

Residential Program Guidance FAQ: Section Topics

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Residential Program Definitions

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 (RFs) 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 for educational and residential purposes via an admission, review and dismissal (ARD) committee determination at the 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 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, local education agencies (LEAs) provide transportation to students attending these schools.

A **residential facility (RF)** or a residential treatment center (RTC) 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. RTCs are required to offer access to educational programs and is denoted as RF in ASKTED and within TEA systems. For the Texas Education Agency, RFs and RTCs are the same.

Both general education and special education students can be placed in RF settings. TEA provides guidance for the educational components provided by RFs. However, 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.

School Closure Guidance

Revised May 14, 2020

On March 19, 2020, Governor Abbott issued an [executive order](#) providing that “schools shall temporarily close” beginning 11:59 p.m. on March 20, 2020, until April 3, 2020. On March 31, 2020, Governor Abbott issued another [executive order](#) that schools remain closed and not recommence before May 4, 2020. Governor Abbott then issued additional orders (the most recent on [May 5, 2020](#)) that closed schools to in-person classroom attendance by students for the remainder of the 2019-2020 school year. These orders are applicable to school services provided at both nonpublic residential schools or programs 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 orders must close. However, nonpublic residential schools or programs 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 [TEA guidance](#) and the guidance provided by [Health and Human Services](#).
- For students with disabilities, LEAs should reference the **COVID-19 Special Education Q&A** located on the [TEA Coronavirus site under Special Education](#).

Residential Programs

1. Do the Governor’s executive orders apply to nonpublic day schools? **Revised May 14, 2020**

Revised
5/14/2020

Yes. Nonpublic day schools are considered “schools” in the executive orders issued by Governor Abbot. As such, LEAs should work to notify families of school closures in effect for the 2019-2020 school year. LEAs electing to provide instructional services through alternative means during school closures must plan for and provide the provision of a free and appropriate public education (FAPE).

2. What if a nonpublic residential program closes operations completely due to COVID-19? **Posted March 22, 2020**

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 during closure.

3. What if a residential facility (RF) closes the facility completely due to COVID-19? **Posted March 22, 2020**

The RF should be in communication with its 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 its students during closure.

4. What should an LEA do regarding transportation of students if the LEA is closed but a nonpublic day school is open? *Posted March 22, 2020*

As of 11:59 p.m. on March 20, 2020, as detailed in the Governor’s order, “schools” were ordered to close their brick and mortar programs, which included nonpublic day programs. LEAs are not required to provide transportation while they are closed. However, LEAs that are providing education through virtual or other means to students while closed must provide 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. This Q&A can be found on the [TEA Coronavirus \(COVID-19\) Support and Guidance website](#), under SPED and Special Populations.

5. Would the residential restriction also apply to Texas School for the Deaf (TSD) or Texas School for the Blind and Visually Impaired (TSBVI)? *REVISED April 7, 2020*

Yes, the Governor’s executive orders closing schools for the 2019-2020 school year apply to all brick and mortar school programs, including school programs provided by TSD and TSBVI. **Both TSD and TSBVI are providing instructional continuity, resources and support for the provision of FAPE for their students.** LEAs should consult the TEA COVID-19 Special Education Q&A regarding FAPE.

6. What is the expectation of a residential facility if the student is returning from an out-of-state visit/break? *Posted March 22, 2020*

Facilities should work with the contracting LEA and their respective licensing authorities. 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. Title 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 issue is addressed on a case-by case basis.

7. My residential treatment center (RTC) uses a different structure than traditional schools. What process should we consider? Can we have teachers on campus and just not interact with students? Is an RTC exempt from the prohibition on in-person educational services? *Posted March 26, 2020*

Per the Governor’s orders, in-person classroom instruction for students is not permitted. Schools must commit to supporting students instructionally while absent from the school grounds.

For some RTCs, students are housed on the broader school grounds. So, remote instructional support could look different. Instruction must be completed where students and teachers are not congregating together in groups. Facility staff should maximize social distancing while supervising students accessing remote instruction. Note: RTCs must consider the needs of students with disabilities while provide remote instruction. Please see the COVID 19 Special Education Q&A on the [TEA Coronavirus \(COVID-19\) Support and Guidance](#) webpage, under SPED and Special Populations, for guidance on ARD requirements which remain in place.

With regard to teacher access to the school campus and classrooms, RTCs would be no different than other schools. Under Governor Abbott’s orders, teachers and other staff can continue to have physical access to the school to support distance learning and food assistance programs but should do so in very small numbers at any one time to maximize social distancing. Any related matters arising from local shelter-in-place orders should be addressed with the local authorities issuing such orders.

