Nonpublic School Review Process Guidance Document

Divisions of Federal and State Education Policy and Program Monitoring and Interventions
**Introduction/Overview**

In accordance with 19 Texas Administrative Code (TAC) §89.61 and federal requirements in 34 Code of Federal Regulations (CFR) §§300.401-300.402, the Texas Education Agency (TEA) approves the educational programs of nonpublic schools that meet both federal and state special education program requirements. The TEA reviews both day and residential nonpublic schools with which districts and charter schools may contract for special education instructional and related services. However, the legal responsibility for providing appropriate educational services to students remains with the district. The district and TEA, as part of the review, must ensure that all service providers at these nonpublic schools are appropriately licensed and/or certified. Placement in a nonpublic school is considered a more segregated educational environment than placement in a public school setting, and federal regulations and State Board of Education/Commissioner’s rules protect the rights of students in such placements. If a nonpublic school provides any or all educational services listed in the student’s individualized educational program (IEP), the commissioner of education must approve the nonpublic school’s education program. An admission, review, and dismissal (ARD) committee may not place students in a nonpublic school that has not had its educational program approved by the Agency.

This guidance document outlines the processes to gain approval of a facility that is not currently on the approved list of nonpublic schools, the renewal process for a facility, and the approval of a placement of a student into a facility that is on the approval list.

The nonpublic school approval process is not required for a facility that provides only related services and/or whose special education instructional program is the responsibility of an accredited Texas public school. The legal responsibility for ensuring appropriate educational services are provided to students placed in nonpublic schools remains with the district. The district or charter school has the following responsibilities when making a nonpublic day or residential placement:

A. Before a student is placed in or referred to a nonpublic school, the district or charter school must initiate and conduct a meeting of the student’s ARD committee to develop an IEP for the student. A representative of the nonpublic school must participate in the ARD committee meeting.

B. **The services which the district is unable to provide and which the nonpublic school will provide must be listed in the student’s IEP.**

C. The ARD committee must establish, in writing, **criteria and estimated timelines for the student’s return to the school district.**

D. The appropriateness of the nonpublic school for the student must be documented in the IEP. The district must justify the more restrictive environment of the nonpublic school.

E. The district must make an initial and an annual on-site visit to verify that the nonpublic school can, and is providing the services listed in the student’s IEP. It will be necessary for the district to continue to follow-up with the nonpublic school throughout the year to ensure that the student is receiving services as written in the IEP and receiving education benefit. It is the responsibility of the district to ensure that the student receives a free, appropriate public education (FAPE).
Initial Approval Process

District Initial Request for Approval of a Nonpublic School
If a district intends to contract with a nonpublic school that is not currently approved by the TEA, the district must notify the agency in writing of its intent to place a student in the nonpublic school and request that the nonpublic school is reviewed for approval.

To begin the initial approval process, the district must submit the following documents to the TEA to begin the approval process:
1. A completed District Assurance Checklist for Contracting with a Nonpublic School;
2. A copy of the student’s ARD/IEP (that includes the information described above in the General Overview section); and,
3. A letter of intent to contract with the nonpublic school signed by the district’s superintendent.

Step 1. Initial Visit to the Nonpublic School
The district must visit the nonpublic school and complete the Checklist for Contracting with a Nonpublic School to ensure that the facility meets health and safety standards, employs appropriately certified or licensed staff to provide appropriate services to students, and has a written curriculum that includes the Texas Essential Knowledge and Skills and is appropriate for the placement of students.

Step 2. Student’s ARD/IEP Documentation
The district must convene a meeting of the ARD committee meeting for the each identified student with which nonpublic school placement is being sought to develop an IEP that meets federal and state requirements. The IEP must include all special education and related services that the district cannot provide and that the nonpublic school can provide, and the date and criteria for returning the student to the district.

