees to reimburse Richard Milburn Academy for the cost of transportation;
 - ii. Richard Milburn Academy agrees to pay the cost of transportation; or
 - iii. Richard Milburn Academy and the local welfare agency agree to share the cost of such transportation.

20 U.S.C. § 6312(c)(5).

Sec. 2. SURROGATE PARENT

Richard Milburn Academy must appoint an individual to serve as the surrogate parent for a child if:

1. Richard Milburn Academy is unable to identify or locate a parent for a child with a disability; or
2. the foster parent of a child is unwilling or unable to serve as a parent.

A surrogate parent appointed by Richard Milburn Academy may not:

1. be an employee of the state, Richard Milburn Academy, or any other agency involved in the education or care of the child; or
2. have any interest that conflicts with the interests of the child.

A surrogate parent must:

1. be willing to serve in that capacity;
2. exercise independent judgement in pursuing the child's interests;
3. ensure that the child's due process rights under applicable state and federal laws are not violated;
4. complete a training program that complies with minimum standards established by agency rule before the next scheduled admission, review, and dismissal committee meeting for the child but not later than the 90th day after the date the surrogate parent is appointed;
5. visit the child and the school where the child is enrolled;
6. review the child's educational records;
7. consult with any person involved in the child's education, including the child's teachers, caseworkers, court-appointed volunteers, guardian ad litem, attorney ad litem, foster parent, and caregiver; and
8. attend meetings of the child's admission, review, and dismissal committee.

Richard Milburn Academy may appoint a person who has been appointed to serve as a child's guardian ad litem or as a court-certified volunteer advocate as the child's surrogate parent. As soon as practicable after appointing a surrogate parent Richard Milburn Academy shall provide written notice of the appointment to the child's educational decision-maker and caseworker.

If a court appoints a surrogate parent for a child with a disability and the Richard Milburn Academy determines that the surrogate parent is failing to perform or is not properly performing the duties listed in this policy, Richard Milburn Academy shall consult with the DFPS regarding whether another person should be appointed to serve as the surrogate parent for the child.

PG-6.25 PROCEDURAL SAFEGUARDS AND REQUIREMENTS

Sec. 1. PROCEDURAL SAFEGUARDS

The Superintendent shall establish and maintain procedures to ensure that children with disabilities and their parents or adult student are guaranteed procedural safeguards with respect to the provision of a free appropriate public education ("FAPE"). 20 U.S.C. § 1415(a)-(b).

These procedures shall include:

- 6.25.1 An opportunity for the parents to review all education records and to participate in meetings relating to the identification, evaluation, and educational placement of the child and the provision of FAPE to the child. 34 C.F.R. § 300.501.
- 6.25.2 An opportunity for the parents to obtain an independent educational evaluation of the child. 34 C.F.R. § 300.502.
- 6.25.3 Assignment of an individual to act as a surrogate for the parent when no parent can be identified, Richard Milburn Academy cannot locate the parents, or the child is a ward of the state. 34 C.F.R. § 300.519.
- 6.25.4 Prior written notice to the parents whenever Richard Milburn Academy proposes to initiate or change, or refuses to initiate or change, the identification, evaluation, or educational placement of the child, or the provision of FAPE to the child. 34 C.F.R. § 300.503.
- 6.25.5 Procedures to allow parties to resolve disputes through a mediation process. 34 C.F.R. § 300.506.
- 6.25.6 An opportunity for any party to file a due process complaint on any matter relating to the identification, evaluation, or educational placement of the child, or the provision of FAPE to the child. 34 C.F.R. § 300.507.
- 6.25.7 Procedures that require either party, or the attorney representing a party, to provide to the other party a due process complaint (which shall remain confidential). 34 C.F.R. § 300.508.

Sec. 2. LANGUAGE OF NOTICES

The procedural safeguards and prior notices described below must be written in a language understandable to the general public. The notice must be provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so. 34 C.F.R. §§ 300.503(c), 300.504(d).

a) Electronic Delivery of Notices

A parent of a child or adult student with a disability may elect to receive required notices by electronic mail, if Richard Milburn Academy makes that option available. 34 C.F.R. § 300.505.

b) Notice of Procedural Safeguards

Richard Milburn Academy shall provide a copy of the procedural safeguards to parents or adult student only once per year, except that a copy also shall be given to the parents or adult student:

1. Upon initial referral or parental or adult student request for evaluation;
2. Upon receipt of the first state complaint and upon receipt of the first due process complaint in a school year;
3. On the date of a decision to make a disciplinary removal that is a change in placement; and
4. Upon request by a parent or adult student.

Richard Milburn Academy may also place a current copy of the procedural safeguards notice on its Internet website.

c) Contents of Notice

The notice shall include a full explanation of the procedural safeguards relating to:

1. Independent educational evaluations;
2. Prior written notice;
3. Parental consent;
4. Access to educational records;
5. Opportunity to present and resolve complaints through the due process complaint and state complaint procedures, including:
 - a. The time period in which to file a complaint,
 - b. The opportunity for Richard Milburn Academy to resolve the complaint; and
 - c. The difference between the due process complaint and the state complaint procedures, including the jurisdiction of each procedure, what issues may be raised, filing and decisional timelines, and relevant procedures.
6. The availability of mediation;
7. The child's placement during pendency of any due process proceedings;
8. Procedures for children who are subject to placement in an interim alternative educational setting;
9. Requirements for unilateral placement by parents of children in private schools at public expense;
10. Hearings on due process complaints, including requirements for disclosure of evaluation results and recommendations;
11. Civil actions, including the time period in which to file such actions; and
12. Attorneys' fees.

20 U.S.C. § 1415(a)–(b), (d); 34 C.F.R. § 300.504(c).

Sec. 3. DISPUTE RESOLUTION

The possible options for resolving disputes that arise between a parent and Richard Milburn Academy relating to the identification, evaluation, or educational placement of or the provision of FAPE to a student with a disability include, but are not limited to:

1. ARD committee meetings, including IEP facilitation if offered by Richard Milburn Academy, under 19 TAC 89.1196;
2. Meetings or conferences with the student's teachers;
3. Meetings or conferences, subject to Richard Milburn Academy policies, with the principal, special education director, Superintendent, or Board;
4. Requesting state IEP facilitation in accordance with 19 TAC 89.1197 (relating to State Individualized Education Program Facilitation);
5. Requesting mediation through the Texas Education Agency ("TEA") in accordance with 34 CFR 300.506;
6. Filing a complaint with TEA in accordance with 34 CFR 300.153; or
7. Requesting a due process hearing through TEA in accordance with 34 CFR 300.507-300.514.

19 TAC 89.1150.

Sec. 4. PROCESS COMPLAINT

Whenever a due process complaint has been received by Richard Milburn Academy, the parent shall have an opportunity for an impartial due process hearing, which shall be conducted by TEA.

a) Time Limits

1. *Due Process Complaints Filed Before September 1, 2022:*

A due process complaint filed before September 1, 2022 must set forth an alleged violation that occurred not more than one year before the date the parent or Richard Milburn Academy knew or should have known about the alleged action that forms the basis of the complaint. *20 U.S.C. 1415(f)(1)(A); 19 TAC 89.1151(c).*

2. *Due Process Complaints Filed On or After September 1, 2022:*

A due process complaint filed on or after September 1, 2022 must set forth an alleged violation that occurred not more than two years before the date the parent or Richard Milburn Academy knew or should have known about the alleged action that forms the basis of the complaint. *20 U.S.C. 1415(f)(1)(A); Education Code 29.0164.*

b) Exceptions

These time limits shall not apply if the parent was prevented from requesting a hearing due to:

1. A specific misrepresentation by Richard Milburn Academy that it had resolved the problem forming the basis of the complaint; or
2. Richard Milburn Academy's withholding of information from the parent that Richard Milburn Academy was required by the IDEA to provide.

20 U.S.C. 1415(f)(3)(D); 34 CFR 300.511(f); 19 TAC 89.1151(d).

c) "Stay Put"

During the pendency of any administrative or judicial proceeding regarding a due process complaint notice requesting a due process hearing, the child shall remain in the then-current educational placement unless Richard Milburn Academy and the parent agree otherwise. If the child is applying for initial admission to a public school, the child shall, with the consent of the parents, be placed in the public school program until all proceedings have been completed. *20 U.S.C. 1415(j); 34 CFR 300.518, 300.533.*

d) Exception

When a due process hearing has been requested by a parent or Richard Milburn Academy concerning a disciplinary change of placement or manifestation determination, the child shall remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the child's assignment to the alternative setting, or the 45-day timeline, if applicable, whichever occurs first, unless the parent and Richard Milburn Academy agree otherwise. *20 U.S.C. 1415(k)(3)(A), 1415(k)(4)(A); 34 CFR 300.533.*

e) Resolution Process

Within 15 days of receiving notice of a parent's due process complaint, and before initiating a due process hearing under 34 CFR 300.511, Richard Milburn Academy shall convene a meeting with the parent and the relevant member or members of the ARD committee. The purpose of the meeting is for the parent to discuss the due process complaint and the facts that form the basis of the due process complaint, so that Richard Milburn Academy has the opportunity to resolve the dispute.

The meeting need not be held if the parent and Richard Milburn Academy agree in writing to waive the meeting, or the parent and Richard Milburn Academy agree to use the mediation process.

If Richard Milburn Academy has not resolved the due process complaint to the satisfaction of the parent within 30 days of the receipt of the complaint, the due process hearing may occur. If Richard Milburn Academy is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made Richard Milburn Academy may, at the conclusion of the 30-day period, request that a hearing officer dismiss the parent's due process complaint.

34 CFR 300.510.

Sec. 5. TRANSFER OF RIGHTS TO ADULT STUDENTS

When a student reaches the age of 18, Richard Milburn Academy shall notify the student and the parents of the transfer of parental rights. This notice is separate and distinct from the requirement that, beginning at least one year before the student reaches the age of 18, the student's IEP include a statement regarding transfer of parental rights.

