



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 (FAPE) in the least restrictive environment (LRE). 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 program, referred to as a nonpublic or non-district operated program. A student’s admission, review, and dismissal (ARD) committee must determine that the school district 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 or non-district operated program.

In Texas there are different types of educational programs and settings school districts contract with for the provision of special education supports and services that fall under Texas Education Agency (TEA) jurisdiction in some manner. Those include:

- **Nonpublic residential program** - A nonpublic residential program includes the provision of special education and related services to one or more Texas public school students by someone other than school district personnel at a program not operated by a school district. A student placed in this program has been determined by his or her ARD committee to require a residential placement in order to facilitate the student's attainment of reasonable educational progress and to provide the student FAPE. It is not a placement intended primarily for the provision of medical care and treatment.
- **Nonpublic residential program provider** - A nonpublic residential program provider is a public or private entity with one or more facilities that contracts with a school district for the provision of some or all of a student's special education and related services when the school district is

unable to provide those services and maintains current and valid licensure by the Texas Department of Family and Protective Services, the Texas Health and Human Services Commission, or another appropriate state agency.

- **Nonpublic or non-district operated day program** - A nonpublic or non-district operated day program includes the provision of special education and related services to one or more Texas public school students during school hours by someone other than school district personnel in a program not operated by a school district. A student placed in this program has been determined by his or her ARD committee to require a day placement in order to facilitate the student's attainment of reasonable educational progress and to provide the student FAPE.
- **Nonpublic or non-district operated day program provider**--A nonpublic or non-district operated day program provider is an entity with one or more facilities that contracts with a school district for the provision of some or all of a student's special education and related services when the school district is unable to provide these services. These providers include:
 - 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 program not operated by a school district.
- **School district**--The definition of a school district includes independent school districts established under Texas Education Code (TEC), Chapter 11, Subchapters A-F, and open-enrollment charter schools established under TEC, Chapter 12, Subchapter D.

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, TEA approves the educational programs of nonpublic programs. TEA reviews nonpublic programs with which school districts contract for special education instructional services, with or without related services. This review is **not** required when:

- a school district contracts with a nonpublic program solely for related services; or
- an accredited Texas public school provides all special education instructional services for

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

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 school district.

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
- Funding for Nonpublic Placements.

Nonpublic Placement Notification and Application

Under 19 TAC §89.1092 (c), §89.1094 (c), a school district must notify TEA if the school district 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 (e)(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;
- district does not have a plan, including criteria and a projected date, for the student's return to

the local school program;

- the school district did not attempt to implement lesser restrictive placements prior to nonpublic placement (except for emergency situations as documented in the student’s ARD committee);
- placement is not cost effective when compared with other alternative placements; and/or
- the nonpublic program provides non-fundable/non-approvable services.

Failure to meet notification timelines impacts 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 school district has the following responsibilities when making a nonpublic day or residential placement.

Prior to Placement:

- The school district should coordinate with their Local Intellectual and Developmental 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 program, the school district must make an initial visit to verify the nonpublic program 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 for the student in accordance with federal, state, and commissioner of education rules³. A representative of the nonpublic program must participate in the ARD committee meeting.
- The student’s IEP must list the services which the school district 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

² TEC, §29.013

³ 34 CFR §§300.114-300.118; 300.320-300.325; TAC §§89.1092; 89.1094

writing, individualized, specific, measurable criteria and a projected date for the student’s return to the school district (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 program 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 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 school district must document the appropriate instructional setting code.
- The school district must take steps to ensure that one or both parents/guardians of the student are present at each ARD committee meeting or are afforded the opportunity to participate.⁴

The school district must make two in-person visits (one announced and one unannounced) per school year to verify that the nonpublic program can and is providing the services listed in the student’s IEP. The school district 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 school district to ensure that the student receives a FAPE.

Initial Nonpublic Approval Process

Step 1. Initial Visit to the Nonpublic Program

The school district 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 program:

- 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 usage of the [Texas Content Competency Worksheet](#) as outlined by State Board for Educator Certification (SBEC).
- employs licensed staff capable of providing services required to meet student needs;

⁴ 34 CFR §300.322(a)(1)(2)

- has a written curriculum that includes the Texas Essential Knowledge and Skills;
- Is appropriate for the students served, including 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 a school district intends to place a student with a disability in a nonpublic program that has not yet been approved by TEA, the district is required to notify the agency in writing to initiate the review process for potential approval of the nonpublic school. To assist districts in understanding and complying with nonpublic placement requirements, TEA has developed a [Preliminary Approval Guide](#), which outlines the procedural steps and requirements necessary for consideration. The school district must submit the following documents to TEA:

- A completed [school district 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 all 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 school district’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 school district a letter of approval or a letter of findings that identifies reasons for non-approval. If the school district intends to maintain the placement, the school district 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 state and federal 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 TEA does not approve, does not reapprove, or withdraws approval from a program provider, a school district must take steps to remove any students currently placed at the provider's program, or cancel a

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

student's planned placement, as expeditiously as possible. Additionally, if the nonpublic program is not approved, the school district 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

A school district 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 [school district 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 school district has visited the nonpublic program during the same academic year, an onsite visit may not be necessary. However, the school district must confirm that the nonpublic program is appropriate to meet individual student needs on a case-by-case basis. For each student, the school district 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 through the [Texas Content Competency Worksheet](#) as outlined by SBEC.