Step 3. Complete the Letter of Intent to Contract
The district’s superintendent will submit a letter of intent to contract with the nonpublic school that includes the following information in the letter:
- Name of the nonpublic school;
- Nonpublic school director’s name and contact number and email address;
- Specific program location(s);
- Date for which approval is requested;
- Specific area(s) of disability for which approval is requested;
- Age range(s) for which approval is requested;
- Type of placement requested (day or residential); and
- The superintendent’s signature.
Step 4. Submit Required Documentation to the Agency
Mail the three documents to the
Texas Education Agency
Division of Federal and State Education Policy
1701 N. Congress Ave.
Austin, Texas 78701-1494

Or email them to www.NPDayandRes@tea.texas.gov.

Next Steps. TEA Process for Approval
Upon receipt of the required documentation, TEA staff will review the student’s IEP to ensure that it meets federal and state requirements. If the IEP does not meet the requirements, TEA staff will notify the district and the nonpublic school of the decision. The district will have an opportunity to correct any noncompliance and resubmit to the agency for further review, or may request an informal review of the determination.

If TEA’s preliminary review of the student’s IEP meets federal and state requirements, the Division of Federal and State Education Policy will notify the Division of Program Monitoring and Intervention with the name of the facility for which approval is sought and a copy of the student’s IEP will be provided to PMI.

The PMI division will notify the nonpublic school to request that a copy of the most current financial statement for the facility and the Nonpublic School Assurance Checklist for Contracting with Districts. The nonpublic schools also will be required to provide evidence of appropriate state licenses.

After the preliminary document review, the TEA will schedule an on-site review of the nonpublic school to verify compliance with state and federal requirements. After the TEA on-site review, the TEA will issue the nonpublic school a letter of approval or a letter of findings that identifies corrective actions for each area of identified noncompliance. If the TEA identifies any noncompliance on the part of the district, the TEA will issue a letter of findings and require the district to develop a corrective action plan to address the noncompliance. When all compliance standards are met, the TEA staff will recommend approval to the Director of the Division of Program Monitoring and Interventions. The initial approval period for a nonpublic school is one year.

The nonpublic school’s approval is based on the educational program and services that the TEA determines the nonpublic school has the expertise and ability to provide. The nonpublic school is reviewed in terms of the area(s) of disability, and age ranges served, and whether the nonpublic school has appropriate staffing. If, at any time the nonpublic school does not have any students placed by a district, the nonpublic school will be removed from the approved list.

A district may not negotiate and enter into a contract with a nonpublic school to provide educational programs and services prior to the nonpublic school being approved by the TEA. Upon approval of the facility, a district may enter into a contract with the facility. Both the district and the nonpublic school must maintain a copy of the contract for the current year. The contract must provide a termination clause that may be exercised by the district, if the nonpublic school loses its approval status.
Contracting with a Previously Approved Nonpublic School

Step 1. Visit to the Nonpublic School

A district that is considering whether to place a student at a nonpublic school that is already approved by the TEA must visit the nonpublic school and complete the Checklist for Contracting with a Nonpublic School to ensure that the nonpublic school meets health and safety standards, employs appropriately certified or licensed staff to provide appropriate services to the student, and has a written curriculum that includes the Texas Essential Knowledge and Skills and is appropriate for the placement of students. The checklist is found on the Program Monitoring and Interventions website at: http://www.tea.state.tx.us/pmi and selecting the Special Education Nonpublic Monitoring link, then selecting the guidance and resources link.

Step 2. Student’s ARD/IEP Documentation

The district will convene an ARD committee meeting for the student to develop an IEP that meets federal and state requirements to be implemented by the nonpublic school. The IEP must include the services that the district cannot provide that the nonpublic school can provide, and the date and criteria for returning the student to the district.

A representative of the nonpublic school must attend the ARD committee meeting or participate through another means, such as a telephone call or video conferencing.

The district must conduct an annual on-site visit to the approved nonpublic school facility to ensure that the nonpublic school continues to meet health and safety standards, can provide appropriate special education, continues to meet federal and state requirements, provides required services, and that teachers, related services personnel, and educational aides are properly certified or licensed [See 19 TAC §89.1131 regarding qualifications of special education personnel.] Special certification/licensure is required for teachers serving students with speech, visual, or auditory impairments and for teachers who are teaching in the preschool program for children with disabilities.