A student with a disability who is 18 years of age or older or whose disabilities of minority have been removed for general purposes under Chapter 31, Family Code, shall have the same right to make educational decisions as a student without a disability. All other rights accorded to parents under Chapter 29, Subchapter A of the Education Code or 20 U.S.C. 1415 transfer to the student.

34 CFR 300.520; Education Code 29.017(a)-(b); 19 TAC 89.1049(c).

PG-6.26 RECORDS

Student records shall be maintained for each student from the time the student begins attending Richard

Milburn Academy until withdrawal or graduation from Richard Milburn Academy. These records shall move with the respective student from campus to campus. Records for students not in attendance and/or withdrawn students and graduates shall be retained for the period of time required by law. No permanent records may be destroyed without explicit written permission from the Superintendent.

Sec. 1. EDUCATION RECORDS

a) “Education Records” Defined

For the purposes of this policy, the term “education records” means those records, files, documents, and other materials that contain information directly related to a student and are maintained by Richard Milburn Academy or by a person acting for Richard Milburn Academy.

The term “education records” does not include:

1. Records that are created or received by Richard Milburn Academy after an individual is no longer a student in attendance, and that are not directly related to the individual’s attendance as a student.
2. Records made by Richard Milburn Academy personnel that are kept in the sole possession of the maker, are used only as a personal memory aid, and are not accessible or revealed to anyone other than a temporary substitute for the maker of the record.
3. Records maintained by a law enforcement unit of Richard Milburn Academy that were created by that law enforcement unit for the purpose of law enforcement.
4. Records on a student who is eighteen years of age or older, or who is attending an institution of postsecondary education, that are:
 - a. Made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his or her professional capacity or assisting in a paraprofessional capacity;
 - b. Made, maintained, or used only in connection with treatment of the student; and
 - c. Disclosed only to individuals providing the treatment. For the purpose of this definition, “treatment” does not include remedial educational activities or activities that are part of the program of instruction at the agency or institution.
5. Grades on peer-graded papers before they are collected and recorded by a teacher.

State and federal law safeguard educational records from unauthorized inspection or use. All information relating to student performance, including grades, test results, and disciplinary records are considered confidential educational records. Release of those records are restricted to parents or adult student; school staff members with a legitimate educational interest; various governmental agencies or in response to a subpoena or court order; or a school to which the student transfers or subsequently enrolls. Release to any other person or agency will occur only with prior written consent of the parent or adult student.

b) Screening Records

The Principal of each Richard Milburn Academy campus shall maintain records of screening for special senses and communication disorders, spinal screening, and assessment for type 2 diabetes for each student in Richard Milburn Academy. Records shall be open for inspection by the state or local health department. The Texas-Mexico Border Health Coordination Office may, directly or through local health departments, enter a school and inspect records relating to assessment for type 2 diabetes. Individual screening records may be transferred among schools in accordance with Section 2-d (Access by Other Persons) below.

c) Immunization Records

Richard Milburn Academy shall maintain an individual immunization record during the period of attendance for each student admitted. The records shall be open for inspection at all reasonable times by the Texas Education Agency (“TEA”) or by representatives of local health departments or the Texas Department of State Health Services (“TDSHS”). Richard Milburn Academy shall cooperate with other districts and schools in transferring students’ immunization records between other schools. Specific approval from students or parents is not required prior to making such record transfers.

d) Medical Records

The parent of a student under the age of 18 is entitled to access the student’s medical records maintained by Richard Milburn Academy. The adult student is also entitled to access his or her records maintained by Richard Milburn Academy. On request of a student’s parent or an adult student, Richard Milburn Academy shall provide a copy of the student’s medical records to the parent or adult student. Richard Milburn Academy may not impose a charge that exceeds the amount authorized by Texas Government Code § 552.261.

e) Privacy Rule for Non-“Education Records”

To the extent Richard Milburn Academy is a covered entity under the Health Insurance Portability and Accountability Act (“HIPAA”), Richard Milburn Academy must comply with the Privacy Rule, 45 C.F.R. Part 164, with respect to protected health information that is not an education record.

f) Food Allergy Information

Information regarding a child’s or adult student’s food allergy, regardless of how it is received by Richard Milburn Academy, shall be retained in the student’s student records, but may not be placed in the health record maintained for the child or adult student by Richard Milburn Academy.

i. Exceptions

If Richard Milburn Academy receives documentation of a food allergy from a physician, that documentation shall be placed in the health record maintained for the student by Richard Milburn Academy. A registered nurse may enter appropriate notes about a student’s possible food allergy in the health record maintained for the student by Richard Milburn Academy, including a notation that the student’s student records indicate that a parent or adult student has notified Richard Milburn Academy of the student’s possible food allergy.

g) Assessment Instruments

The results of individual student performance on basic skills assessment instruments or other achievement tests administered by Richard Milburn Academy are confidential and may be made available only to the student, the student’s parent if the student is under 18, and to Richard Milburn Academy personnel directly involved with the student’s educational program. However, overall student performance data shall be aggregated by ethnicity, sex, grade level, subject area, campus, and school system, and made available to the public, with appropriate interpretations, at regularly scheduled Board meetings. The information may not contain the names of individual students or teachers.

h) Academic Achievement Records (Grades 9–12)

Richard Milburn Academy shall use the academic achievement record (transcript) form adopted by the State Board of Education (“SBOE”). This form shall serve as the academic record for each student and shall

be maintained permanently by Richard Milburn Academy. Copies of the record shall be made available to students transferring to another district. The information may be provided to the student or to the receiving district or to both. Richard Milburn Academy shall respond promptly to all requests for student records from receiving districts.

i) Enrollment Records

If a parent or other person with legal control of a child enrolls the child in Richard Milburn Academy, the parent or other person, or the school district in which the child most recently attended school, shall furnish to Richard Milburn Academy all of the following:

1. The child's birth certificate, or another document suitable as proof of the child's identity as defined by the Commissioner of Education in the Student Attendance Accounting Handbook.
2. A copy of the child's records from the school the child most recently attended if he or she was previously enrolled in a school in Texas or in another state.

Richard Milburn Academy must furnish information under items 1 and 2 not later than the tenth working day after the date Richard Milburn Academy receives a request for the information.

If a parent or other person with legal control of a child under a court order requests that Richard Milburn Academy transfer a child's student records, Richard Milburn Academy shall notify the parent or other person as soon as practicable that the parent or other person may request and receive an unofficial copy of the records for delivery in person to a school in another district.

Sec. 2. ACCESS, DISCLOSURE, AND AMENDMENT

a) Definitions

i. "Attendance"

"Attendance" includes, but is not limited to:

1. Attendance in person or by paper correspondence, videoconference, satellite, Internet, or other electronic information and telecommunications technologies for students who are not physically present in the classroom; and
2. The period during which a person is working under a work-study program.

ii. "Disclosure"

"Disclosure" means to permit access to or the release, transfer, or other communication of personally identifiable information contained in education records by any means, including oral, written, or electronic means, to any party except the party identified as the party that provided or created the record.

iii. "Parent"

"Parent" includes a natural parent, a guardian, or an individual acting as a parent in the absence of a parent or guardian.

iv. “Personally Identifiable Information”

“Personally identifiable information” includes, but is not limited to:

1. The student’s name;
2. The name of the student’s parent or other family members;
3. The address of the student or student’s family;
4. A personal identifier, such as the student’s biometric record, defined as a record of one or more measurable biological or behavioral characteristics that can be used for automated recognition of an individual (e.g., fingerprints, retina and iris patterns, voiceprints, DNA sequence, facial characteristics, and handwriting); social security number; or student number;
5. Other indirect identifiers, such as the student’s date of birth, place of birth, and mother’s maiden name;
6. Other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty; or
7. Information requested by a person who Richard Milburn Academy reasonably believes knows the identity of the student to whom the education record relates.

v. “Record”

“Record” means any information recorded in any way, including, but not limited to, handwriting, print, computer media, video or audiotape, film, microfilm, and microfiche.

vi. “Authorized Representative”

“Authorized representative” means any entity or individual designated by a state or local educational authority or an agency headed by an official listed in 34 C.F.R. § 99.31(a)(3) to conduct—with respect to federal- or state-supported education programs—any audit, evaluation, or any compliance or enforcement activity in connection with federal legal requirements that relate to these programs.

vii. “Education Program”

“Education program” means any program that is principally engaged in the provision of education, including but not limited to, early childhood education, elementary and secondary education, postsecondary education, special education, job training, career and technical education, and adult education, and any program that is administered by Richard Milburn Academy.

viii. “Signed and Dated Written Consent”

“Signed and dated written consent” may include a record and signature in electronic form that:

1. Identifies and authenticates a particular person as the source of the electronic consent; and
2. Indicates such person’s approval of the information contained in the electronic consent.

b) Access by Parents

Access to the education records of a student who is or has been in attendance at Richard Milburn Academy

shall be granted to the parent of the student who is a minor or who is a dependent for tax purposes.

Richard Milburn Academy shall presume that a parent has authority to inspect and review the student's records unless it has been provided with evidence that there is a court order, state statute, or legally binding document that specifically revokes these rights. A court may order the custodian of records to delete all references in a child's records to the place of residence of either party appointed as conservator before their release to another party appointed as conservator.

c) Access by Student

Whenever a student has attained 18 years of age or is attending an institution of postsecondary education, the rights accorded to, and consent required of, parents transfer from the parents to the student.

Nothing in this section prevents Richard Milburn Academy from disclosing education records, or personally identifiable information from education records, to a parent without prior written consent of an eligible student if the disclosure meets the conditions in 34 C.F.R. § 99.31(a), including if the student is a dependent for tax purposes or in the case of a health or safety emergency.

