Sec. 1. CHILD FIND

Midland Academy Charter shall ensure that all children residing within the Midland Academy Charter 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 CFR 300.111(a)(1)(i), (c).

a) *Private School Students*

Midland Academy Charter shall coordinate with home school districts, who are primarily responsible for consulting with private school representatives regarding the child find process and the provision of special education and related services to children enrolled in private schools within the Midland Academy Charter boundaries.

Midland Academy Charter shall undertake activities similar to those undertaken for public school children and shall complete the child find process for children enrolled in private schools in a time period comparable to that for other students attending the public schools within the Midland Academy Charter boundaries.

20 U.S.C. 1412(a)(10)(A)(ii)–(iv).

b) *Preschool Students*

Midland Academy Charter shall develop a system to notify residents within the Midland Academy Charter boundaries with children who are at least three and younger than six and who are eligible for enrollment in a special education program of the availability of such programs.

Education Code 29.009.

Sec. 2. REFERRAL

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.

© March 31, 2022 Schulman, Lopez, Hoffer & Adelstein, LLP
All rights reserved.

20 U.S.C. 1414(a)(1)(E).

Referral of students for a full and individual initial evaluation for possible special education services shall be a part of Midland Academy Charter's overall general education referral or screening system. Either a parent, the Texas Education Agency ("TEA"), another state agency, or Midland Academy Charter 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, Midland Academy Charter personnel must refer the student for a full and individual initial evaluation.

b) *Parent Request*

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

1. Provide the parent with prior written notice of its proposal to conduct an evaluation consistent with 34 CFR 300.503, a copy of the procedural safeguards notice required by 34 CFR 300.504, and an opportunity to give written consent for the evaluation; or
2. Refuse to provide the evaluation and provide the parent or legal guardian with notice of procedural safeguards under 20 USC 1415(b).

20 U.S.C. 1414(a)(1); 34 C.F.R. 300.301; 19 TAC 89.1011(a), (b); Education Code 29.004(c).

Sec. 3. <u>NOTICE OF RIGHTS</u>

Midland Academy Charter 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 CFR 300.503(a).

Sec. 4. <u>INITIAL EVALUATION</u>

Midland Academy Charter shall conduct a full and individual initial evaluation before the initial provision of special education and related services to a child with a disability.

20 U.S.C. 1414(a)(1)(A).

© March 31, 2022 Schulman, Lopez, Hoffer & Adelstein, LLP
All rights reserved.

a) *Consent for Initial Evaluation*

Midland Academy Charter shall, after providing notice consistent with 34 CFR 300.503 and 300.504, obtain informed consent, consistent with 34 CFR 300.9, from the parent of the child before conducting the evaluation.

If the parent does not provide consent for an initial evaluation or fails to respond to a request to provide consent, Midland Academy Charter 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 CFR 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, Midland Academy Charter shall make reasonable efforts to obtain the informed consent from the parent for an initial evaluation, unless:

1. Midland Academy Charter cannot discover the whereabouts of the parent, despite reasonable efforts to do so;
2. The rights of the parent have been terminated in accordance with State law; or
3. The rights of the parent to make educational decisions have been subrogated by a judge in accordance with State law 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 CFR 300.300(a)(2).

c) *Completion of Written Report*

Midland Academy Charter must complete the written report of a full individual and initial evaluation:

1. Not later than the 45th school day following the date on which Midland Academy Charter in accordance with 20 USC 1414(a) receives written consent for the evaluation signed by the student's parent or legal guardian. If a student has been absent from school during that period on three or more school days, the period must be extended by a number of school days equal to the number of school days during that period on which the student has been absent; or
2. For students under five years of age by September 1 of the school year and not enrolled in public school and for students enrolled in a private or homeschool setting, not later than

© March 31, 2022 Schulman, Lopez, Hoffer & Adelstein, LLP
All rights reserved.

the 45th school day following the date on which Midland Academy Charter receives written consent for the evaluation signed by the student's parent or legal guardian.

If Midland Academy Charter receives written consent for the evaluation from the student's parent at least 35 but less than 45 school days before the last instructional day of the school year, the written report of a full individual and initial evaluation of a student must be provided to the student's parent not later than June 30 of that year.