The ARD committee determines whether continued contracting is needed and whether a student’s current placement is appropriate.

Step 3. Complete the Letter of Intent to Contract

The district will submit a letter of intent to contract with a nonpublic school that includes the following information in the letter:

- Name of the nonpublic school;
- Nonpublic school director’s name and contact number and email address;
- Specific program location(s);
- Date for which approval is requested;
- Type of placement requested (day or residential); and
- The Superintendent’s signature.
Step 4. Submit Required Documentation to the Agency
Mail the three documents to the
Texas Education Agency
Division of Federal and State Education Policy
1701 N. Congress Ave.
Austin, Texas 78701-1494

Or email them to NPDandRes@tea.texas.gov

Next Steps. TEA Approval for Placement
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 meets all requirements, TEA will send correspondence notifying the district that placement has been approved. If the IEP does not meet the requirements, the TEA will notify the district and the nonpublic school that TEA cannot approve the placement of the student into the nonpublic school. An explanation for the decision will be provided by TEA, and the district may reconvene the ARD committee to revise the IEP to meet federal and state requirements. The district may resubmit the IEP to the TEA for further review. The district also may request an informal review of the determination. If the IEP meets federal and state requirements, TEA will notify the district that placement of the student has been approved.
Nonpublic School Reapproval Process

Before the end of a nonpublic school’s approval period, the TEA will conduct an on-site visit to the nonpublic school.

Nonpublic School’s Responsibilities
Prior to the on-site visit, nonpublic schools must complete and submit to the TEA a Nonpublic School Self-Analysis for Nonpublic Placements. The self-analysis evaluates compliance with state and federal regulations for the following categories:

- Properly Constituted ARD Committee Meetings;
- IEP Implementation;
- Disciplinary Removals;
- Discipline;
- Confidentiality;
- Personnel Credentials;
- Program Activities/Contractual Obligations; and
- Written Curriculum.

The Nonpublic School Self-Analysis for Nonpublic Placements may be downloaded from the Program Monitoring and Interventions website at: http://www.tea.state.tx.us/pmi, selecting the Special Education-Nonpublic Monitoring link, and then selecting the Guidance and Resources link.

District’s Responsibilities
As part of the reapproval process, each district who has placed students in the facility must complete and submit to the TEA the following documents:

- Compliance Review;
- Assurance Checklist for Contracting with a Nonpublic School;
- Documentation of Visit to Nonpublic School; and
- Longitudinal History of Individual Student Progress.

These documents also can be downloaded from the Program Monitoring and Interventions website at http://www.tea.state.tx.us/pmi, selecting the Special Education-Nonpublic Monitoring link, then selecting the Guidance and Resources link. The district must submit all documents via ISAM. Instructions regarding the use of ISAM can be found under “How Do I” section of the Program Monitoring andInterventions website at www.tea.state.tx.us/pmi.

Step 1. Completing the Compliance Review
The district must assemble a review team that includes a licensed specialist in school psychology (LSSP) and/or a diagnostician, special education teacher familiar with the student, administrator, and a nonpublic school representative. The district may add additional team members as appropriate. Select the appropriate student folder(s) for all district student(s) attending the nonpublic school.
Conduct the compliance review using the Legal Framework, IDEA 2004; the Special Education Rules and Regulations Side-by-Side; and the IDEA 2004 Federal Regulations, as appropriate, as guides to state and federal requirements. The Legal Framework, IDEA 2004, is accessible at http://framework.esc18.net.

The district should review the requirements contained in the references above and make a determination regarding whether student-specific documentation is in compliance and whether the determinations of the ARD committee are being implemented appropriately.

**Step 2. Completing the District Assurance Checklist for Contracting with a Nonpublic School**

The district must determine if the nonpublic school has systems in place that address the items listed in the document. Check “Yes” or “No” to indicate if the district assures that the nonpublic school complies with state and federal requirements.

**Step 3. Completing the Documentation of the District Visit to the Nonpublic School**

For each year, the district must conduct at least one visit to the nonpublic school, enter the date of the visit, the district participants, and identify if the nonpublic school complies with the requirements listed by checking “Yes” or “No”.