If material in the education record of a student includes information on another student, only the portion of the material relating to the student whose records were requested may be inspected and reviewed.

d) Access by Other Persons

Personally identifiable information in education records shall not be released without the written consent of the student's parents or adult student, except to the following:

ix. School Officials

Richard Milburn Academy may disclose personally identifiable information without parent consent when disclosure is made to school officials with legitimate educational interest in the information. A school official is:

1. A person employed by Richard Milburn Academy as an administrator, instructor, or support staff member (including health or medical staff and law enforcement unit personnel).
2. A person serving on the Board.
3. A person or company with whom Richard Milburn Academy has contracted to perform a special task (such as an attorney, auditor, medical consultant, or therapist).
4. A consultant, contractor, volunteer, or other party to whom Richard Milburn Academy has outsourced institutional services or functions, provided that the outside party:
 - a. Performs an institutional service or function for which Richard Milburn Academy would otherwise use employees;
 - b. Is under the direct control of Richard Milburn Academy with respect to the use and maintenance of education records; and
 - c. Is subject to the requirements of 34 C.F.R. § 99.33(a) governing the use and redisclosure of personally identifiable information from education records.
5. A parent or student serving on an official committee, such as a disciplinary or grievance committee, or assisting another school official in performing his or her tasks.

A school official has a legitimate educational interest if the official needs to review an educational record in order to fulfill his or her professional responsibility.

Richard Milburn Academy must use reasonable methods to ensure that school officials obtain access to only those education records in which they have legitimate educational interests.

x. Officials of Other Schools

Officials of other schools or school systems in which the student seeks or intends to enroll, or where the student is already enrolled so long as the disclosure is for purposes related to the student's enrollment or transfer, provided that Richard Milburn Academy either:

1. Includes in its policies a statement that notifies the parent or student that it forwards education records on request of the other school to such officials; or
2. Makes a reasonable attempt to notify the parent (unless the record transfer is initiated by the parent).

In either case, Richard Milburn Academy shall furnish a copy of the transferred records to the parent if requested and shall give the parent an opportunity for a hearing to challenge the content of the record.

xi. Authorized Governmental Representatives

Authorized representatives of the officials or agencies headed by the Comptroller General of the United States, the Attorney General of the United States, the Secretary of Education, or state and local educational authorities who require access to student or other records necessary in connection with the audit and evaluation of federal- or state-supported education programs or in connection with the enforcement of or compliance with federal legal requirements that relate to such programs.

Richard Milburn Academy may not refuse to report information concerning a student holding an F, J, or M visa on the basis of the Family Educational Rights and Privacy Act ("FERPA") and any regulation implementing FERPA. Richard Milburn Academy is authorized and required to report information that would ordinarily be protected by FERPA only to the extent required by 8 U.S.C. § 1372, 8 C.F.R. § 214.3, or any corresponding regulation.

xii. Financial Aid Personnel

Personnel involved with a student's application for, or receipt of, financial aid.

xiii. Juvenile Justice Officials

State and local officials to whom such information is specifically allowed to be reported or disclosed by state statute if:

1. The allowed reporting or disclosure concerns the juvenile justice system and its ability to effectively serve the student whose records are released, and
2. The officials and authorities to whom such information is disclosed certify in writing to Richard Milburn Academy that the information will not be disclosed to any other party except as provided under state law without the prior written consent of the parent of the student.

xiv. Organizations Conducting Surveys

Organizations conducting studies for, or on behalf of, Richard Milburn Academy for the purpose of developing, validating, or administering predictive tests, administering student aid programs, and improving instruction. Such studies must be conducted so that personal identification of students and their parents will not be revealed to persons other than authorized personnel of the organizations conducting the studies who have legitimate interests in the information. Such information must be destroyed when no longer needed for the original purposes of the studies.

Richard Milburn Academy must enter into a written agreement with the organization that:

1. Specifies the purpose, scope, and duration of the study or studies and the information to be disclosed;
2. Requires the organization to use personally identifiable information from education records only to meet the purpose or purposes of the study as stated in the written agreement;
3. Requires the organization to conduct the study in a manner that does not permit personal identification of parents and students, as defined in this part, by anyone other than representatives of the organization with legitimate interests; and
4. Requires the organization to destroy or return to Richard Milburn Academy all personally identifiable information when the information is no longer needed for the purposes for which the study was conducted and specifies the time period in which the information must be returned or destroyed.

If Richard Milburn Academy enters into an agreement with an organization conducting a study, it may re-disclose personally identifiable information from education records on behalf of educational agencies and institutions that disclosed the information to Richard Milburn Academy in accordance with the requirements of 34 C.F.R. § 99.33(b).

Richard Milburn Academy is not required to initiate a study or agree with or endorse the conclusions or results of the study.

xv. Accrediting Organizations

Accrediting organizations that require the information for purposes of accreditation.

xvi. Health & Safety Emergency

Appropriate persons, including the student's parents, who, in an emergency, must have such information in order to protect the health or safety of the student or other person.

In making a determination, Richard Milburn Academy may take into account the totality of the circumstances pertaining to a threat to the health or safety of a student or other individuals. If Richard Milburn Academy determines that there is an articulable and significant threat to the health or safety of a student or other individuals, it may disclose information from education records to any person whose knowledge of the information is necessary to protect the health or safety of the student or other individuals.

xvii. Secretary of Agriculture

The Secretary of Agriculture, or authorized representative from the Food and Nutrition Service, for the purposes of conducting program monitoring, evaluations, and performance measurements of schools receiving funding or providing benefits of programs authorized under the National School Lunch Act or the Child Nutrition Act.

xviii. State or Local Child Welfare Agency

An agency caseworker or other representative of a state or local child welfare agency who has the right to access a student's case plan when the agency is legally responsible, in accordance with state law, for the care and protection of the student.

xix. Directory Information

Any person requesting directory information after Richard Milburn Academy has given public notice of that definition

e) Written Consent

The parent or adult student shall provide a signed and dated written consent before Richard Milburn Academy discloses personally identifiable information from a student's education records to any individual, agency, or organization other than the parent, the student, or those listed above. Such consent shall specify records to be released, the reason for such release, and to whom the records are to be released.

f) Instructional Resources and Parental Rights

All instructional materials, including teacher's manuals, films, tapes, or other supplementary material that will be used in connection with any survey, analysis, or evaluation as part of any program funded in whole or in part by the U. S. Department of Education ("DOE") shall be available for inspection by the parents of students.

g) Information Collection

xx. DOE Funded Surveys

No student shall be required, as part of any program funded in whole or in part by the DOE, to submit to a survey, analysis, or evaluation that reveals information concerning the following topics without the prior consent of the student (if the student is an adult or emancipated minor), or, in the case of an unemancipated minor, without the prior written consent of the parent:

1. Political affiliations or beliefs of the student or the student's parents.
2. Mental and psychological problems of the student or the student's family.
3. Sex behavior and attitudes.
4. Illegal, anti-social, self-incriminating, and demeaning behavior.
5. Critical appraisals of other individuals with whom students have close family relationships.
6. Legally recognized privileged or analogous relationships, such as those of lawyers, physicians, and ministers.
7. Religious practices, affiliations, or beliefs of the student or student's parent.
8. Income, other than that required by law to determine eligibility for participation in a program or for receiving financial assistance under such program.

xxi. Information Collection Funded by Other Sources

Except as provided by 20 U.S.C. § 1232h(a) or (b), as a condition of receiving funds from programs funded in whole or in part by the DOE, Richard Milburn Academy shall develop and adopt policies, in consultation with parents, pursuant to 20 U.S.C. § 1232h(c)(1), and provide for parent or adult student notification in accordance with 20 U.S.C. § 1232(c)(2).

xxii. Subpoenaed Records

Richard Milburn Academy shall release student records to an entity or persons designated in a subpoena. Richard Milburn Academy shall not disclose to any person the existence or contents of the subpoena if a court orders Richard Milburn Academy to refrain from such disclosure. Unless the court or other issuing agency orders Richard Milburn Academy to refrain from such disclosure or the order is an *ex parte* court order obtained by the United States Attorney General (or designee not lower than an Assistant Attorney General) concerning investigations or prosecutions of an offense listed in 18 U.S.C. § 2332b(g)(5)(B) or an act of domestic or international terrorism as defined in 18 U.S.C. § 2331, Richard Milburn Academy shall make a reasonable effort to notify the parents and the student of all such subpoenas in advance of compliance.

xxiii. Sex Offenders

Richard Milburn Academy may disclose personally identifiable information without consent if the disclosure concerns sex offenders and other individuals required to register under section 170101 of the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14071, and the information was provided to Richard Milburn Academy under 42 U.S.C. § 14071 and applicable federal guidelines.

h) Parental Rights and Student Privacy

As a condition of receiving funds under any applicable program, Richard Milburn Academy adopts the following policies, pursuant to 20 U.S.C. § 1232h(c)(1):

1. Parents have a right to inspect any survey created by a third party before the survey is administered or distributed by Richard Milburn Academy to the student. Parents should submit such a request to the Principal and shall be provided an opportunity to inspect the survey within a reasonable period of time as determined by the Principal. Upon a parent's request to inspect a survey, the parent's child shall not participate in the survey until the parent has had a reasonable opportunity to inspect the survey, as determined by the Principal.
2. In the event a survey contains the items listed above, and is administered or distributed to students, Richard Milburn Academy shall comply with FERPA and other applicable law to protect student privacy.
3. Parents have a right to inspect any instructional material used in the educational curriculum for the student. Parents should submit such a request to the Principal. The Principal shall provide reasonable access to parents within a reasonable period of time, as determined by the Principal.
4. Richard Milburn Academy may administer physical examinations or other screenings to students as required and/or authorized by state or federal law and in accordance with other

applicable policy.

5. Richard Milburn Academy shall not collect, disclose, or use a student's personal information for the purpose of marketing or selling that information to third parties. This policy does not apply to or restrict the use of personal information collected from students for the purpose of developing, evaluating, or providing educational products or services offered by Richard Milburn Academy, for or to students or educational institutions, such as recruiters, book clubs, curriculum and instructional materials used by schools, sale by students of products or services to raise funds for school-related or education-related activities, or student recognition programs, or as otherwise required by law. This policy is also subject to state and federal public information laws and FERPA, that makes some student personal information, defined in this policy as "Directory Information," public.
6. Parents have a right to inspect any instrument used in collection of personal information, described above, before the instrument is administered to the student. Parents should submit such a request to the Principal. The Principal shall provide reasonable access to parents within a reasonable period of time, as determined by the Principal. Upon a parent's request to inspect such an instrument, the parent's child shall not participate until the parent has had a reasonable opportunity to inspect the instrument, as determined by the Principal.

