



Nonpublic/ Non-District Operated Program Guidance

**Office of Special Populations
and Student Supports**

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Overview

The Individuals with Disabilities Education Act (IDEA) entitles a student with a disability to a free, appropriate public education in the least restrictive environment. When a student has educational needs that cannot be met in a public school setting, that student can be educated in a private school or facility, referred to as a nonpublic program. A student’s admission, review, and dismissal (ARD) committee must determine that the local education agency (LEA) cannot provide the student with the special education instruction and related services necessary to meet the student’s unique needs in order for that student to be educated in a nonpublic program.

In Texas there are different types of educational programs and settings LEAs contract with for the provision of special education supports and services. There are nonpublic programs that fall under Texas Education Agency (TEA) jurisdiction in some manner. To clarify:

- A **nonpublic residential program** is a private school or facility that supports students with disabilities who have been placed for educational purposes via an admission, review and dismissal (ARD) committee determination at a nonpublic residential program or school. Through an individual education plan (IEP) process, an ARD committee may make the determination that a student requires placement in a nonpublic residential placement to meet their educational needs. Private residential placement for educational purposes means that residential placement is necessary in order for the student to make reasonable academic progress as opposed to residential placement for care and treatment purposes.
- A **nonpublic or non-district operated day program** is a private school that provides special education and related services provided during school hours by someone other than school district personnel in a facility not operated by a school district. This placement is determined by

an ARD committee. LEAs provide or arrange for transportation for students attending these programs. *A nonpublic or non-district operated day program includes:*

- a county system operating under application of former law as provided in Texas Education Code (TEC), §11.301;
- a regional education service center established under TEC, Chapter 8;
- a nonpublic day school;
- or any other public or private entity with which a school district enters into a contract under TEC, §11.157(a), for the provision of special education services in a facility not operated by a school district.

Please note that for the remainder of this program guidance, “nonpublic” refers to nonpublic or non-district operated programs.

In accordance with state and federal special education requirements¹, the Texas Education Agency (TEA) approves the educational programs of nonpublic programs. The TEA reviews nonpublic programs with which LEAs contract for special education instructional services, with or without related services. This review is **not** required when:

- an LEA contracts with a nonpublic facility solely for related services; or
- an accredited Texas public school provides all special education instructional services for students placed in a nonpublic day school.

Placement in a nonpublic school is considered a more restrictive educational environment than placement in a public school setting. Federal and state rules and regulations protect the rights of students in such placements. The legal responsibility for providing appropriate educational services to students remains with the LEA.

This guidance document outlines:

- Nonpublic Placement Notification and Application;
- Initial approval of facilities not currently on the list of approved nonpublic schools;
- Placement of students into approved nonpublic facilities;
- Nonpublic school renewal; and

¹ 19 Texas Administrative Code (TAC) §89.1092, §89.1094; 34 Code of Federal Regulations (CFR) §300.401-300.402

- Funding for Nonpublic Placements.

Nonpublic Placement Notification and Application

Under 19 TAC §89.1092 (a)(3), §89.1094 (c), an LEA must notify TEA if the LEA intends to place a student with a disability in a nonpublic program. The process for notification is made through the Nonpublic Placement Notification and Application in [Texas Education Agency Login \(APEX\)](#) and submitted as follows:

- Within 30 calendar days of the ARD committee nonpublic placement decision, if the student was placed in a nonpublic program after the school year began.
- Within 30 calendar days from the date the Nonpublic Placement Notification and Application opens, if the student was placed in a nonpublic program after the school year ended.
- Within 30 calendar days from the date the Nonpublic Placement Notification and Application opens, if the student is in a continuing placement.

Upon receipt of the application, TEA conducts a review for approval of state and federal funding. State and federal funding are approved for educational purposes only. Per 19 TAC §89.1092 (b)(1), funding shall not be approved if the application indicates:

- placement is due primarily to the student's medical problems;
- placement is due primarily to problems in the student's home;
- the LEA does not have an individualized plan, including timelines and criteria, for the student's return to the local school program (reintegration plan);
- the LEA did not attempt to implement lesser restrictive placements prior to nonpublic placement (except for emergency situations as documented in the student's IEP);
- placement is not cost effective when compared with other alternative placements; and/or
- the nonpublic facility provides non-fundable/non-approvable services.