**Step 4. Completing the Longitudinal History of Individual Student Progress Workbook**

To complete the *Longitudinal History of Individual Student Progress Workbook*, assemble the review team that includes an LSSP/diagnostician, special education teacher familiar with the student, administrator, and a nonpublic school representative. The district may include additional team members as appropriate.

The district must enter information on the *Longitudinal History of Individual Student Progress workbook* for each student placed in the nonpublic school. For each student, collect the following information: current full and individual evaluation (FIE) and ARD documents for the past three years.

Information documenting implementation of the review process as required must be maintained by the district. This includes documentation regarding which student folders, policies, certifications, transactions, etc. were reviewed in the process. Appropriate Implementation of the system, as well as integrity of the data reflected in the system, are subject to future random verification by the agency. If inaccurate reporting of findings is determined through TEA verification processes, the district shall be subject to additional TEA sanctions and interventions.

**TEA’s Responsibilities**

Upon receipt of both the nonpublic school, and the district, submissions, TEA staff will review the information to determine if additional information is necessary prior to the on-site visit. Once all documentation has been reviewed, TEA will schedule an on-site review to the nonpublic school.

Within 30 business days of the date of the on-site review, the TEA will issue the nonpublic school a letter of reapproval or a letter of findings that identifies corrective actions required for areas of
noncompliance. If the TEA identifies any noncompliance on the part of a contracting district, TEA will issue a letter of findings to the district and require the district to develop a corrective action plan to address the noncompliance. If necessary, within 30 business days of the date of the letter of findings, the nonpublic school and each district must submit a corrective action plan to the TEA to address areas of identified noncompliance. When all compliance standards are met, TEA staff will recommend reapproval of the nonpublic school to the Director of the Division of Program Monitoring and Interventions. If there are no issues of concern and/or identified noncompliance, the nonpublic school will be reapproved. If there are concerns and/or identified noncompliance, the effective date of the nonpublic school’s approval will be the date in which discrepancies are removed.

The reapproval period for a nonpublic school may be for one, two, or three years. The reapproval period is based on the educational program and services that the TEA determines the nonpublic school has the expertise and ability to provide at the time of the on-site visit. Following reapproval, the TEA will notify each district that has students placed at the nonpublic school of the approval status, including areas of disability age ranges that may be served, and the approval period. A current list of nonpublic schools that are approved for contracting purposes is posted on the Program Monitoring and Interventions website at: [http://www.tea.state.tx.us/pmi](http://www.tea.state.tx.us/pmi) and may be found by selecting the Special Education-Nonpublic Monitoring link.

Reapproval must be granted before the district may continue to contract for services with the nonpublic school. Both the district and the nonpublic school must maintain a copy of the contract for the current year. A district may not continue to contract with a nonpublic school that is not reapproved. The contract must provide a termination clause that may be exercised by the district if the nonpublic school loses its approval status.

**Modifications to Approved Areas of Disability, Locations, and/or Age Ranges**

When an approved nonpublic school wants to modify the approved locations, areas of disability, and/or age ranges served the nonpublic school and must submit a written request to the TEA. The nonpublic school will receive a written response from the TEA to this request within 15 business days. Depending upon the nature of the modification requested, the TEA may schedule and conduct an on-site review within 30 days to determine if the modification request is warranted.

**Financial Assistance for Residential Contract Placements**

Financial assistance for contract placements in approved residential nonpublic schools may be available. The district must submit the following information to the Division of Federal and State Education Policy, an Application for Approval of Funding for Residential Placement (SAS-A111-15) through the local Education Services Centers (ESCs). The district must submit a separate application for each student, and should include the following information, as appropriate:

A. Nonpublic Day School Report (SPE-106)

   1. This report indicates each contracted student’s identification number, date of birth, primary disability, the name of the approved contracting nonpublic school, and the
number of months contracted. It must be submitted to TEA by the designated time line for previous year placements.