The Superintendent shall ensure that parents are provided reasonable notice of the adoption or continued use of these policies. Such notice shall be provided directly to the parents of the students in attendance at Richard Milburn Academy. At a minimum, Richard Milburn Academy shall:

1. Provide notice at least annually, at the beginning of the school year and within a reasonable time after any substantive change in the policies; and
2. Offer an opportunity for the parent to opt the student out of participation in an activity described above.

i) Request Procedure

Richard Milburn Academy must permit parents to inspect and review education records related to their minor that are collected, maintained, or used by the Richard Milburn Academy under the IDEA. Richard Milburn Academy must comply with the request without unnecessary delay and before any meeting regarding an IEP, any due process hearing, or resolution session, and in no case more than 45 days after the request has been made.

j) Destruction of Records

Richard Milburn Academy shall not destroy any education records if there is an outstanding request to inspect and review the records.

k) De-Identified Records

Richard Milburn Academy, or a party that has received education records or information from education records, may release the records or information without the parent's or adult student's written consent after the removal of all personally identifiable information provided that Richard Milburn Academy or other party has made a reasonable determination that a student's identity is not personally identifiable, whether

through single or multiple releases, and taking into account other reasonably available information.

l) Education Research

Richard Milburn Academy, or a party that has received education records or information from education records, may release de-identified student level data from education records for the purpose of education research by attaching a code to each record that may allow the recipient to match information received from the same source, provided that:

1. Richard Milburn Academy or other party that releases de-identified data under this section does not disclose any information about how it generates and assigns a record code, or that would allow a recipient to identify a student based on a record code;
2. The record code is used for no purpose other than identifying a de-identified record for purposes of education research and cannot be used to ascertain personally identifiable information about a student; and
3. The record code is not based on a student's social security number or other personal information.

m) Authenticating Requestors' Identities

Richard Milburn Academy must use reasonable methods to identify and authenticate the identity of parents, students, school officials, and any other parties to whom Richard Milburn Academy discloses personally identifiable information from education records.

n) Transfer Not Permitted

Personal information from student education records shall be transferred to a third party only on the condition that such party will not permit any other party to have access to such information without the written consent of the student's parent or adult student. If a third party permits access to information in violation of this policy, Richard Milburn Academy shall not permit access to information from education records to that third party for a period of not less than five years.

Richard Milburn Academy shall inform a party to whom a disclosure is made of the requirements of 34 C.F.R. § 99.33, unless the disclosure is made pursuant to a court order, lawfully issued subpoena, or litigation; the disclosed information is directory information; the disclosure concerns sex offenders; or the disclosure is made to a parent of a student who is not an eligible student or to a student.

Richard Milburn Academy may disclose personally identifiable information with the understanding that the party receiving the information may make further disclosures of the information on behalf of Richard Milburn Academy if:

1. The disclosures meet the requirements of 34 C.F.R. § 99.31; and
2. Richard Milburn Academy has complied with the requirements of 34 C.F.R. § 99.32(b) regarding the record of disclosure; or a state or local educational authority or federal official or agency listed requesting information through a subpoena or *ex parte* order has complied with the requirements of 34 C.F.R. § 99.32(b)(2).

o) Record of Access to Student Records

Each campus shall maintain a record, kept with the education record of each student, that indicates all individuals, agencies, or organizations that have requested or obtained access to a student's education records, as well as the names of state and local educational authorities and federal officials and agencies listed in 34 C.F.R. § 99.31(a)(3) that may make further disclosures of personally identifiable information

from the student's education records without consent Richard Milburn Academy must obtain a copy of the record of further disclosures maintained by the named authorities, officials, and agencies under 34 C.F.R. § 99.32(b)(2) and make it available in response to a parent's or adult student's request to review the record.

Richard Milburn Academy must record the following information when it discloses personally identifiable information from education records under the health or safety emergency exception:

1. The articulable and significant threat to the health or safety of a student or other individuals that formed the basis for the disclosure; and
2. The parties to whom Richard Milburn Academy disclosed the information.

The records shall include at least the name of the person or agency that made the request and the legitimate interest the person or agency had in the information. The record will be maintained as long as Richard Milburn Academy maintains the student's education record. The record of access shall be available only to parents or adult student, school officials responsible for custody of the records, and those state, local, and federal officials authorized to audit the operation of the system.

The record shall not include requests for access by, or access granted to, parents of the student or officials of Richard Milburn Academy, requests accompanied by prior written consent of the parent, requests for directory information, or a party seeking or receiving records in accordance with a subpoena or *ex parte* order.

p) Right to Amend Records

The parent of a student or adult student whose records are covered by this policy may ask Richard Milburn Academy to amend the student's record if the parent or adult student believes it contains information that is inaccurate, misleading, or in violation of the student's right of privacy or other rights. If Richard Milburn Academy decides not to amend the education records requested, it shall inform the parent or adult student of its decision and his or her right to a hearing to challenge the content of the student's education records.

If Richard Milburn Academy decides to amend the records as a result of the hearing, it shall inform the parent or adult student in writing. If, as a result of the hearing, Richard Milburn Academy decides not to amend the records, it shall inform the parent or adult student of the right to place a statement in the records commenting on the contested information and/or stating why the parent disagrees with the decision of Richard Milburn Academy. Any explanation shall be maintained with the contested part of the record for as long as the record is maintained and shall be disclosed whenever the contested portion of the record is disclosed.

q) Fees for Copies

No fee shall be charged to search for or to retrieve the education records of a student. A fee may be charged for copies of education records that are made for the parents or students under this policy provided that the fee does not effectively prevent them from exercising their right to inspect and review those records. Hardship cases shall be dealt with on an individual basis.

r) Records of Students with Disabilities

Richard Milburn Academy shall permit parents of a minor or adult student to inspect and review education records collected, maintained, or used for purposes of identifying, evaluating, placing, or educating students with disabilities.

xxiv. Access Rights

In addition to policies applicable to all student records, the following guidelines shall apply when parents of a minor student or an adult student with disabilities request to review or inspect school records relating to the education of their child:

1. Parents may request that a representative inspect and review the records.
2. Richard Milburn Academy shall comply with a request without unnecessary delay and before any meeting regarding an IEP or hearing relating to the identification, evaluation, or placement of the child, and in no case longer than 45 days after the request.
3. Richard Milburn Academy shall keep a record of persons obtaining access to these student records (except access by parents and authorized employees), including name, date of access, and the purpose for which the person is authorized to use the records.

xxv. List of Types and Locations of Information

Richard Milburn Academy shall provide parents on request a list of types and locations of education records.

xxvi. Parental Consent

Parental or adult student consent must be obtained before personally identifiable information is used for any purpose other than meeting a requirement under the IDEA or disclosed to anyone other than officials of agencies collecting or using this information. Richard Milburn Academy may not release information from these records without parental or adult student consent except as provided in FERPA.

xxvii. Confidentiality

Richard Milburn Academy shall protect the confidentiality of personally identifiable information in collection, storage, disclosure, and destruction of records. One official in Richard Milburn Academy shall assume responsibility for ensuring confidentiality of personally identifiable information. All persons collecting or using this information shall receive training or instruction concerning the legal requirements involved in handling these records. Richard Milburn Academy shall maintain for public inspection a current listing of the names and positions of employees who may have access to this information.

xxviii. Destruction of Information

Richard Milburn Academy shall inform parents or adult student when personally identifiable information collected, maintained, or used to provide special education and related services is no longer needed to provide educational services to the student. Such information shall be destroyed at the request of the parents or adult student.

A permanent record of the student's name, address, phone number, grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

*s) **Annual Notification of Rights***

Richard Milburn Academy shall give parents of students in attendance and eligible students in attendance annual notification of their rights under FERPA.

The notice must inform parents or eligible students that they have the right to:

1. Inspect and review the student's education records;
2. Seek amendment of the student's education records that the parent or eligible student believes to be inaccurate, misleading, or otherwise in violation of the student's privacy rights;
3. Consent to disclosures of personally identifiable information contained in the student's education records, except to the extent that the Act and 34 C.F.R. § 99.31 authorize disclosure without consent; and
4. File with the DOE a complaint under 34 C.F.R. §§ 99.63 and 99.64 concerning alleged failures by Richard Milburn Academy to comply with the requirements of the Act and 34 C.F.R. § Part 99.

The notice must include all of the following:

1. The procedure for exercising the right to inspect and review education records.
2. The procedure for requesting amendment of records under 34 C.F.R. § 99.20.
3. If Richard Milburn Academy has a policy of disclosing education records under 34 C.F.R. § 99.31(a)(1), a specification of criteria for determining who constitutes a school official and what constitutes a legitimate educational interest.

Richard Milburn Academy may provide this notice by any means that are reasonably likely to inform the parents or eligible students of their rights. Richard Milburn Academy shall effectively notify parents who are disabled and parents of students who have a primary or home language other than English.

t) Custodian of Records

The Superintendent or designee is designated as the custodian of all student records. The Principal of each campus is designated as an agent of the Superintendent or designee for the purposes of the receipt of requests concerning the disclosure of student records.

Sec. 3. DIRECTORY INFORMATION

Certain information about students is considered "directory information" and will be released to anyone who follows procedures for requesting it unless the parent or eligible student objects in writing to its release, within a reasonable time period set by the Superintendent, of receiving notice of FERPA rights. A parent or eligible student may also choose to opt out of the release of directory information at any time during the school year. At any time after restricting the release of directory information, a parent or eligible student may in writing authorize Richard Milburn Academy to release directory information.

a) Definition

Richard Milburn Academy has designated the following categories of information as directory information for the purpose of disclosure relating solely to school-sponsored/school-affiliated purposes:

1. Student's name;
2. Address;
3. Telephone listing;
4. Electronic mail address;

5. Photographs (including video images);
6. Date and place of birth;
7. Major field of study;
8. Dates of attendance;
9. Grade level;
10. Participation in officially recognized activities and sports;
11. Weight and height of members of athletic teams;
12. Degrees, honors, and awards received; and
13. The most recent educational agency or institution attended.