If Midland Academy Charter receives written consent signed by a student's parent less than 35 school days before the last instructional day of the school year or if Midland Academy Charter 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 report must be completed not later than the 45th school day following the date Midland Academy Charter received written consent, except that the period must be extended by a number of school days equal to the number of school days during that period on which the student has been absent.

A student is considered absent for the school day if the student is not in attendance at the official Midland Academy Charter attendance taking time or at the alternate attendance taking time set for that student. A student is considered in attendance if the student is off campus participating in an activity that is approved by the Board and is under the direction of a professional staff member of Midland Academy Charter or an adjunct staff member who has a minimum of a bachelor's degree and is eligible for participation in the Teacher Retirement System of Texas.

"School day" does not include a day that falls after the last instructional day of the spring school term and before the first instructional day of the subsequent fall school term.

These time frames shall not apply if the parent repeatedly fails or refuses to produce the child for the evaluation.

d) *Transfer Students*

Midland Academy Charter shall ensure that evaluations of children who transfer from one public school 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.

If a student was in the process of being evaluated for special education eligibility by another public school and enrolls in Midland Academy Charter before the previous school completed the full individual and initial evaluation, Midland Academy Charter must coordinate with the previous school as necessary and as expeditiously as possible to ensure a prompt completion of the evaluation in accordance with 34 C.F.R. 300.301(d)(2) and (e) and 300.304(c)(5).

The time lines above do not apply in such a situation if:

© March 31, 2022 Schulman, Lopez, Hoffer & Adelstein, LLP
All rights reserved.

1. The new school is making sufficient progress to ensure a prompt completion of the evaluation; and
2. The parent and the new school agree to a specific time when the evaluation will be completed.

20 U.S.C. 1414(a)(1)(C), (b)(3)(D); 34 C.F.R. 300.301(c)–(e); Education Code 29.004; 19 TAC 89.1011.

Sec. 5. PSYCHOLOGICAL EXAMS

If Midland Academy Charter determines that an additional examination or test is required for the evaluation, Midland Academy Charter shall provide the information required by Education Code 29.0041(a) and shall obtain parental consent. If a parent does not give consent within 20 calendar days after the School provides the information, the parent's consent is considered denied.

The time required for Midland Academy Charter to provide information and seek consent may not be counted toward the timeline for completion of an evaluation under Education code 29.004.

Education Code 29.0041.

Sec. 6. ELIGIBILITY AND REEVALUATIONS

A student is eligible to participate in Midland Academy Charter's special education program if:

1. The student is between the ages of 3 and 21, inclusive;
2. The student has one or more of the disabilities listed in federal regulations, state law, or both; and
3. 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 the public schools without the provision of special services.

20 U.S.C. 1401(3); Education Code 29.003(b); 19 TAC 89.1035, .1040.

a) *Determination of Initial Eligibility*

Upon completion of the administration of assessments and other evaluation measures, a team of qualified professionals and the parent shall make the determination of whether the child has a disability and of the educational needs of the child.

Midland Academy Charter shall provide a copy of the evaluation report and the documentation of determination of eligibility at no cost to the parent.

© March 31, 2022 Schulman, Lopez, Hoffer & Adelstein, LLP
All rights reserved.

20 U.S.C. 1414(b)(4)(B); 34 CFR 300.306(a).

The admission, review, and dismissal ("ARD") committee must make its decisions regarding a student's initial eligibility determination and, if appropriate, individualized education program ("IEP") and placement within 30 calendar days from the date of the completion of the written full individual and initial evaluation report. 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, IEP, and placement, unless the full individual and initial evaluation indicates that the student will need extended school year (ESY) services during that summer.

When a report is provided to a parent not later than June 30 as described at Timeframe for Completion of Written Report, above, the ARD committee must meet not later than the 15th school day of the following school year to consider the evaluation. If, however, an evaluation indicates that a student will need ESY services, the ARD committee must meet as expeditiously as possible.