2. State special education funds are generated by this report and are included on the Summary of Finances from TEA.

B. Application for Approval of Funding for Residential Placement

1. All required documentation, IEPs, reintegration plan, and contract

2. Required signatures
   - The superintendent of the fiscal agent (or ESC executive director) for a special education shared services arrangement (SSA) or his/her designee or the superintendent of a single member of his/her designee also must sign each application. A letter of authorization must be included with the application, if someone other than the superintendent/ESC executive director signs the application.

   - The district should coordinate with the Local Intellectual Disability Authority (LIDA), Mental Health Authority (MHA), Community Resource Coordination Group (CRCG), or a group of people knowledgeable about the student to determine whether noneducational support services are available that would enable the student to remain in or return to the community. The signature of the authorized representative of the LIDA or MHA; i.e. the superintendent of a state school, the director of a state center, the executive director of a community center, only as verification that staff were consulted regarding services for the student named on the application is required.

   - Prior to a residentially placed student returning to the community, it is highly recommended that a CRCG meeting be held to discuss the student’s needs for local resources and to review the most recent reintegration plan.

3. The district must submit to its regional ESC a separate application for each student and retain one copy.

4. Approval is provided for an individual student’s application via an approval letter from TEA. This letter will be mailed to the superintendent of the district or to the fiscal agent superintendent/ESC executive director, if the student is a resident of a member district of a special education SSA.

   - The district also will receive a Recapitulation of Funding Sources and Approved Costs page, which will indicate the total amount of funds and the fund sources approved for residential placement.

   - The residential placement, if approved by the TEA, shall be funded as follows:
• The education cost of residential contracts shall be funded with state funds on the same basis as nonpublic day school contract costs according to Texas Education Code, §42.151;
  A. 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 and 25% of its IDEA-B formula tentative entitlement (or an equivalent, amount of state and/or local funds) for related services and residential costs. If this is not sufficient to cover all costs of the residential placement, the district through the residential application process may receive additional IDEA-B discretionary funds to pay the balance of the residential contract placement(s) costs; and
  B. Funds generated by the formula for residential costs described in subsection (b)(2)(B) of this section shall not exceed the daily rate recommended by the Texas Department of Family and Protective Services for the specific level of care in which the student is placed.
  C. If IDEA-B Discretionary Residential funds are approved, the district must submit the Special Education Residential Grant application through the eGrants system. Individuals with Disabilities Education Act (IDEA)-B Discretionary Residential funds are dedicated to cover the balance of the residential contract placement costs that exceed other available funds, the local tax share per average daily attendance, and 25% of the district’s IDEA-B formula base planning amount (or an equivalent amount of State and/or local fund) for related services and residential costs (19 TAC §89.61 Subchapter D).

If within the fiscal year, a student’s ARD committee meets and makes decisions that result in a change of placement and/or services for which funding has been requested, an Amended Application for Approval of Funding for Residential Placement must be submitted.
• The amended application must be received at the TEA within 15 school days of the ARD meeting date.
• When an annual ARD date does not align with the fiscal year dates of the application and contract, it will be necessary to submit amendments; however, districts may align IEP development with the fiscal year in order to minimize the need for submission of amendments.

Other Considerations:
• ARD committee decisions regarding residential placement are binding. If the application for funding is not approved, the residential placement costs must be paid from local funds.

• All students placed by ARD committees in private residential facilities should be coded Instructional Setting Code “50” in the Public Education Information Management System (PEIMS). The average daily attendance (ADA) eligibility code for these students is “0” (enrolled, not in membership). They cannot be counted for attendance appropriately in the Public Education Information Management System (PEIMS). Consult the [Student Attendance and...](#)
Accounting Handbook (SAAH) for Instructional Setting Code and average daily attendance (ADA) eligibility code for these students.

- The residential application shall not be approved if the application indicates that the:
  - Placement is due primarily to the student’s medical problems;
  - Placement is due primarily to problems in the student’s home;
  - The district does not have a plan, including timelines and criteria, for the student’s return to the local school program;
  - The district did not attempt to implement lesser restrictive placements prior to placement (except in emergency situation as documented by the ARD committee);
  - Placement is not cost effective when compared with other alternative placements; and/or
  - The residential facility provides unfundable/unapprovable services.