“Directory information” does not include a student’s:

1. Social security number; or
2. Student identification number, unless the student identification number, user identification number, or other unique personal identifier used by the student for purposes of accessing or communicating in electronic systems cannot be used to gain access to education records except when used in conjunction with one or more factors that authenticate the user’s identity, such as a personal identification number, password, or other factor known or possessed only by the authorized user.

School-sponsored/school-affiliated purposes are those events/activities that Richard Milburn Academy conducts and/or sponsors to support Richard Milburn Academy’s educational mission. Examples include, but are not limited to:

1. Extracurricular programs or events (e.g., school plays, concerts, athletic events, graduation ceremonies).
2. Publications (e.g., newsletters, yearbook, etc.).
3. Honor roll and other student recognition lists.
4. Marketing materials of the School (e.g., print media, website, videos, newspaper, etc.).

Richard Milburn Academy has designated the following categories of information for the purpose of disclosure to military recruiters and institutions of higher education, but only for secondary students:

1. Student’s name;
2. Address;
3. Telephone listing; and
4. E-mail address.

b) Disclosure of Directory Information

Richard Milburn Academy shall not release directory information except for the purposes indicated above, namely:

1. Disclosure relating to school-sponsored/school-affiliated purposes; and
2. Disclosure to military recruiters and institutions of higher education, but only for secondary students.

c) In Class

A parent or eligible student may not use the right of refusal to opt out of directory information disclosures to prevent Richard Milburn Academy from disclosing or requiring a student to disclose the student’s name, identifier, or institutional e-mail address in a class in which the student is enrolled.

d) Former Students

Richard Milburn Academy may disclose directory information about former students without satisfying the public notice conditions above. However, Richard Milburn Academy must continue to honor any valid request to opt out of the disclosure of directory information made while a student was in attendance unless the student rescinds the opt-out request.

e) Confirmation of Identity or Records

Richard Milburn Academy may not disclose or confirm directory information without meeting the written consent requirements in 34 C.F.R. § 99.30 if a student's social security number or other non-directory information is used alone or combined with other data elements to identify or help identify the student or the student's records.

f) Designation of Directory Information

Richard Milburn Academy may designate as directory information any or all information defined as directory information by FERPA. Directory information under that Act that is not designated by Richard Milburn Academy as directory information is excepted from disclosure by Richard Milburn Academy under Texas Government Code Chapter 552.

Directory information consented to by a parent or adult student for use only for a limited school- sponsored purpose, such as for a student directory, student yearbook, or school publication, if any such purpose has been designated by Richard Milburn Academy, remains otherwise confidential and may not be released under Texas Government Code Chapter 552.

g) Student Recruiting Information

Notwithstanding the provisions of Section 3 (Directory Information) above, upon receipt of assistance under the Elementary and Secondary Education Act of 1965 (ESEA), Richard Milburn Academy shall provide, on a request made by military recruiters or an institution of higher education, access to secondary school students' names, addresses, and telephone listings.

A secondary school student or the parent of the student may request that the student's name, address, and telephone listing described above not be released without prior written parental or adult student consent. Richard Milburn Academy shall notify parents or adult student of the option to make a request and shall comply with any request.

Sec. 4. INFORMATION FROM LAW ENFORCEMENT

a) Oral Notice of Arrest or Referral

Upon receipt of oral notice from a law enforcement agency that it has arrested a student or referred a student to the juvenile board for a specified offense, the Superintendent shall promptly notify all instructional and support personnel who have responsibility for supervising the student. All personnel shall keep the information received confidential.

b) Written Notice of Arrest or Referral

Upon subsequent receipt of confidential, written notice of the arrest or referral, the Superintendent or

designee may send the information in the confidential notice to a School employee having direct supervisory responsibility over the student if the Superintendent or designee determines that the employee needs the information for educational purposes or for the protection of the person informed or others.

c) Oral Notice of Conviction or Adjudication

Upon receipt of oral notice from a prosecuting attorney of a student's conviction, deferred prosecution, or adjudication of a specified offense, including a statement as to whether the student is required to register as a sex offender, the Superintendent shall, within 24 hours of receiving the notice, notify all instructional and support personnel who have regular contact with the student.

d) Notice of Transfer or Reenrollment

Upon receipt of notice from a parole, probation, or community supervision office having jurisdiction over a student that a student has transferred or reenrolled, the Superintendent shall, within 24 hours of receiving the notice, notify all instructional and support personnel who have regular contact with the student.

A person who receives information described above shall not disclose it except as specifically authorized by Texas Code of Criminal Procedure § 15.27.

Information received by Richard Milburn Academy under this provision shall not be attached to the permanent academic file of the student who is the subject of the report. Richard Milburn Academy shall destroy the information at the end of the academic year in which the report was filed.

e) Duty to Flag Records

Upon receipt of notification from a law enforcement agency or the missing children and missing persons information clearinghouse that a child under 11 years of age who attended or who is enrolled in Richard Milburn Academy is missing, Richard Milburn Academy shall flag the child's records and maintain the records in its possession so that on receipt of a request regarding the child, Richard Milburn Academy will be able to notify law enforcement or the missing children and missing persons information clearinghouse that a request for a flagged record has been made.

i. Request in Person

When a request for a flagged record is made in person, Richard Milburn Academy may not advise the requesting party that the request concerns a missing child and shall:

1. Require the person requesting the flagged record to complete a form stating the person's name, address, telephone number, and relationship to the child for whom a request is made, and the name, address, and birth date of the child;
2. Obtain a copy of the requesting party's driver's license or other photographic identification, if possible;
3. If the request is for a birth certificate, inform the requesting party that a copy of a certificate will be sent by mail; and
4. Immediately notify the appropriate law enforcement agency that a request has been made concerning a flagged record and include a physical description of the requesting party, the identity and address of the requesting party, and a copy of the requesting party's driver's license or other photographic identification.

After providing the information listed above, Richard Milburn Academy shall mail a copy of the

requested record to the requesting party on or after the 21st day after the date of the request.

ii. Request in Writing

When a request for a flagged record is made in writing, Richard Milburn Academy may not advise the requesting party that the request concerns a missing child and shall immediately notify the appropriate law enforcement agency that a request has been made concerning a flagged record and provide to the law enforcement agency a copy of the written request. After providing the notification, Richard Milburn Academy shall mail a copy of the requested record to the requesting party on or after the 21st day after the date of the request.

iii. Removal of Flag

On the return of a missing child under 11 years of age, the law enforcement agency shall notify each school that has maintained flagged records for the child that the child is no longer missing. On receipt of this notification, Richard Milburn Academy shall remove the flag from the records.

A school that has reason to believe that a missing child has been recovered may request confirmation that the missing child has been recovered from the appropriate law enforcement agency or the missing children and missing persons information clearinghouse. If a response is not received after the 45th day after the date of the request for confirmation, Richard Milburn Academy may remove the flag from the record and shall inform the law enforcement agency or the missing children and missing persons information clearinghouse that the flag has been removed.

Sec. 5. ACCESS TO RECORDS UNDER THE IDEA

The IDEA grants parents the right to inspect and review all educational records with respect to the identification, evaluation, educational placement, and the provision of FAPE to the child. 34 C.F.R. § 300.501(a). Richard Milburn Academy must permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the district under the IDEA. Richard Milburn Academy must comply with the request without unnecessary delay and before any meeting regarding an IEP, any due process hearing, or resolution session, and in no case more than 45 days after the request has been made. 34 C.F.R. § 300.613(a).

PG-6.27 RECORDS RETENTION AND DESTRUCTION

Sec. 1. DEFINITIONS

a) ***“Records”***

The term “records” means all documents, papers, letters, books, maps, photographs, sound or video recordings, microfilm, magnetic tape, electronic media, or other recording media, regardless of physical form or characteristic, and regardless of whether public access to it is open or restricted under the laws of the state, created or received by Richard Milburn Academy, or any of its officers or employees pursuant to law or in the transaction of public business, are hereby declared to be the records of Richard Milburn Academy and shall be created, maintained, and disposed of in accordance with the provisions of this ordinance or procedures authorized by it and in no other manner.

The term “records” does not include:

1. Convenience copies: "Extra identical copies of documents created only for convenience of reference or research."
2. Copies of documents furnished to the public (to fulfill a Public Information Act request).
3. Blank forms/stocks of publications.
4. Library or museum materials.

b) "Essential Record"

The term "essential record" means any record of Richard Milburn Academy necessary to the resumption or continuation of operations of Richard Milburn Academy in an emergency or disaster, to the recreation of the legal and financial status of Richard Milburn Academy, or to the protection and fulfillment of obligations to the people of the state.

c) "Records Management"

The term "records management" means the application of management techniques to the creation, use, maintenance, retention, preservation, and disposal of records for the purposes of reducing the costs and improving the efficiency of record keeping. The term includes the development of records control schedules, the management of filing and information retrieval systems, the protection of essential and permanent records, the economical and space-effective storage of inactive records, control over the creation and distribution of forms, reports, and correspondence, and the management of micrographic and electronic and other records storage systems.

d) "Records Liaison Officers"

The term "records liaison officers" means the persons designated under Section 9 of this policy.

e) "Records Management Committee"

The term "records management committee" means the committee established in accordance with this policy.

f) "Records Management Officer"

The term "records management officer" means the person designated in Section 4 of this policy.

g) "Records Management Plan"

The term "records management plan" means the plan developed under this policy.