Failure to meet notification timelines may impact state and federal funding allocations. This will be addressed in more detail later in this document.

For additional information on the submission process, refer to the [APEX User Manual](#).

General Responsibilities Overview

The LEA has the following responsibilities when making a nonpublic day or residential placement.

Prior to Placement:

- LEAs should coordinate with the Local Intellectual Disability Authority, Mental Health Authority, Community Resource Group, or group of people knowledgeable about the student to determine if noneducational support services are available that would enable the student to remain in or return to the community.²
- Prior to placing a student in a nonpublic facility, the LEA must make an initial visit to verify the nonpublic facility can and will provide the services that have been contracted for and that are outlined in the student's IEP.

Admission, Review, and Dismissal (ARD) Committee Meeting:

- Before a student is placed in or referred to a nonpublic program, the student's ARD committee must meet to develop an IEP in accordance with federal, state, and commissioner of education rules³ for the student. A representative of the nonpublic program must participate in the ARD committee meeting.
- The student's IEP must list the services which the LEA is unable to provide and which the nonpublic program will provide.
- Prior to the student's enrollment in a nonpublic program, the ARD committee must establish, in writing, individualized, specific, measurable criteria and estimated timelines for the student's return to the LEA (reintegration plan). For 18+ programs, the ARD committee must establish, in writing, individualized graduation and/or exit criteria and the estimated graduation/exit timeline.
- The student's IEP must document the appropriateness of the nonpublic school for the student. The ARD committee must address lesser restrictive placements that have been attempted and documented prior to nonpublic placement (except in emergency situations) – emergency situations must be documented by the ARD committee. In selecting the least restrictive environment (LRE), consideration should be given to any potential harmful effects on the student. For students in continuing placements, the ARD committee must determine whether continued contracting is needed and whether a student's current placement is appropriate.
- The LEA must document the appropriate instructional setting code.
- The LEA must take steps to ensure that one or both parents/guardians of the student are present at each ARD meeting or are afforded the opportunity to participate.⁴

² TEC, §29.013

³ 34 CFR §§300.114-300.118; 300.320-300.325

⁴ 34 CFR §300.322(a)(1)(2)

The LEA must make two, in-person visits (one announced and one unannounced) per school year to verify that the nonpublic school can and is providing the services listed in the student's IEP. The LEA must continue to monitor the nonpublic placement throughout the year to ensure that the student is receiving services as written in the IEP and receiving educational benefit. It is the responsibility of the LEA to ensure that the student receives a FAPE.

Initial Nonpublic Approval Process

Step 1. Initial Visit to the Nonpublic Program

The LEA must visit the nonpublic program and complete the [LEA Assurance Checklist for Contracting with Nonpublic Programs and Record of Annual Visits](#) to ensure that the facility:

- meets health and safety standards;
- employs staff appropriately certified in the grade level and content area of assignment, either by holding Texas teacher certification in the grade levels and content areas of assignment, or via alternate [HOUSSE criteria](#) as outlined by TEA state educator standards.
- employs licensed staff capable of providing services required to meet student needs;
- has a written curriculum that includes the Texas Essential Knowledge and Skills; and
- Is appropriate for the students served, including an age- appropriate instructional environments for 18+ populations, when applicable;
- can provide the services outlined in the student's IEP; and
- has knowledge of and adheres to the requirements outlined in TEC §37.0023 *Prohibited aversive techniques* (including the use of prone and supine restraint.)

Step 2. Notify the TEA

If the LEA intends to place a student with a disability in a nonpublic program that is not currently approved by the TEA, the LEA must notify the agency in writing so that the nonpublic school can be reviewed for approval.

The LEA must submit the following documents to the TEA:

- A completed [LEA Assurance Checklist for Contracting with Nonpublic Programs and Record of Annual Visits](#);
- A completed [Teacher Certification Verification Worksheet](#).

Step 3. TEA Process for Approval

Upon receipt of the required documentation, the TEA will schedule an on-site review of the nonpublic program to evaluate educational programming and the program's ability to provide specialized supports and services. It is the LEA's responsibility to ensure the program is in compliance with state and federal special education requirements and is able to provide services outlined in the student's IEP.

