

In Texas there are different types of educational programs and settings related to K-12 education that have a residential component. There are Nonpublic Residential programs and Residential Facilities (RF) that fall under Texas Education Agency (TEA) jurisdiction in some manner. To clarify:

A **Nonpublic residential** program or school supports students with disabilities, who for educational reasons have been placed via an ARD committee determination. Through an IEP process, an ARD Committee may make the determination that a student requires placement in a nonpublic day or nonpublic residential placement to meet their educational needs.

A **Nonpublic day school** is a private school or facility that supports students with educational needs that cannot be met in a public school setting. This placement is determined by an ARD committee. Nonpublic day schools do not provide residential programs, instead LEAs provide transportation to students attending these schools.

A **Residential Facility (RF)**, supports students 22 years of age or younger who reside in the facility for detention, treatment, foster care, or any non-educational purpose providing 24-hour custody or care of students. Both general education and special education students can be placed in RF settings. The RF operates the residential services under the licensure of another state agency such as Health and Human Services or the department of corrections.

LEAs are required to serve students with disabilities residing in RFs located within the LEAs' geographic boundaries and/or jurisdictions. Some charter schools operate campuses within RFs. The Commissioner and the TEA have jurisdiction over these educational entities.

### Guidance

On 3/19/2020, Governor Abbot issued an [executive order](#) detailing "schools shall temporarily close" beginning 11:59 PM 3/20/2020 until 4/3/2020. This order is applicable to school services provided at both Nonpublic Residential and Residential Facilities, with the following considerations:

- Above all, prioritize the health and safety of students, staff, and communities.
- Traditional brick and mortar "school" programs and school services under the Governor's executive order must close, however nonpublic residential and residential facilities can maintain the residential components of their programs. This will allow students in these programs to remain in the residential units during the school closure.
- Residential facilities and nonpublic residential units operating while school programs are closed are expected to follow the guidance provided by [Health and Human Services](#).
- For students with Disabilities, LEAs should reference the [COVID-19 and Special Education Q&A](#)

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**Q1 Does the Governor’s executive order apply to nonpublic day schools?**

**A1:** Yes. Nonpublic Day schools are considered “schools” in the executive order issued by Governor Abbot on 3/19/2020. As such, LEAs should work to notify families of school closures until 4/3/2020. LEAs electing to provide instructional services through alternative means during school closures must plan for and provide the provision of FAPE.

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**Q2 What if a Nonpublic Residential program closes operations completely due to COVID-19?**

**A2:** LEAs should be in communication with their contracted facilities and families to formulate plans in the event of full facility closure. Additionally, plans should be made for instructional continuity for these students placed in nonpublic residential programs.

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**Q3 What if a Residential Facility (RF) closes the facility completely due to COVID-19?**

**A3:** The RF should be in communication with their licensing agency to determine next steps and make appropriate plans. Again, guidance provided by the Department of Health and Human Services should be followed should the facility close. Campuses operating within the RF will need to take measures to provide for the instructional continuity for these students for students in the residential facility.

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**Q4 What should an LEA do regarding transportation of students if the LEA s closed but a Nonpublic Day school is open?**

**A4:** As of 11:59PM 3/20/2020 as detailed in Governor’s executive order “schools” will close their brick and mortar programs, this would include Nonpublic Day programs. LEAs are not required to provide transportation. LEAs who are providing education through virtual or other means to students shall consider FAPE for all students with disabilities, including those in Nonpublic Day settings. LEAs should consult the [TEA COVID-19 Special Education Q&A](#) regarding FAPE.

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**Q5 Would the residential restriction also apply to Texas School for the Deaf (TSD) or Texas School for the Blind and Visually Impaired (TSBVI)?**

**A5:** Yes, the Governor’s executive order closing schools through 4/3/2020 applies to all brick and mortar school programs including school programs provided by TSD and TSBVI. LEAs who are providing education through virtual or other means to students shall make a reasonable effort to

provide FAPE for all students with disabilities, including those in TSD and TSBVI. LEAs should consult the TEA COVID-19 Special Education Q&A regarding FAPE.

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**Q6: What is the expectation of a residential facility if the student is returning from an out-of-state visit/break?**

**A6:** Facilities should work with the contracting LEA, their licensing authority. School districts have the right to control and restrict access to campuses. School districts and charter schools should consult with their local health authorities and incorporate any guidance provided by the local health authorities into their decision on whether to permit a student or staff member access to public school facilities. Section 25 Texas Administrative Code (TAC) Sec 97.7 articulates the discretion a school administrator has when a child has or is suspected of having a communicable condition. This is on a case-by case basis.