Sec. 2. RECORDS DECLARED PUBLIC PROPERTY

All records as defined in this policy are hereby declared to be the property of Richard Milburn Academy. No official or employee of Richard Milburn Academy has, by virtue of his or her position, any personal or property right to such records, even though he or she may have developed or compiled them. The unauthorized destruction, removal from files, or use of such records is prohibited.

Sec. 3. POLICY

It is hereby declared to be the policy of Richard Milburn Academy to provide for efficient, economical, and effective controls over the creation, distribution, organization, maintenance, use, and disposition of all

records of this office through a comprehensive system of integrated procedures for the management of records from their creation to their ultimate disposition, consistent with the requirements of the Local Government Records Act and accepted records management practice.

Sec. 4. RECORDS MANAGEMENT OFFICER

The RMA Human Resources Specialist will serve as Records Management Officer for Richard Milburn Academy as provided by law, and will ensure that the maintenance, destruction, electronic storage, or other disposition of the records of this office are carried out in accordance with the requirements of the Texas Local Government Records Act.

Sec. 5. ESTABLISHMENT OF RECORDS MANAGEMENT COMMITTEE; DUTIES

The Records Management Officer, in consultation with the Human Resource Director, shall appoint a Records Management Committee consisting of:

1. A Human Resource Department Supervisor; and
2. A financial officer for Richard Milburn Academy; and
3. An executive or administrative officer for Richard Milburn Academy.

The committee shall:

1. Assist the Records Management Officer in the development of policies and procedures governing the records management program;
2. Review the performance of the program on a regular basis and propose changes and improvements if needed;
3. Review and approve records control schedules submitted by the Records Management Officer;
4. Give final approval to the destruction of records in accordance with approved records control schedules; and
5. Actively support and promote the records management program throughout Richard Milburn Academy.

Sec. 6. RECORDS MANAGEMENT PLAN TO BE DEVELOPED; APPROVAL OF PLAN; AUTHORITY OF PLAN

The Records Management Officer and the Records Management Committee shall develop a records management plan for Richard Milburn Academy to be submitted to the Board. The plan must contain policies and procedures designed to reduce the costs and improve the efficiency of record keeping, to adequately protect the essential records of Richard Milburn Academy, and to properly preserve those records of Richard Milburn Academy that are of historical value. The plan must be designed to enable the Records Management Officer to carry out his or her duties prescribed by state law and this policy effectively.

Once approved by the Board, the records management plan shall be binding on all offices, departments, divisions, programs, commissions, bureaus, boards, committees, or similar entities of Richard Milburn Academy, and records shall be created, maintained, stored, microfilmed, or disposed of in accordance with the plan.

Sec. 7. DUTIES OF RECORDS MANAGEMENT OFFICER

In addition to other duties assigned in this policy, the Records Management Officer shall:

1. Administer the records management program and provide assistance to department heads in its implementation;
2. Plan, formulate, and prescribe records disposition policies, systems, standards, and procedures;
3. In cooperation with Principals and department heads, identify essential records and establish a disaster plan for each Richard Milburn Academy campus and department to ensure maximum availability of the records in order to re-establish operations quickly and with minimum disruption and expense;
4. Develop procedures to ensure the permanent preservation of the historically valuable records of Richard Milburn Academy;
5. Establish standards for filing and storage equipment and for record keeping supplies;
6. Study the feasibility of and, if appropriate, establish a uniform filing system and a forms design and control system for Richard Milburn Academy;
7. Provide records management advice and assistance to all Richard Milburn Academy departments by preparing a manual or manuals of procedure and policy and by on-site consultation;
8. Monitor records retention schedules and administrative rules issued by the Texas State Library and Archives Commission to determine if the records management program and Richard Milburn Academy's records control schedules are in compliance with state regulations;
9. Disseminate to the Board, department heads, and Principals information concerning state laws and administrative rules relating to local government records;
10. Instruct Records Liaison Officers and other personnel in policies and procedures of the records management plan and their duties in the records management program;
11. Direct Records Liaison Officers or other personnel in the conduct of records inventories in preparation for the development of records control schedules as required by state law and this policy;
12. Ensure that the maintenance, preservation, microfilming, destruction, or other disposition of Richard Milburn Academy records is carried out in accordance with the policies and procedures of the records management program and the requirements of state law;
13. Maintain records on the volume of records destroyed under approved records -- control schedules, the volume of records microfilmed or stored electronically, and the estimated cost and space savings as the result of such disposal or disposition;
14. Report annually to the Superintendent on the implementation of the records management plan in each department of Richard Milburn Academy; and
15. Bring to the attention of the Superintendent non-compliance by department heads, Principals, or other Richard Milburn Academy personnel with the policies and procedures of the records management program or the Local Government Records Act.

Sec. 8. DUTIES AND RESPONSIBILITIES OF DEPARTMENT HEADS AND PRINCIPALS

In addition to other duties assigned in this policy, department heads and Principals shall:

1. Cooperate with the Records Management Officer in carrying out the policies and procedures established by Richard Milburn Academy for the efficient and economical management of records and in carrying out the requirements of this policy;
2. Adequately document the transaction of government business and the services, programs, and

- duties for which the department head, principal, and his or her staff are responsible; and
3. Maintain the records in his or her care and carry out their preservation, microfilming, destruction, or other disposition only in accordance with the policies and procedures of the records management program of Richard Milburn Academy and the requirements of this policy.

Sec. 9. DESIGNATION OF RECORDS LIAISON OFFICERS

Each department head and Principal shall designate a member of his or her staff to serve as a Records Liaison Officer for the implementation of the records management program in the department.

If the Records Management Officer determines that in the best interests of the records management program more than one Records Liaison Officer should be designated for a department, the department head or Principal shall designate the number of Records Liaison Officers specified by the Records Management Officer.

Persons designated as Records Liaison Officers shall be thoroughly familiar with all records created and maintained by the department.

In the event of the resignation, retirement, dismissal, or removal by action of the department head or Principal of a person designated as a Records Liaison Officer, the department head or Principal shall promptly designate another person to fill the vacancy.

A department head or Principal may serve as Records Liaison Officer for his or her department.

Sec. 10. DUTIES AND RESPONSIBILITIES OF RECORDS LIAISON OFFICERS

In addition to other duties assigned in this policy, Records Liaison Officers shall:

1. Conduct or supervise the conduct of inventories of the records of the department in preparation for the development of records control schedules;
2. In cooperation with the Records Management Officer, coordinate and implement the policies and procedures of the records management program in their department; and
3. Disseminate information to department staff concerning the records management program.

Sec. 11. RECORDS CONTROL SCHEDULES TO BE DEVELOPED; APPROVAL; FILING WITH STATE

1. The Records Management Officer, in cooperation with department heads, Principals, and Records Liaison Officers, shall prepare records control schedules on a department by department basis, listing all records created or received by the department and the retention period for each record. Records control schedules shall also contain such other information regarding the disposition of Richard Milburn Academy records as the records management plan may require.
2. Each records control schedule shall be monitored and amended as needed by the Records Management Officer on a regular basis to ensure that it is in compliance with records retention schedules issued by the state, and that it continues to reflect the record keeping procedures and needs of the department and the records management program of Richard Milburn Academy.
3. Before its adoption, a records control schedule or amended schedule for a department must be approved by the department head or Principal and the members of the Records Management Committee.
4. Before its adoption, a records control schedule must be submitted to and accepted for filing by the

director and librarian as provided by state law. If a schedule is not accepted for filing, the schedule shall be amended to make it acceptable for filing. The Records Management Officer shall submit the records control schedules to the director and librarian.

Sec. 12. IMPLEMENTATION OF RECORDS CONTROL SCHEDULES; DESTRUCTION OF RECORDS UNDER SCHEDULE

1. A records control schedule for a department that has been approved and adopted under Section 11 shall be implemented by department heads, principals and Records Liaison Officers according to the policies and procedures of the records management plan.
2. A record whose retention period has expired on a record control schedule shall be destroyed unless an open records request is pending on the record, the subject matter of the records is pertinent to a pending lawsuit, or the department head or principal requests in writing to the Records Management Committee that the record be retained for an additional period.
3. Prior to the destruction of a record under an approved records control schedule, authorization for the destruction must be obtained by the Records Management Officer from the Records Management Committee.

Sec. 13. DESTRUCTION OF UNSCHEDULED RECORDS

A record that has not yet been listed on an approved records control schedule may be destroyed if its destruction has been approved in the same manner as a record destroyed under an approved schedule and the Records Management Officer has submitted to and received back from the director and librarian an approved destruction authorization request.

Sec. 14. CONTRACT SERVICES

With approval of the Board, the Records Management Officer and Committee may assign and delegate duties under this Policy to contracted services. The engagement of contract services will not relieve persons assigned and responsible under this policy from such assignment and responsibilities.

Sec. 15. RECORD OF ACCESS

Richard Milburn Academy shall maintain a record of each request for access to and each disclosure of personally identifiable information from the education records of each student, (except access by parents and authorized employees of the participating agency), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records. The record of access shall be maintained with the education records of the student as long as the records are maintained.

PG-6.28 RESTRAINT AND TIME-OUT

Sec. 1. BEHAVIOR MANAGEMENT TECHNIQUES

It is Richard Milburn Academy's policy to treat all students with dignity and respect, including students with disabilities who receive special education services. Any behavior management technique and/or discipline management practice must be implemented in such a way as to protect the health and safety of the student and others. No discipline management practice may be calculated to inflict injury, cause harm, demean, or deprive the student of basic human necessities.

Education Code 37.0021(a); 19 TAC 89.1053(a), (j).

Exceptions Tex. Educ. Code § 37.0021 (regarding use of confinement, seclusion, restraint, and time-out) does not apply to:

1. A peace officer, while performing law enforcement duties, except as provided by Education Code 37.0021(i); and
2. An educational services provider with whom a student is placed by a judicial authority unless the services are provided in a Richard Milburn Academy educational program.

Education Code 37.0021(g).