After the on-site review, the TEA will issue the nonpublic program and the LEA a letter of approval or a letter of findings that identifies reasons for non-approval. The LEA must work to rectify, within timelines designated, identified areas to ensure that students placed in or referred to nonpublic programs are provided with special education and related services that meet federal and state special education program requirements under 34 CFR §300.146. Failure to correct noncompliance within required timelines will result in elevated interventions or sanctions.⁵

If the nonpublic program is not approved, the LEA will not be eligible for state and federal funding. If approved, the initial approval period for a nonpublic program is one year.

Contracting with an Approved Nonpublic Program

Requirement 1. Visit to the Nonpublic Program

An LEA that is considering placing a student at a nonpublic program that is already approved by the TEA must visit the nonpublic program and complete the [LEA Assurance Checklist for Contracting with Nonpublic Programs and Record of Annual Visits](#) to ensure that the nonpublic program meets health and safety standards, employs appropriately certified or licensed staff to provide identified services to the student, and has a written curriculum that includes the Texas Essential Knowledge and Skills and is appropriate for the student. If the LEA has visited the nonpublic program during the same academic year, an onsite visit may not be necessary. However, the LEA must confirm that the nonpublic program is appropriate to meet individual student needs on a case-by-case basis. For each student, the LEA must verify that the student's assigned teaching staff are appropriately certified in the grade level and content areas applicable to the student, either by holding Texas teacher certification in the grade levels and content areas of assignment, or via alternate [HOUSSE criteria](#) as outlined by TEA state educator standards.

Requirement 2. Student's ARD/IEP Documentation

The student's ARD committee will meet to develop an IEP that meets federal and state requirements to be implemented by the nonpublic program. The ARD committee must consider all options and lesser restrictive placements. The IEP must identify the services that the LEA cannot provide that the nonpublic program will provide. The IEP must state the reintegration criteria and projected date for the student's

⁵ TEC, Chapter 39; 19 TAC §§89.1076, 97.1071.

return to the LEA campus. For 18+ programs, the ARD committee must establish, in writing, individualized graduation and/or exit criteria and the estimated graduation/exit timeline. Any special education services that are provided beyond the regular LEA school year calendar are considered ESY services and must be determined on an individual basis by the admission, review, and dismissal (ARD) committee annually. A representative of the nonpublic program must attend the ARD committee meeting or participate through another means, such as a telephone call or videoconferencing.

If a nonpublic program employs any practices that restrict parent/child contact for any period of time, the LEA should inform the parents of such practices prior to a placement determination by the ARD committee. The student's IEP should reflect circumstances of restriction, any potential harmful effects, and parent acknowledgement of limitations.

Other LEA Considerations

The LEA must conduct two, in-person annual on-site visits, one announced and one unannounced, to the approved nonpublic program to ensure that the program continues to meet health and safety standards, meets federal and state requirements, provides appropriate services, and provides all contracted services listed in the student's IEP.

To be processed for approval of state and federal funding, an LEA's contract with the nonpublic program must:

- include the beginning and ending dates of placement (dates cannot overlap with a previous contract);
- include the number of days for the student's placement;
- contract for no more than 365 days (the need for ESY services must be determined on an individual student basis by the ARD committee);
- fall within the school year that coincides with the application year;
- include signatures from both the LEA and nonpublic program; and
- include a cost analysis of all services to be provided by the nonpublic facility (for residential placements and as requested for day placements).

LEA Reporting Responsibilities

Contract Amendments – A new or amended contract must be submitted online as part of the application amendment process if an ARD committee develops an IEP for a student that changes the services for which they have contracted. The amended application must be submitted within 30 calendar days of the ARD committee decision.

PEIMS Restraint Reporting – for the 2021-2022 school year and after, Nonpublic Restraint Reporting will be captured and reported with the LEA’s regular TSDS reporting period for restraint data.

Requirement 3. Submit Required Documentation to the Agency through the secure APEX Nonpublic/High Cost Funds online application.

For additional information on the submission process, refer to the [APEX User Manual](#).

TEA Application Review

Upon receipt of the required documentation, TEA will review the student’s IEP to ensure that it meets federal and state requirements. If the IEP does not meet the requirements, the TEA will notify the LEA of needed corrections. The LEA may correct and resubmit the IEP to the TEA for further review. If the IEP meets federal and state requirements, and application eligibility requirements are satisfied, TEA will electronically notify the LEA that the nonpublic application has been approved.

