

FAQs

19 Texas Administration Code Chapter §89.1094

19 TAC §89.1094, relating to off-campus placements for students who receive special education services, went into effect November 10, 2019. This document is intended to provide local education agencies (LEAs) guidance, as well as answer the most commonly asked questions regarding this new rule.

What are the submission procedures for notifying the Texas Education Agency (TEA) that a LEA intends to contract with an off-campus program provider to provide special education and related services to a student with a disability?

LEAs should notify TEA via the Nonpublic Day Application system located in TEAL. TEA has worked to upgrade the application to include notification requirements for off-campus placements (i.e., additional instructional setting codes for off-campus placements). The TEAL Nonpublic Application can be found [here](#).

Since the rule went into effect November 10, 2019, will LEAs be found out of compliance for failing to notify the agency of off-campus placements within the required 30 calendar days?

No. TEA has been working to upgrade our systems to capture all submission requirements associated with an off-campus placement. Additionally, TEA understands that LEAs have made off-campus placements prior to the effective date of this rule. TEA has provided this FAQ document, a TAA, and anticipates launching the application upgrades the first week of February to facilitate implementation of the rule. LEAs are asked to enter existing and previous placements into the application system as soon as possible. Admission, Review, and Dismissal (ARD) committee placements made after the TAA dated 2/6/2020 should have applications into the system within 30 calendar days from the ARD committee's decision to place the student in an off-campus program.

What Instructional Setting Code(s) should LEAs use for off-campus program placements?

LEAs should submit their application with the Instructional Setting Code they believe best represents the type of placement and services the student will be receiving. As part of the application review process TEA will work with LEAs to determine the most appropriate instructional setting code and will advise the LEA through the clarification process if revisions are needed. Instructional setting codes 50 and 60 are specific to nonpublic day and residential facilities, LEAs using these types of facilities should submit applications in accordance with current program guidance.

What types of facilities and placements fall under §89.1094?

An off-campus program is defined as special education and related services provided during school hours by someone other than school district personnel in a facility other than a school district campus. Special education and related services that are provided by a nonpublic day school, a county department of education, a regional education service center, or any other public or private entity with which a school district enters into a contract under Texas Education Code §11.157 in order to provide special education services in a facility other than a school district campus operated by a school district fall under this rule.

LEAs that contract with other LEAs through a Shared Service Agreement (SSA) to provide services within that district's program or facility would not fall under this rule.

Is the Harris County Department of Education (HCDE) §89.1094 considered an off-campus program provider and therefore subject to §89.1094?

Yes. HCDE is a county system operating under application of former law as provided in TEC 11.301. Because 89.1094 specifically includes such entities in the definition of off-campus placement providers, HCDE is subject to the rule.

Will JJA placements fall under §89.1094?

JJAEPs are not considered nonpublic day schools and, therefore, are not subject to §89.1094. More specifically, JJAEPs are programs that, by statute, are developed by county juvenile boards or school districts (depending on county population) and provide services to students who have been expelled from public schools for serious school-related law violations or for violations of the student code of conduct while placed at a district alternative education program. Students may be court ordered into these programs and must meet minimum lengths of stay. These programs are subject to the minimum operational, programmatic, and educational standards set forth in 37 TAC Chapter 348.

Is an 18+ off-campus program subject to §89.1094?

If an ARD committee has determined that a student with a disability who is still enrolled in a Texas LEA needs to attend an 18+ program that meets the definition of an “off-campus program” as provided in §89.1094, the LEA would need to comply with the requirements of the rule and notify and submit the requisite information to TEA within 30 calendar days of the ARD committee’s decision to place the student in an off-campus program.

Who is responsible for approving the off-campus program, the LEA or the TEA?

The ARD committee determines the placement of a student to receive their special education and related services. LEAs need to complete the requirements as defined within the rule and all assurance documents as a part of the application process. TEA reviews the application materials, assurance documents to ensure the facility is able to meet the requirements defined in the IEP, that there is alignment between the contract and IEP documents, and that the placement will provide services in accordance with all applicable federal and state rules. The LEA remains responsible for students placed in any off-campus placement. TEA maintains review and approval authority for contracting and funding purposes over off-campus facilities, but not regulatory authority. TEA maintains regulatory authority over the LEA where the student is enrolled.

What happens if TEA does not approve the off-campus program? Is the LEA able to keep the student in the placement/facility?

If TEA does not approve the placement, the LEA will not be able to receive federal or state funds for the off-campus program placement. TEA will notify the LEA of the reason that the placement was not approved. If the LEA maintains the student’s placement at the facility, it may be able to do so using local funds but should discuss this and all potential consequence with LEA counsel.

What is the purpose of the Nonpublic School approved list?

The agency maintains a list of approved nonpublic schools and will similarly start a list of approved off-campus programs. This list exists in order to allow LEAs the ability to see what facilities and programs have been approved for contracting purposes.

It is important to note that each application is reviewed on a case-by-case basis by TEA in accordance with §89.1094, and state and federal rules and regulations. Thus, the presence of a facility on the approved list does not indicate that similar subsequent placements will be automatically approved. This list is not exhaustive and is subject to change.

If a facility is on the approved list, does that mean contracting costs/facility rates have been approved by TEA?

No. It is the responsibility of the LEA to ensure that placement is cost effective when compared to other alternative placements.

How does an LEA comply with §89.1094's requirement to provide written verification that the facility meets minimum standards for health and safety, holds applicable local and state accreditation, and permit requirements?

The LEA is required in accordance with §89.1094(b)(3) to ensure the appropriateness of the off-campus program, which includes ensuring that the facility is appropriate. In doing so, the LEA must "obtain written verification that the facility meets minimum standards for health and safety and holds applicable local and state accreditation and permit requirements." See §89.1094(b)(3)(C)(ii). This would include, but is not limited to, written verification that the facility has running water, electricity, effective sanitation, has passed necessary and applicable building or health code requirements, etc. In other words, the facility should generally meet the same health and safety standards as LEA campus facilities.

Is there additional funding that will be associated with this or is it all tied to the PEIMS code?

§89.1094 does not provide for any additional funding or funding mechanisms. LEAs continue to be eligible for the funding defined by PEIMS and as appropriate may apply for High Cost Funds. For additional information on High Cost Funds, please visit the HCF [webpage](#).

Who can LEAs contact with questions?

LEAs can find support by contacting the Special Projects Division of Special Education within the Office of Special Populations at TEA. Find division contact information [here](#).