Revised
5/14/2020

- 8. We currently have students in non-public day and residential placements who, under the governor’s order, are not attending school in facilities. Residential students are residing at the facility. The non-public day and residential schools are providing some educational services to students. Can the non-public day and residential programs still bill the district for the full placement cost during this time? How should we track attendance?**

Revised May 14, 2020

LEAs who have students in residential and non-public day schools that are providing educational services to their students are responsible for ensuring that their students are provided FAPE to the extent possible. LEAs must make a reasonable effort to implement the special education and related services defined in the IEP. When school resumes, ARD committees should address student-specific needs resulting from the closure. This might include discussions of possible compensatory education and extended school year (ESY) services on a case-by-case basis. Any need for compensatory services related to school closure or inability to fully implement a student’s IEP will be addressed by ARD committees after school closures end. LEAs should make a reasonable effort to hold meetings, stay in compliance, and document communication with parents/guardians. Additionally, the LEA should document any agreements that allowed for flexibility during the COVID-19 response.

LEAs should work with nonpublic providers and review contract terms to determine billing and associated costs for services during this time. Through a discussion of the contract terms and services currently being provided, the LEA should determine what is and what is not billable during this time. If this results in a contract amendment or modification due to service provision the LEA should update their application and contract in the Nonpublic Application portal.

The LEA should refer to the [Student Accounting and Attendance Handbook](#) as well as any local board policies regarding attendance tracking.

New
5/14/2020

9. Is the TEA supporting continued utilization of and payment to Nonpublic schools and facilities? *NEW on May 14, 2020*

Yes. Approved contracts will continue to be funded. LEAs should work collaboratively with Nonpublic schools to ensure continuity of services, including the use of virtual or remote platforms for service delivery to the extent feasible and appropriate.

In an effort to ensure that the full continuum of placements and service delivery options remains available to students and LEAs subsequent to these unprecedented school site closures, TEA supports LEAs continuing to use the services of Nonpublic schools, including distance learning options made available by Nonpublic schools.

If a student was withdrawn from the Nonpublic school or the Nonpublic school discontinued provision of special education supports and services, the LEA should amend their nonpublic day or residential application to reflect the actual dates of service.

New
5/14/2020

10. Are we required to change the contract and our Day or Residential applications for students during COVID-19? *NEW on May 14, 2020*

Applications and contracts should accurately reflect the services students are receiving. LEAs may need to amend their applications in the Nonpublic Application portal, due to necessary changes and adjustments during this pandemic response. Applications and contracts in the Nonpublic application must be current to ensure appropriate funding.

New
5/14/2020

11. We have already submitted our Day or Residential application but need to make changes. How do we accomplish that? *NEW on May 14, 2020*

If you need to amend your day or residential application, you can request your application be returned for amendments via the Nonpublic Application Portal. If you need additional guidance, you can email NPDaYandRes@tea.texas.gov

High Cost Funds (HCF)

New
5/14/2020

1. With brick and mortar schools closed for the rest of the year by the Governor, we have staff not able to work in their specific roles. Will HCF be based on what would have been expended or only what has been incurred? *New on May 14, 2020*

The High Cost Fund (HCF) was established under 34 CFR sec. 300.704 and exists to create a pool of funding LEAs can apply for to reimburse allowable excess costs (3X APPE) related to the provision of special education services. These reimbursable costs must be for services provided that are defined in IEPs by ARD committees.

During the pandemic response, LEAs have had to work with families and ARD committees to determine how to provide FAPE and document services not currently provided at this time.

Services not currently provided could include transportation services, bus aides, nursing services, and 1:1 aide supports in classrooms. TEA has provided guidance on using staff who are paid with special education funds. That guidance can be found in the [COVID-19 Special Education Q&A](#) under the General Guidance section, question #8.

The U.S. Department of Education has not granted any waivers of IDEA requirements. As noted above, the HCF reimburses allowable excess costs defined in IEPs. If those services as defined are not being provided to students, then those costs associated with those staff members, programs, or services are not subject to HCF reimbursement.

2. Will the HCF applications deadline be extended given COVID-19? *New on May 14, 2020*

New
5/14/2020

To allow LEAs time to apply given these clarifications and guidance, all HCF applications are due by June 1, 2020.

3. Do we need to pro-rate our HCF applications given COVID-19? *New on May 14, 2020*

New
5/14/2020

Given the information in this document, LEAs may need to adjust and pro-rate projected costs that were submitted for possible HCF reimbursement.

4. If we have already submitted our HCF application but need to make edits, how do we do so? *New on May 14, 2020*

New
5/14/2020

If you need to edit your HCF application, you can email hcf@tea.texas.gov and request your application be placed in “amend” status to make changes and then resubmit. All HCF applications must be submitted by June 1, 2020.

5. Will LEAs be expected to return funds to TEA that were not used due to COVID-19? *New on May 14, 2020*

New
5/14/2020

LEAs are required each school year to project costs for the spring and summer months that will be expended after the HCF application window closes, and the COVID-19 pandemic has not changed that requirement. LEAs that do not incur projected costs must return any overpayment of HCF funds to TEA.