Sec. 2. CONFINEMENT

A student with a disability who receives special education services may not be confined in a locked box, locked closet, or other specially designed locked space as either a discipline management practice or a behavior management technique. *Education Code 37.0021(a).*

Education Code 37.0021 does not prevent a student's locked, unattended confinement in an emergency situation while awaiting the arrival of law enforcement personnel if:

1. The student possesses a weapon; and
2. The confinement is necessary to prevent the student from causing bodily harm to the student or another person.

For these purposes, "weapon" includes any weapon described under Education Code 37.007(a)(1).

Education Code 37.0021(f), 37.007(a)(1); Penal Code 46.01(1), (3), (6), 46.05.

Sec. 3. SECLUSION

A Richard Milburn Academy employee or volunteer or an independent contractor of Richard Milburn Academy may not place a student in seclusion. "Seclusion" means a behavior management technique in which a student is confined in a locked box, locked closet, or locked room that:

1. Is designed solely to seclude a person; and
2. Contains less than 50 square feet of space.

Education Code 37.0021(b)(2), (c).

Sec. 4. RESTRAINT

A Richard Milburn Academy employee, volunteer, or independent contractor may use restraint only in an emergency and with the following limitations:

1. Restraint shall be limited to the use of such reasonable force as is necessary to address the emergency.
2. Restraint shall be discontinued at the point at which the emergency no longer exists.
3. Restraint shall be implemented in such a way as to protect the health and safety of the student and others.
4. Restraint shall not deprive the student of basic human necessities.

19 TAC 89.1053(c).

a) Definitions

“Restraint” means the use of physical force or a mechanical device to significantly restrict the free movement of all or a portion of a student’s body.

Education Code 37.0021(b)(1); 19 TAC 89.1053(b)(2).

“Restraint” does not include the use of:

1. Physical contact or appropriately prescribed adaptive equipment to promote normative body positioning and/or physical functioning;
2. Limited physical contact with a child to promote safety (e.g., holding a student’s hand), to prevent a potentially harmful action (e.g., running into the street), to teach a skill, or to provide comfort;
3. Limited physical contact or appropriately prescribed adaptive equipment to prevent a child from engaging in ongoing, repetitive self-injurious behaviors; or
4. Seat belts and other safety equipment used to secure children during transportation.

19 TAC 89.1053(f).

“Emergency” means a situation in which a student’s behavior poses a threat of:

1. Imminent, serious physical harm to the student or others; or
2. Imminent, serious property destruction.

19 TAC 89.1053(b)(1).

b) Training

Training for Richard Milburn Academy employees, volunteers, or independent contractors regarding the use of restraint shall be provided according to the requirements set forth at 19 TAC 89.1053(d).

c) Data Reporting

Cumulative data regarding the use of restraint must be electronically reported through the Public Education Information Management System in accordance with reporting standards specified by the Texas Education Agency.

Education Code 37.0021(i); 19 TAC 89.1053(f),(k).

d) Documentation

In a case in which restraint is used by Richard Milburn Academy employees, volunteers, or independent contractors, Richard Milburn Academy shall comply with the documentation requirements set forth at 19 TEX. ADMIN. CODE § 89.1053(e).

Sec. 5. TIME-OUT

A Richard Milburn Academy employee, volunteer, or independent contractor may use time-out with the following limitations.

1. Physical force or threat of physical force shall not be used to place a student in time-out;
2. Time-out must only be used in conjunction with an array of positive behavior intervention strategies and techniques and must be included in the student's individualized education program ("IEP") and/or behavior intervention plan ("BIP") if it is utilized on a recurrent basis to increase or decrease targeted behavior; and
3. Use of time-out shall not be implemented in a fashion that precludes the ability of the student to be involved in and progress in the general curriculum and advance appropriately toward attaining the annual goals specified in the student's IEP.

19 TAC 89.1053(b)(3), (g).

"Time-out" means a behavior management technique in which, to provide a student with an opportunity to regain self-control, the student is separated from other students for a limited period in a setting:

1. That is not locked; and
2. From which the exit is not physically blocked by furniture, a closed door held shut from the outside, or another inanimate object.

Education Code 37.0021(b)(3); 19 TAC 89.1053(b)(3).

a) Training

Training for Richard Milburn Academy employees, volunteers, or independent contractors regarding the use of time-out shall be provided according to the requirements set forth at 19 TEX. ADMIN. CODE § 89.1053(h).

b) Documentation

Necessary documentation or data collection regarding the use of time-out, if any, must be addressed in the IEP or BIP. The ARD committee must use any collected data to judge the effectiveness of the intervention and provide a basis for making determinations regarding its continued use.

19 TAC 89.1053(i).

Sec. 6. PROHIBITED AVERSIVE TECHNIQUES

Richard Milburn Academy and employees, volunteers, and independent contractor of Richard Milburn Academy may not apply an aversive technique, or by authorization, order, or consent, cause an aversive technique to be applied, to a child.

Education Code 37.0023(b).

"Aversive technique" means a technique or intervention that is intended to reduce the likelihood of a behavior reoccurring by intentionally inflicting on a student significant physical or emotional discomfort or pain. The term includes a technique or intervention that:

1. is designed to or likely to cause physical pain, other than an intervention or technique permitted under Section 37.0011;
2. notwithstanding Section 37.0011, is designed to or likely to cause physical pain through the use of electric shock or any procedure that involves the use of pressure points or joint locks;
3. involves the directed release of a noxious, toxic, or otherwise unpleasant spray, mist, or substance near the student's face;
4. denies adequate sleep, air, food, water, shelter, bedding, physical comfort, supervision, or access to a restroom facility;
5. ridicules or demeans the student in a manner that adversely affects or endangers the learning or mental health of the student or constitutes verbal abuse;
6. employs a device, material, or object that simultaneously immobilizes all four extremities, including any procedure that results in such immobilization known as prone or supine floor restraint;
7. impairs the student's breathing, including any procedure that involves:
 - a. applying pressure to the student's torso or neck; or
 - b. obstructing the student's airway, including placing an object in, on, or over the student's mouth or nose or placing a bag, cover, or mask over the student's face;
8. restricts the student's circulation;
9. secures the student to a stationary object while the student is in a sitting or standing position;
10. inhibits, reduces, or hinders the student's ability to communicate;
11. involves the use of a chemical restraint;
12. constitutes a use of time-out that precludes the student from being able to be involved in and progress appropriately in the required curriculum and, if applicable, toward the annual goals included in the student's individualized education program, including isolating the student by the use of physical barriers; or
13. except as provided by Section 37.0023 (c), deprives the student of the use of one or more of the student's senses.

Education Code 37.0023(a).

PG-6.29 VIDEO SURVEILLANCE OF SPECIAL EDUCATION SETTINGS

Sec. 1. DEFINITIONS

For purposes of this policy, the following terms will have the meanings set forth below:

“**Parent**” means a person standing in parental relation to a child or an adult student who has reached age of majority and has not authorized another individual to act on their behalf, including a guardian, and whose child receives special education and related services and assigned to one or more self-contained classrooms or other special education settings for at least 50 percent of the instructional day.

“**Staff member**” means a teacher, related service provider, paraprofessional, counselor, or educational aide assigned to work in a self-contained classroom or other special education setting.

“**Board**” means a majority of the Richard Milburn Academy Board of Directors.

“**School business day**” means a day that campus or Richard Milburn Academy administrative offices are open.

“**Time-Out**” has the meaning assigned by Tex. Educ. Code § 37.0021.

“**Self-contained classroom**” means a classroom on a regular Richard Milburn Academy campus (*i.e.*, a campus that serves students in general education and students in special education) in which a majority of the

students in regular attendance are provided special education and related services and have one of the following instructional arrangements/settings described in the Student Attendance Accounting Handbook adopted by the Texas Education Agency (“TEA”):

1. self-contained (mild/moderate/severe) regular campus;
2. full-time early childhood (preschool program for children with disabilities) special education setting;
3. residential care and treatment facility--self-contained (mild/moderate/severe) regular campus;
4. residential care and treatment facility--full-time early childhood special education setting;
5. off home campus--self-contained (mild/moderate/severe) regular campus; or
6. off home campus--full-time early childhood special education setting.

“**Other special education setting**” means a classroom on a separate Richard Milburn Academy campus (*i.e.*, a campus that serves only students who receive special education and related services) in which a majority of the students in regular attendance are provided special education and related services and have one of the following instructional arrangements/settings described in the Student Attendance Accounting Handbook adopted by the TEA:

1. residential care and treatment facility--separate campus; or
2. off home campus--separate campus.

“**Incident**” means an event or circumstance that involves alleged “abuse” or “neglect,” as those terms are described in Texas Family Code § 261.001, of a student by a Richard Milburn Academy employee or alleged “physical abuse” or “sexual abuse,” as those terms are described in Texas Family Code § 261.410, of a student by another student; and allegedly occurred in a self-contained classroom or other special education setting in which video surveillance is conducted under Tex. Educ. Code § 29.022.

Sec. 2. PROMOTION OF STUDENT SAFETY

Richard Milburn Academy will, upon receipt of a written request authorized by this policy, provide equipment, including a video camera, to the school or schools specified in the request

A school or campus that receives equipment due to a video surveillance request shall place, operate, and maintain one or more video cameras in self-contained classrooms and other special education settings in which a majority of the students in regular attendance are provided special education and related services and are assigned to one or more self-contained classrooms or other special education setting for at least 50 percent of the instructional day.

Richard Milburn Academy may not:

1. allow regular or continual monitoring of video recorded under this policy; or
2. use video recorded under this policy for routine teacher evaluation or monitoring or for any purpose other than the promotion of student safety.

