



Nonpublic School/Off-Campus Program Guidance

Office of Special Populations and Monitoring
September 2021

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Overview

The Individuals with Disabilities Act entitles a student with a disability to a free, appropriate public education in the least restrictive environment. 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 facility, referred to as a nonpublic school or qualifying off-campus program. A student’s admission, review, and dismissal (ARD) committee must determine that the local education agency (LEA) 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 school or qualifying off-campus program. The ARD committee identifies a nonpublic school or off-campus program that will provide the student with the special education and related services required to meet the student's unique needs and from which the student will receive an educational benefit in the least restrictive environment.

In Texas there are different types of educational programs and settings LEAs contract with for the provision of special education supports and services. There are nonpublic residential programs and off-campus day placements that fall under Texas Education Agency (TEA) jurisdiction in some manner. To clarify:

- A **nonpublic residential program or school** is a private school or facility that supports students with disabilities who have been placed for educational 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 residential placement to meet their educational needs.
- An **off-campus day program or school** is a private school that provides special education and related services provided during school hours by someone other than school district personnel in a facility other than an LEA campus. This placement is determined by an ARD committee. Off-Campus programs do not provide residential services. Instead, LEAs provide or arrange for transportation for students attending these programs. *An off-campus program provider includes:*
 - 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 facility other than a school district campus operated by a school district.

In accordance with state and federal special education requirements¹, the Texas Education Agency (TEA) approves the educational programs of nonpublic schools and qualifying off-campus programs. The TEA reviews both nonpublic schools and qualifying off-campus programs with which LEAs contract for special education instructional services, with or without related services. This review is **not** required when:

- an LEA contracts with a nonpublic facility solely for related services; or
- an accredited Texas public school provides all special education instructional services for students placed in a nonpublic 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 LEA.

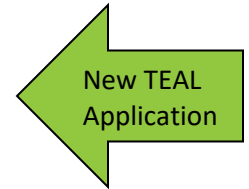
This guidance document outlines:

- [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.](#)

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

Under 19 TAC §89.1092 (a)(3), § 89.1094 (c), an LEA must notify TEA if the LEA intends to place a student with a disability in a nonpublic or qualifying off-campus placement. 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 off-campus placement decision, if the student was placed in a nonpublic facility or off-campus 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 placement or off-campus 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 (b)(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;
- the LEA does not have an individualized plan, including timelines and criteria, for the student's return to the local school program (reintegration plan);
- the LEA did not attempt to implement lesser restrictive placements prior to nonpublic placement (except for emergency situations as documented in the student's IEP);
- placement is not cost effective when compared with other alternative placements; and/or
- the nonpublic facility provides non-fundable/non-approvable services.

Failure to meet notification timelines may impact 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 [Nonpublic Placement Notification and Application APEX Application Guidance](#) document.

General Responsibilities Overview

The LEA has the following responsibilities when making a nonpublic day or residential placement:

Prior to Placement:

- LEAs should coordinate with the Local Intellectual 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

² TEC, §29.013
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- B. Prior to placing a student in a nonpublic facility, the LEA must make an initial visit to verify the nonpublic facility 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:

- A. Before a student is placed in or referred to a nonpublic school or off-campus program, the student's ARD committee must meet to develop an IEP in accordance with federal, state, and commissioner of education rules³ for the student. A representative of the nonpublic school or off-campus program must participate in the ARD committee meeting.
- B. The student's IEP must list the services which the LEA is unable to provide and which the nonpublic school or off-campus program will provide.
- C. Prior to the student's enrollment in a nonpublic school or off-campus program, the ARD committee must establish, in writing, individualized, specific, measurable criteria and estimated timelines for the student's return to the LEA (reintegration plan). For 18+ programs, the ARD committee must establish, in writing, individualized graduation and/or exit criteria and the estimated graduation/exit timeline.
- D. The student's IEP must document the appropriateness of the nonpublic school 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 least restrictive environment (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.
- E. The LEA must document the appropriate instructional setting code.
- F. The LEA must take steps to ensure that one or both of the parents of the student are present at each ARD meeting or are afforded the opportunity to participate. 34 CFR 300.322(a)(1)(2)


The LEA must make two visits (one announced and one unannounced) per school year to verify that the nonpublic school can and is providing the services listed in the student's IEP. The LEA must 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 educational benefit. It is the responsibility of the LEA to ensure that the student receives a FAPE.