The TEA cannot approve the nonpublic placement of a student if the placement is primarily for disciplinary reasons. Nonpublic placements may not be used as an alternative to disciplinary removal, such as if an ARD committee determines a student’s behavior, which subjects the student to removal from his or her current placement, is not a manifestation of the student’s disability. However, there may be situations in which a student’s history of disciplinary infractions is considered, along with other relevant factors, to determine the need for a more restrictive setting such as a nonpublic program.

Nonpublic Program Reapproval Process

Before the end of a nonpublic school’s approval period, the TEA will initiate a reapproval process for facilities with existing or pending contracts which may include an on-site visit, student file reviews, staff and provider interviews, student observations, policy, procedure and documentation audits, and parent outreach. TEA will contact the facility and placing LEAs to discuss timelines, expectations, and the reapproval plan.

Nonpublic Program Responsibilities

Facilities must complete and submit to the TEA an application for renewal. Additional reapproval activities may include, but are not limited to, the review of state and federal regulations relevant to the following categories:

- IEP Implementation;
- Discipline and Restraint;
- Confidentiality;

- Personnel Credentials;
- Program Activities/Contractual Obligations; and
- Written Curriculum.

LEA Responsibilities

As part of the reapproval process, each LEA who has one or more students placed in the facility must complete and submit to the TEA the following documents:

- [LEA Assurance Checklist for Contracting with Nonpublic Programs and Record of Annual Visits](#)
- [LEA Student Folder Review for Nonpublic Program Monitoring](#)
- A completed [Teacher Certification Verification Worksheet](#) for each teacher serving LEA students
- Other IEP documentation as requested by the TEA.

Requirement 1. Completing the Compliance Review

The LEA should assemble a review team that includes a licensed specialist in school psychology (LSSP) and/or behavior specialist, special education teacher familiar with the student, and administrator. The LEA should collaborate with the nonpublic program and may add additional team members as appropriate. Select the appropriate student folder(s) for all LEA student(s) attending the nonpublic school.

The LEA should review the requirements contained in the above documents and determine whether student-specific documentation is in compliance and whether the determinations of the ARD committee are being implemented appropriately.

Requirement 2. Documenting the LEA Visit to the Nonpublic School

For each year, the LEA must conduct two in-person visits to the nonpublic program. The LEA must document the dates of the visits and identify the LEA participants. The LEA must determine whether the nonpublic program complies with each requirement listed by checking “Yes” or “No”.

TEA’s Responsibilities

Upon receipt of both the nonpublic program and the LEA’s submissions, TEA staff will review the submissions to determine whether additional information is needed prior to the on-site visit. Once all documentation has been reviewed, the TEA will schedule an on-site review of the nonpublic program.

After the review is completed, the TEA will issue the nonpublic program either notice of new approval status, with or without required corrective actions, or notice of non-approval with required actions for future approval.

If the TEA identifies any noncompliance on the part of a contracting LEA, TEA will issue a letter of findings to the LEA outlining areas of noncompliance.

The reapproval period for a nonpublic program may be one, two, or three years, at the TEA's discretion.

Following reapproval, the TEA will notify each LEA that has students placed, or a pending request, of the nonpublic program's approval status.

Beginning in the 2023-2024 school year, the TEA will no longer identify specific areas of disability and age/grade ranges of approval. It is the responsibility of the LEA to determine the appropriateness of the facility for each student considered for placement based on individual areas of need. Further, it is the responsibility of the LEA to verify that facility personnel implementing each student's IEP meet certification or licensure standards applicable to teaching staff within the LEA. If a facility teacher does not hold certification in the content areas and grade level applicable to the student, the LEA must document whether the teacher meets alternate [HOUSSSE criteria](#) outlined by TEA state educator standards.

A current [list of nonpublic schools that are approved for contracting purposes](#) is available on the TEA Nonpublic Placement and Application website.

Funding for Nonpublic Placements

TEA's Office of Special Populations and Monitoring conducts a programmatic review of the Nonpublic Placement Notification and Application to ensure federal and state requirements are met. If all program requirements are met, the application will be considered in compliance for use of funds.