19 TAC 89.1011(d), (e).

b) ***Consent: Initial Provision of Services***

Midland Academy Charter must obtain informed consent from the parent for the initial provision of special education and related services. If the parent of a child fails to respond to a request for, or refuses to consent to, the initial provision of services, Midland Academy Charter:

1. May not use the procedures in 34 CFR part 300 subpart E (including the mediation and due process procedures) in order to obtain agreement or a ruling that the services may be provided to the child;
2. Will not be considered to be in violation of the requirement to make FAPE available to the child for the failure to provide the services for which Midland Academy Charter requests consent; and
3. Is not required to convene an ARD meeting or develop an IEP for the child for the services.

c) ***Consent: Revoking Consent***

If, at any time after the provision of initial services, the parent of a child revokes consent in writing for the continued provision of services, Midland Academy Charter:

1. May not continue to provide services to the child, but must provide prior written notice in accordance with 34 CFR 300.503 before ceasing services;
2. May not use the procedures in 34 CFR part 300 subpart E in order to obtain agreement or a ruling that the services may be provided to the child;
3. Will not be considered to be in violation of the requirement to make FAPE available to the child because of the failure to provide the child with further services; and

© March 31, 2022 Schulman, Lopez, Hoffer & Adelstein, LLP
All rights reserved.

4. Is not required to convene an IEP Team meeting or develop an IEP for further provision of services.

34 CFR 300.300(b).

d) *Reevaluations*

Midland Academy Charter shall ensure that each child with a disability is reevaluated if Midland Academy Charter determines that the educational or related service needs of the child, including improved academic achievement and functional performance, warrant a reevaluation, or if the child's parent or teacher requests a reevaluation.

Reevaluation shall occur:

1. No more than once a year, unless the parent and Midland Academy Charter agree otherwise; and
2. At least once every three years, unless the parent and Midland Academy Charter agree that a reevaluation is unnecessary.

Midland Academy Charter shall obtain informed parental consent before conducting a reevaluation, except that informed parental consent is not needed if Midland Academy Charter can demonstrate that it has taken reasonable measures to obtain consent and the child's parent has failed to respond.

20 U.S.C. 1414(a)(2), (c)(3); 34 CFR 300.303.

e) *Evaluation for Change in Eligibility*

Midland Academy Charter shall evaluate a child before determining that the child is no longer a child with a disability. However, an evaluation is not required before the termination of eligibility due to graduation from secondary school with a regular diploma or due to exceeding the age eligibility for FAPE under state law; a summary of academic achievement and functional performance must be provided in these circumstances.

20 U.S.C. 1414(c)(5); 34 CFR 300.305(e); 19 TAC 89.1070(g).

f) *Independent Evaluation*

Parents have a right to obtain an independent educational evaluation of their child. Upon such a request, Midland Academy Charter shall provide the parents with information regarding where one can be obtained and Midland Academy Charter's criteria for independent evaluations.

i. *At Public Expense*

© March 31, 2022 Schulman, Lopez, Hoffer & Adelstein, LLP
All rights reserved.

If a parent requests an independent evaluation at public expense, Midland Academy Charter shall, without unnecessary delay, either:

1. File a due process complaint to request a hearing to show that its evaluation is appropriate; or
2. Ensure that an independent evaluation is provided at public expense, unless Midland Academy Charter demonstrates in a hearing pursuant to 34 CFR 300.507 through 300.513 that the evaluation obtained by the parent did not meet Midland Academy Charter's criteria for independent evaluations.

ii. *At Private Expense*

If Midland Academy Charter initiates a hearing, and the final decision is that Midland Academy Charter's evaluation is appropriate, the parent still has a right to an independent evaluation, but not at public expense. If the parent obtains an independent evaluation at private expense, Midland Academy Charter shall consider the results of the evaluation, if it meets Midland Academy Charter's criteria, in any decision made with respect to providing FAPE to the child.

34 CFR 300.502.

Sec. 7. REQUIRING PRESCRIPTION MEDICATION

Midland Academy Charter employees are prohibited from requiring a child to obtain a prescription for a substance covered under the federal Controlled Substances Act (21 U.S.C. 801 *et seq*.) as a condition of attending school, receiving an evaluation for special education, or receiving special education and related services.

Midland Academy Charter employees are not prohibited from consulting or sharing classroom-based observations with parents regarding a student's academic and functional performance, behavior in the classroom or school, or the need for evaluation for special education or related services.

20 U.S.C. 1412(a)(25).

© March 31, 2022 Schulman, Lopez, Hoffer & Adelstein, LLP
All rights reserved.