Initial Nonpublic or Off-Campus Approval Process

Step 1. Initial Visit to the Nonpublic School

The LEA must visit the nonpublic school or off-campus program and complete the [Nonpublic Assurance Checklist for Contracting with Districts to](#) ensure that the facility:

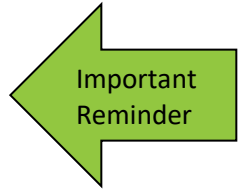
- meets health and safety standards;
- employs staff appropriately certified in the grade level and content area of assignment;
- employs licensed staff capable of providing services required to meet student needs; has a written curriculum that includes the Texas Essential Knowledge and Skills and is appropriate for the students served, including an age- appropriate instructional environments for 18+ populations, when applicable;



Important
Reminder

³ 34 CFR §§300.114-300.118; 300.320-300.325

- 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 the LEA intends to place a student with a disability in a nonpublic or qualifying off-campus program that is not currently approved by the TEA, the LEA must notify the agency in writing so that the nonpublic school can be reviewed for approval.

The LEA must submit the following documents to the TEA:

1. A completed [Nonpublic Assurance Checklist for Contracting with Districts](#);
2. Description of age range and disability categories for which the LEA is seeking approval

Step 3. TEA Process for Approval

Upon receipt of the required documentation, the TEA will schedule an on-site review of the nonpublic school or off-campus program to evaluate educational programming and the program’s ability to provide specialized supports and services. It is the LEA’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 school or off-campus program and the LEA a letter of approval or a letter of findings that identifies reasons for non-approval. The LEA must work to rectify, within timelines designated, identified areas to ensure that students placed in or referred to nonpublic or off-campus programs are provided with special education and related services that meet federal and state special education program requirements under 34 CFR §300.146. Failure to correct noncompliance within required timelines will result in elevated interventions or sanctions.⁴

If the off-campus program is not approved, the LEA will not be eligible for state and federal funding. If approved, the initial approval period for a nonpublic school or off-campus program is one year.

Contracting with an Approved Nonpublic School or Off-Campus Program

Requirement 1. Visit to the Nonpublic School

An LEA that is considering placing a student at a nonpublic school that is already approved by the TEA must visit the nonpublic school and complete the [LEA Assurance Checklist for Contracting with Nonpublic Schools/ Off-Campus Programs and Records of Annual Visits](#) to ensure that the nonpublic school 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 LEA has visited the nonpublic school during the same academic year, an onsite visit may not be necessary. However, the LEA must confirm that the nonpublic school is appropriate to meet individual student needs on a case-by-case basis. If the nonpublic school is not approved for the specific age range and/or disability of the student, additional steps are outlined [on page 10 of this document](#).

⁴ TEC, Chapter 39; 19 TAC §§89.1076, 97.1071.
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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 school or off-campus program. The ARD committee must consider all options and lesser restrictive placements. The IEP must identify the services that the LEA cannot provide that the nonpublic school or off-campus program will provide. The IEP must state the reintegration criteria and projected date for the student's return to the LEA campus. For 18+ programs, the ARD committee must establish, in writing, individualized graduation and/or exit criteria and the estimated graduation/exit timeline. A representative of the nonpublic school or off-campus program must attend the ARD committee meeting or participate through another means, such as a telephone call or videoconferencing.

If a nonpublic school or off-campus program employs any practices that restrict parent/child contact for any period of time, the LEA 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 LEA Considerations

The LEA must conduct 2 annual on-site visits, one announced and one unannounced, to the approved nonpublic school or off-campus 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.

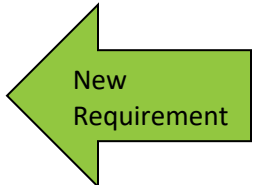
To be processed for approval of state and federal funding, an LEA's contract with the nonpublic facility or off-campus program must:

- include the beginning and ending dates of placement (dates cannot overlap with a previous contract);
- include the number of 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 committee⁵);
- fall within the school year that coincides with the application year;
- include signatures from both the LEA and nonpublic facility or off-campus program; and
- include a cost analysis of all services to be provided by the nonpublic facility (for residential placements and as requested for day placements).

LEA 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 – for the 2021-2022 school year and after, Nonpublic Restraint Reporting will be captured and reported with the LEA's regular TSDS reporting period for restraint data.



⁵ 34 CFR §300.106; 19 TAC §89.1065
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Requirement 3. Submit Required Documentation to the Agency through the secure APEX Nonpublic/High Cost Funds online application.

For additional information on the submission process, refer to the [Nonpublic Placement Notification and Application TEAL Application Guidance](#) document.

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

The TEA cannot approve the nonpublic or off-campus placement of a student if the placement is primarily for disciplinary reasons. Nonpublic or off-campus 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 school or off-campus program.