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 school district cannot provide that the nonpublic program will provide. The IEP must state the reintegration criteria and projected date for the student's return to the school district 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 school district year calendar are considered ESY services and must be determined on an individual basis by the 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 practice that restricts parent/child contact for any period of time, the school district 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 School District Considerations

The school district 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, a school district’s contract with the nonpublic program must:

- include the placement start date, which must be on or after August 1, and the end date, which must be on or before July 31. Ensure dates do not overlap with a previous contract;
- include the number of instructional 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 valid⁶ signatures from both the school district and nonpublic program; and
- include a cost analysis of all services to be provided by the nonpublic program (for residential placements and as requested for day placements).

School District 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 –Nonpublic Restraint Reporting will be captured and reported with the school district’s regular Texas Student Data System (TSDS) reporting period for restraint data.

Requirement 3. Submit Required Documentation to the Agency through the secure APEX online application.

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

⁶ A valid signature is either hand-written or an electronic signature. An electronic signature must be uniquely identified and employ adequate authentication methods to verify signer identity and intent. Typing the name does not qualify as a valid signature.

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 school district of needed corrections. The school district 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 school district that the nonpublic application has been approved.

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

The fall prior to the nonpublic school’s approval period, 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 program and contracting school districts to discuss timelines, expectations, and the reapproval plan.

Nonpublic Program Responsibilities

Programs 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.

School District Responsibilities

As part of the reapproval process, each school district who has one or more students placed in the program 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 school district students
- Other IEP documentation as requested by the TEA.

Requirement 1. Completing the Compliance Review

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

The school district 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 District Visit to the Nonpublic School

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

It is the responsibility of the school district to determine the appropriateness of the program for each student considered for placement based on individual areas of need. Further, it is the responsibility of the school district to verify that program personnel implementing each student’s IEP meet certification or licensure standards applicable to teaching staff within the school district. If a program teacher does not hold certification in the content areas and grade level applicable to the student, the school district must document whether the teacher meets [Texas Content Competency](#) as outlined by TEA educator standards.

TEA's Responsibilities

Upon receipt of both the nonpublic program and the school district's submissions, TEA staff will review the submissions to determine whether additional information is needed. Once all documentation has been reviewed, TEA will schedule a review of the nonpublic program.

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

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

The reapproval period for a nonpublic program may be one, two, or three years, at TEA's discretion. If TEA does not reapprove, or withdraws approval from a program provider, the school district must take steps to remove any students currently placed at the provider's program as expeditiously as possible. Additionally, if the nonpublic program is not reapproved, the school district will not be eligible for state and federal funding.

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

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 Students Supports conducts a programmatic review of the Nonpublic Placement Notification and Application submitted via APEX to ensure federal and state requirements are met. If all program requirements are met, the application will be considered in compliance for the use of funds.

School districts that do not meet the notification timeline requirements described in the Nonpublic Placement Notification and Application section of this document will be considered for partial funding based on the date of the APEX application submission to the TEA.

Nonpublic or Non-District Operated Day Placements

The cost of nonpublic or non-district operated day program placements will be funded according to TEC, §48.102 (Special Education); 19 TAC §89.1005(e) (relating to Instructional Arrangements and Settings); and 19 TAC §129.1025 (relating to Adoption by Reference: Student Attendance Accounting Handbook).

- School districts receive an annual state special education allotment from the Foundation School Program (FSP) 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.

Contracts between school districts and approved nonpublic or non-district operated day program providers shall not begin prior to August 1 of the contracted program year and must not extend past July 31. Amendments to a contract must be electronically submitted to TEA via the APEX application no later than 30 calendar days from the change in placement or services.

Nonpublic Residential Placements

- Nonpublic Residential program placements are funded through a combination of federal, state, and local funds, as prescribed in Texas Administrative Code (TAC) section [89.1092\(e\)\(2\)](#).
Education Cost: The education cost of nonpublic residential program contracts shall be funded with state funds on the same basis as nonpublic day program contract costs according to Texas Education Code (TEC) §48.102.
- Related Services and Residential Costs: Related services and residential costs for nonpublic residential program contracts 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 cost until the school district's maximum Residential Set-Aside has been exhausted. The school district'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 school district 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 placement, the district, through the Nonpublic Residential APEX application process, may receive IDEA-B Discretionary Residential contract placement(s) costs.
- Limit on Residential Costs Reimbursement: Reimbursement for residential costs shall not exceed the daily rate recommended by the Texas Department of Family and Protective Services for the general residential operation intense service level of care.

Contracts between school districts and approved nonpublic residential program providers shall not begin prior to August 1 of the contracted program year and must not extend past July 31. Amendments to a contract must be electronically submitted to TEA via the APEX application no later than 30 calendar days from the change in placement or services.

Optional - High Cost Funds (HCF)

The High Cost Fund (HCF) is a potential source for additional, optional funding, contingent upon the school district satisfying the HCF eligibility criteria and submitting the High Cost Fund APEX application within the application window established by TEA. The HCF application is a separate application from the Nonpublic Day and Nonpublic Residential APEX applications. HCF awards are not guaranteed and are subject to the availability of funds.

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

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

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

[Teacher Certification Verification Worksheet](#)

Other Resources

[APEX User Manual](#)

[Approved Nonpublic List](#)

[Nonpublic Approval Status Guide](#)

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

NPSpecialAndRes@TEA.Texas.gov

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.