Sec. 3. PROCEDURES FOR REQUESTING VIDEO SURVEILLANCE

Video surveillance under this policy is for the purpose of promoting student safety in certain self-contained

classrooms and other special education settings.

a) Parent or Adult Student Request

A parent or adult student may request in writing that equipment be provided to the school or campus at which the parent's child receives special education services in one or more self-contained classrooms or other special education settings.

b) Board Request

The Board may request in writing that equipment be provided to one or more specified schools or campuses at which one or more children receive special education services in self-contained classrooms or other special education settings.

c) Principal or Assistant Principal Request

The Principal or Assistant Principal of a school or campus at which one or more children receive special education services in self-contained classrooms or other special education settings may request in writing that equipment be provided to the Principal's or Assistant Principal's school or campus.

d) Staff Member Request

A staff member assigned to work with one or more children receiving special education services in a self-contained classroom or other special education settings may request in writing that equipment be provided to the school or campus at which the staff member works.

e) Additional Procedures

A school or campus that receives equipment as a result of the request of a parent or staff member is required to place equipment only in classrooms or settings in which the parent's child is in regular attendance or to which the staff member is assigned, as applicable.

A school or campus that receives equipment as a result of the request by the Board, Principal, or Assistant Principal is required to place equipment only in classrooms or settings identified by the requestor, if the requestor limits the request to specific classrooms or settings.

Richard Milburn Academy shall designate an administrator (the "Administrator") at the Richard Milburn Academy Central Office with responsibility for coordinating the provision of equipment to schools and campuses in compliance with this policy.

A written request must be submitted and acted on as follows:

1. A parent, staff member, or Assistant Principal must submit a request to the Principal or designee of the school or campus addressed in the request, and the Principal or designee must provide a copy of the request to the Administrator.
2. A Principal must submit a request by the Principal to the Administrator.
3. The Board must submit a request to the Administrator, and the Administrator must provide a copy of the request to the Principal or designee of the school or campus addressed in the request.

Richard Milburn Academy shall provide a response to a request not later than the seventh school business day after receipt of the request by the person to whom it must be submitted that either authorizes the request

or states the reason for denying the request. Unless granted an extension by the TEA, the school or campus must begin operation of a video camera in compliance with this policy not later than the 45th school business day, or the first school day after the 45th school business day if that day is not a school day, after the request is authorized.

A parent of a student whose admission, review, and dismissal (“ARD”) committee has determined that the student’s placement for the following school year will be in a classroom or other special education setting in which a video camera may be placed to make a request for the video camera by the later of the date on which the current school year ends, or the 10th school business day after the date of the placement determination by the ARD committee. Unless the TEA grants an extension of time, the school or campus must begin operation of a video camera not later than the later of the 10th school day of the fall semester or the 45th school business day, or the first school

Sec. 4. COORDINATION OF EQUIPMENT

The administrator responsible for coordinating equipment delivery to campuses shall be the Director of Special Populations.

Sec. 5. ADVANCE WRITTEN NOTICE TO CAMPUS STAFF AND PARENTS

Before Richard Milburn Academy activates a video camera in a classroom or other special education setting, Richard Milburn Academy shall provide written notice of the placement to all school or campus staff and to the parents of each student attending class or engaging in school activities in the classroom or setting. This notice shall be in the form of a “Notice of Installation of Video and Audio Recording Equipment” form adopted by the Superintendent or designee, and the form shall be distributed to all parties prior to the start of recording.

At Richard Milburn Academy’s discretion, campuses may post a notice at the entrance of any self- contained classroom or other special education setting in which video cameras are placed stating that video and audio surveillance are conducted in the classroom or setting

Sec. 6. TIMES OF OPERATION

Cameras shall be operational at all times during the instructional day when students are in the self- contained classroom or other special education setting.

A school or campus that places a video camera in a classroom or other special education setting shall operate and maintain the video camera in the classroom or setting, as long as the classroom or setting continues to satisfy the requirements under this policy, for the remainder of the school year in which the school or campus received the request, unless the requestor withdraws the request in writing.

If for any reason a school or campus will discontinue operation of a video camera during a school year, not later than the fifth school day before the date the operation of the video camera will be discontinued, the school or campus must notify the parents of each student in regular attendance in the classroom or setting that operation of the video camera will not continue unless requested by a person eligible to make a request.

Not later than the 10th school day before the end of each school year, the school or campus must notify the parents of each student in regular attendance in the classroom or setting that operation of the video camera will not continue during the following school year unless a person eligible to make a request for the next school year submits a new request.

This policy applies to placement, operation, and maintenance of a video camera in a self-contained classroom or other special education setting during the regular school year and extended school year services.

Sec. 7. RESTRICTIONS ON VIDEO RECORDING

Video cameras must be capable of covering all areas of the classroom or other special education setting, including a room attached to the classroom or setting used for time-out. Video cameras must also be capable of recording audio from all areas of the classroom or other special education setting, including a room attached to the classroom or setting used for time-out.

The inside of a bathroom or any area in the classroom or other special education setting in which a student's clothes are changed may not be visually monitored, except for incidental coverage of a minor portion of a bathroom or changing area because of the layout of classroom or setting.

Sec. 8. RETENTION OF RECORDINGS

Richard Milburn Academy shall retain video recordings from a video camera placed under this policy for at least three months after the date the video was recorded.

If a person described in Section 8-a (Requests to View a Video Recording) as eligible to receive a copy of a video requests to view a video recording from a video camera placed under this policy, Richard Milburn Academy must retain the recording from the date of receipt of the request until the person has viewed the recording and a determination has been made as to whether the recording documents an alleged incident. If the recording documents an alleged incident, Richard Milburn Academy shall retain the recording until the alleged incident has been resolved, including the exhaustion of all appeals.

A video recording under this policy is a governmental record only for purposes of Texas Penal Code § 37.10.

Sec. 9. CONFIDENTIALITY OF VIDEO RECORDINGS

A video recording of a student is confidential and may not be released or viewed except as provided by Tex. Educ. Code § 29.022; the Family Educational Rights and Privacy Act of 1974 ("FERPA"); or other applicable law.

a) Requests to View a Video Recording

Richard Milburn Academy will release a recording for viewing by:

1. A Richard Milburn Academy employee who is involved in an alleged incident that is documented by the recording and has been reported to Richard Milburn Academy, on request of the employee;
2. A parent of a student who is involved in an alleged incident that is documented by the recording and has been reported to Richard Milburn Academy, on request of the parent;
3. Appropriate Department of Family and Protective Services ("DFPS") personnel as part of an investigation under Texas Family Code 261.406;
4. A peace officer, a school nurse, a district-level or campus-level administrator trained in de-escalation and restraint techniques as provided by commissioner rule, or a human resources staff member designated by the Board in response to a report of an alleged incident or an investigation of Richard Milburn Academy personnel or a report of alleged abuse committed by a student; or
5. Appropriate TEA or State Board for Educator Certification personnel or agents as part of an investigation.

A contractor or employee performing job duties relating to the installation, operation, or maintenance of video equipment or the retention of video recordings who incidentally views a video recording is not in violation of this policy.

If a person described by subsections (4) or (5) above who views the video recording believes that the recording documents a possible violation under Subchapter E, Chapter 261, Texas Family Code, the person shall notify the DFPS for investigation in accordance with Texas Family Code § 261.406.

If any person described by subsections (3), (4), or (5) above who views the recording believes that the recording documents a possible violation of Richard Milburn Academy policy, the person may allow access to the recording to appropriate legal and human resources personnel. A recording believed to document a possible violation of Richard Milburn Academy policy relating to the neglect or abuse of a student may be used as part of a disciplinary action against Richard Milburn Academy personnel and shall be released at the request of the student's parent or adult student in a legal proceeding.

If Richard Milburn Academy determines that the recording is an "education record," Richard Milburn Academy shall release the recording in accordance with FERPA. State law does not limit the access of a student's parent or adult student to a record regarding the student under FERPA or other law.

In order to review recordings for potential release, and for operation and maintenance of the equipment, the following individuals shall have access to the video equipment: IT Department, Security Officers, Campus Administrators, or Central Office Staff Members.

Sec. 10. PROCEDURES FOR REPORTING A COMPLAINT AND/OR REQUESTING TO VIEW RECORDING

Video and audio recording equipment shall be used for safety purposes to access documented, specific incidents. To report a complaint of alleged abuse or neglect to Richard Milburn Academy and/or to request to view a recording, a written "Incident Report Form," as adopted by the Superintendent or designee, shall be used by the requestor. This form will be completed to the extent of known information and returned to the Superintendent or designee for validation.

Sec. 11. GRIEVANCE PROCEDURES

The special education dispute resolution procedures in 34 C.F.R. §§ 300.151-300.153 and 300.504-300.515, do not apply to complaints alleging that Richard Milburn Academy has failed to comply with Tex. Educ. Code § 29.022. Complaints alleging violations of Richard Milburn Academy's video surveillance obligations for special education settings under Tex. Educ. Code § 29.022 must be addressed through Richard Milburn Academy's Student and Parent Grievance Process adopted by the Board.

Richard Milburn Academy, a parent, staff member, or an administrator may request an expedited review by the TEA of Richard Milburn Academy's (1) denial of a request, (2) request for an extension of time to begin operation of a video camera, or (3) determination to not release a video recording to an individual. If Richard Milburn Academy, a parent, staff member or administrator requests an expedited review, the TEA shall notify all other interested parties of the request.

If an expedited review has been requested, the TEA shall issue a preliminary judgment as to whether Richard Milburn Academy is likely to prevail on the issue under a full review by the TEA. If the TEA determines Richard Milburn Academy is not likely to prevail, Richard Milburn Academy must fully comply

with the policy notwithstanding an appeal of the TEA's decision. The TEA shall notify the requestor and Richard Milburn Academy, if Richard Milburn Academy is not the requestor, of the TEA's determination.

Sec. 12. FUNDING

Richard Milburn Academy may solicit and accept gifts, grants, and donations from any person to implement the requirements in Tex. Educ. Code § 29.022. Richard Milburn Academy is not permitted to use Individuals with Disabilities Education Act, Part B, funds or state special education funds to implement the requirements of Tex. Educ. Code § 29.022.

Sec. 13. NO WAIVER OF IMMUNITY

The requirements described by this policy do not:

1. Waive any immunity from liability of Richard Milburn Academy, or of Richard Milburn Academy officers or employees; or
2. Create any liability for a cause of action against Richard Milburn Academy or against Richard Milburn Academy officers or employees.