Nonpublic School and Off-Campus Program Reapproval Process

Before the end of a nonpublic school's approval period, the 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 facility and placing LEAs to discuss timelines, expectations, and the reapproval plan.

Nonpublic School or Off-Campus Program Responsibilities

Facilities 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.

LEA's Responsibilities

As part of the reapproval process, each LEA who has one or more students placed in the facility must complete and submit to the TEA the following documents:

- [LEA Assurance Checklist for Contracting with Nonpublic Schools/Off-Campus Programs and Record of Annual Visits](#)
- [LEA Student Folder Review for Nonpublic and Off-Campus Program Monitoring](#)
- Other IEP documentation as requested by the TEA.

Requirement 1. Completing the Compliance Review

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

The LEA 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. Completing the Documentation of the LEA Visit to the Nonpublic School

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

TEA's Responsibilities

Upon receipt of both the off-campus program and the LEA's submissions, TEA staff will review the submissions to determine whether additional information is needed prior to the on-site visit. Once all documentation has been reviewed, the TEA will schedule an on-site review of the nonpublic school or off-campus program.

After the review is completed, the TEA will issue the nonpublic school either notice of new [approval status](#), with or without required corrective actions, or notice of non-approval with required actions for future approval.

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

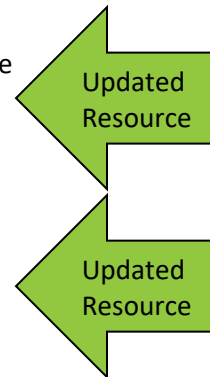
The reapproval period for a nonpublic school may be one, two, or three years, at the TEA's discretion.

Following reapproval, the TEA will notify each LEA that has students placed, or a pending request, of the nonpublic school or off-campus' approval status. Notification will include areas of disability and age ranges that may be served, and the approval period. A [current list of nonpublic schools](#) that are approved for contracting purposes is available on the TEA Nonpublic Placement and Application website.

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

When an LEA intends to contract with an approved nonpublic school or off-campus facility for an age range and/or disability that is not approved, the LEA must notify the TEA within 30 days and complete a new [assurance form](#) specific to the age range and/or disability desired. Depending upon the nature of the modification requested, the TEA may schedule and conduct an on-site to determine additional eligibility areas.

If an approved nonpublic school or off-campus program wants to modify and/or add approved locations, the nonpublic school must submit a [written request](#) to the TEA.



Funding for Nonpublic Placements

TEA’s Office of Special Populations and Monitoring conducts a programmatic review of the Nonpublic / Off-Campus Placement Notification and Application to ensure federal and state requirements are met. If all program requirements are met, the application will be considered in compliance for use of funds.

Nonpublic Day Placements

- LEAs receive an annual allotment from state funds for nonpublic day placements based on the LEA’s adjusted basic allotment multiplied by 1.7 (instructional arrangement weight for nonpublic day school).

Nonpublic Residential Placements

Nonpublic Residential Placements may be funded through a combination of local, state, and federal funds.

- Education Cost: The education cost shall be funded with state funds on the same basis as nonpublic day school contract costs according to Texas Education Code, §42.151.
- Related Services and Residential Costs: 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 Individuals with Disabilities Education Act, Part B, (IDEA-B) formula tentative entitlement (or an equivalent amount of state and/or local funds) for related services and residential costs.
- Limit on Residential Costs Reimbursement: Reimbursement for residential costs cannot exceed the daily rate recommended by the [Texas Department of Family and Protective Services](#).
- Additional IDEA-B Discretionary Funding: 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.

To be considered in compliance for the use of state and federal funds, the LEA is required to meet the following TEA notification requirements:

- Within 30 calendar days of the ARD committee off-campus placement decision, if the student was placed in a nonpublic facility or off-campus 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 placement or off-campus 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.

The process for notification is made through the Nonpublic Placement Notification and Application in [APEX](#). LEAs who do not meet notification requirements will be considered for partial funding based on the date of application submission to the TEA.

Resources

Websites

- [Special Education in Nonpublic and Off-Campus Programs](#)
- [Progress in the General Curriculum Statewide Network: Least Restrictive Environment \(LRE\)](#)
- [Texas Education Agency Login \(TEAL\)](#)
- [Community Resource Coordination Groups](#)

Code of Federal Regulations

- 34 [CFR §300.325 Private School Placements by Public Agencies](#)

Texas Administrative Code

- [19 TAC §89.1094 Students Receiving Special Education and Related Services in an Off-Campus Program](#)

Contacts

Program Information

Office of Special Populations & Monitoring
512-463-9414
NPDayAndRes@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](#) webpage.