Nonpublic Day Placements

- LEAs receive an annual allotment from the Foundation School Program (FSP) state special education funds for the education cost incurred for each nonpublic day placement, based on the formula prescribed in law, [Texas Education Code \(TEC\) §48.102\(a\)](#).
- The [Student Attendance Accounting Handbook](#) and [Texas Administrative Code \(TAC\) §89.1005](#) provide information on instructional setting codes.

Nonpublic Residential Placements

Nonpublic Residential Placements are funded through a combination of federal, state, and local funds.

- Education Cost: The education cost shall be funded with state funds on the same basis as nonpublic day school contract costs according to Texas Education Code (TEC) §48.102(a).
- Related Services and Residential Costs: Related services and residential costs for residential contract students shall be funded from a combination of fund sources. After expending any other available funds, the district must expend its local tax share per average daily attendance for a portion of the cost and use its 25% Residential Set-Aside for a portion of the costs, until the LEA's maximum Residential Set-Aside has been exhausted. The LEA's 25% Residential Set-Aside is calculated on the base portion of its Individuals with Disabilities Education Act, Part B, (IDEA-B) Formula planning entitlement. The Residential Set-Aside amount may be funded by the LEA with their IDEA-B Formula funds or from an equivalent amount of state and/or local funds.
- IDEA-B Discretionary Residential Funding: If the fund sources listed above are not sufficient to cover all costs of the residential placement, the district through the nonpublic residential application process may receive IDEA-B Discretionary Residential Reimbursement funds to pay the balance of the residential contract placement(s) costs.
- Limit on Residential Costs Reimbursement: Reimbursement for residential costs cannot exceed the daily rate recommended by the [Texas Department of Family and Protective Services](#).

To be considered in compliance for the use of state and federal funds, the LEA is required to meet the following TEA notification requirements:

- Within 30 calendar days of the ARD committee nonpublic placement decision, if the student was placed in a nonpublic program after the school year began.
- Within 30 calendar days from the date the Nonpublic Placement Notification and Application opens, if the student was placed in a nonpublic program after the school year ended.
- Within 30 calendar days from the date the Nonpublic Placement Notification and Application opens, if the student is in a continuing placement.

LEAs must meet these notification requirements through completing the Nonpublic Placement Notification and Application in [APEX](#). LEAs who do not meet notification timeline requirements will be considered for partial funding based on the date of application submission to the TEA.

Optional High Cost Funds (HCF)

The LEA may request an optional High Cost Fund (HCF) award if HCF eligibility criteria are met, by submitting the APEX High Cost Fund application within the HCF application window established by TEA.

View the [High Cost Funds](#) website for additional information.

Resources

Websites

[Special Education in Nonpublic Programs](#)

[High Cost Funds](#)

[Texas Education Agency Login \(TEAL\)](#)

[Community Resource Coordination Groups](#)

[Texas Health and Human Services – Search for Residential \(24 hour Operation\)](#) *Note: not all facilities in this directory are approved nonpublic residential programs for special education placement. This directory is provided as a resource to help LEAs verify compliance with licensing requirements.*

Forms

[LEA Assurance Checklist for Contracting with Nonpublic Programs and Record of Annual Visits](#)

[LEA Student Folder Review for Nonpublic Program Monitoring](#)

[Teacher Certification Verification Worksheet](#)

Other Resources

[APEX User Manual](#)

[Approved Nonpublic List](#)

[Nonpublic Monitoring Process](#)

Code of Federal Regulations

[Individuals with Disabilities Education Act 20 U.S.C. § 1400, et. seq.](#)

[34 CFR §300.325 Private School Placements by Public Agencies](#)

[34 CFR §300.146 Responsibility of the SEA](#)

[34 CFR §300.147 Implementation by SEA](#)

Texas Administrative Code

[19 TAC §89.1094 Contracting for Nonpublic or Non-District Operated Day Placements for the Provision of a Free Appropriate Public Education \(FAPE\)](#)

[19 TAC §89.1092 Contracting for Nonpublic Residential Placements for the Provision of a Free Appropriate Public Education \(FAPE\)](#)

Texas Education Code

[TEC §29.008. Contracts for Services; Residential Placement](#)

Contacts

Program Information

Office of Special Populations & Student Supports

512-463-9414

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Regional Education Service Centers (ESCs)

A list of the ESC Special Education contact for each region can be found on the [Education Service Center Technical Assistance](#) website.