

PLACEMENT IN A RESIDENTIAL FACILITY

Authorities: 34 [Code of Federal Regulations](#) (CFR) Part 300; Texas Education Code; ([TEC](#)); 19 [Texas Administrative Code](#) (TAC) Chapter 89

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FEDERAL AND STATE REQUIREMENTS	
<u>Practice</u>	Subject to the provisions of the ADMISSION, REVIEW, AND DISMISSAL COMMITTEE frameworks, including the LEAST RESTRICTIVE ENVIRONMENT framework, and this framework, the local educational agency (LEA) may contract with a nonpublic residential program provider when a child's admission, review, and dismissal (ARD) committee determines that a residential placement is necessary in order for the child to receive a free appropriate public education (FAPE). Citations: 89.1092(b)
<u>Practice</u>	The LEA must comply with the USE OF FUNDS FOR CONTRACT SERVICES INCLUDING RESIDENTIAL PLACEMENTS framework.
NONPUBLIC RESIDENTIAL PLACEMENT REQUIREMENTS	
<u>Practice</u>	If placement in a public or private residential program is necessary to provide special education and related services to a child with a disability, the program, including non-medical care and room and board, must be at no cost to the parent of the child. Citations: 300.104
<u>Practice</u>	A school district may contract with a nonpublic residential program provider when a child's ARD committee determines that a residential placement is necessary in order for the child to receive FAPE. Citations: 89.1092(b)
<u>Practice</u>	Before a child's ARD committee places a child with a disability in, or refers a child to, a nonpublic residential program, the LEA will: Citations: 89.1092(b)(1-2)

FEDERAL AND STATE REQUIREMENTS	
<u>Practice</u>	<ul style="list-style-type: none"> • Comply with the ADMISSION, REVIEW, AND DISMISSAL COMMITTEE MEETING framework. <p>Citations: 89.1092(b)(1)</p>
<u>Practice</u>	<ul style="list-style-type: none"> • Initiate and conduct an in-person, onsite review of the program provider's facility and program to ensure that the program is appropriate for meeting the child's educational needs. <p>Citations: 89.1092(b)(2)</p>
<u>Document</u>	<p>The appropriateness of the placement and the facility will be documented in the individualized education program (IEP) annually.</p> <p>Citations: 89.1092(b)(3)</p>
<u>Document</u>	<p>A child's ARD committee may only recommend a nonpublic residential program if the committee determines that the nature and severity of the child's disability and special education needs are such that the child cannot be satisfactorily educated in the LEA.</p> <p>Citations: 89.1092(b)(3)</p>
<u>Document</u>	<ul style="list-style-type: none"> • A child's IEP must list which services the LEA is unable to provide and which services the nonpublic residential program will provide. <p>Citations: 89.1092(b)(3)(A)</p>
<u>Document</u>	<ul style="list-style-type: none"> • At the time the ARD committee determines placement, the ARD committee will establish, in writing, criteria and a projected date for the child's return to the LEA and document this information in the IEP. <p>Citations: 89.1092(b)(3)(B)</p>
LEA PLACEMENT NOTIFICATION TO THE TEXAS EDUCATION AGENCY (TEA)	

FEDERAL AND STATE REQUIREMENTS	
<u>Practice</u>	Within 30 calendar days from an ARD committee's decision to place or continue the placement of a child in a nonpublic residential program, the LEA will electronically submit to the TEA notice of, and information regarding, placement in accordance with submission procedures specified by TEA. Citations: <u>89.1092(c)</u>
<u>Practice</u>	If the nonpublic residential program provider is on the commissioner's list of approved providers, TEA will review the child's IEP and placement. After review, TEA will notify the LEA whether federal or state funds for the program placement are approved. If TEA does not approve the use of funds, it will notify the school district of the basis for the non-approval. Citations: <u>89.1092(c)(1)</u>
<u>Practice</u>	If the nonpublic residential program provider is not on the commissioner's list of approved providers, TEA will begin the approval procedures. Citations: <u>89.1092(c)(2)</u>
<u>Practice</u>	The LEA will ensure there is no delay in implementing a child's IEP. Citations: <u>89.1092(c)(2)</u>
TEA APPROVAL OF NONPUBLIC RESIDENTIAL PROGRAM REQUIRED	
<u>Document</u>	Nonpublic residential program providers must have their educational programs approved for contracting purposes by TEA. Citations: <u>89.1092(d)</u>
<u>Document</u>	Requests for approval of state and federal funding for nonpublic residential program placements will be negotiated on an individual child basis through a residential application submitted by the LEA to TEA. Citations:

FEDERAL AND STATE REQUIREMENTS	
	<u>89.1092(e)</u>
<u>Document</u>	A residential application may be submitted for educational purposes only. Citations: <u>89.1092(e)(1)</u>
<u>Document</u>	The residential application will not be approved by TEA if the application indicates that the: Citations: <u>89.1092(e)(1)</u>
<u>Document</u>	<ul style="list-style-type: none"> Placement is due primarily to the child's medical problems; Citations: <u>89.1092(e)(1)(A)</u>
<u>Document</u>	<ul style="list-style-type: none"> Placement is due primarily to problems in the child's home; Citations: <u>89.1092(e)(1)(B)</u>
<u>Document</u>	<ul style="list-style-type: none"> The LEA does not have a plan, including criteria and a projected date, for the child's return to the local school program; Citations: <u>89.1092(e)(1)(C)</u>
<u>Document</u>	<ul style="list-style-type: none"> The LEA did not attempt to implement lesser restrictive placements prior to residential placement (except in emergency situations as documented by the child's ARD committee); Citations: <u>89.1092(e)(1)(D)</u>
<u>Document</u>	<ul style="list-style-type: none"> Placement is not cost effective when compared with other alternative placements; or Citations: <u>89.1092(e)(1)(E)</u>
<u>Document</u>	<ul style="list-style-type: none"> Residential facility provides unfundable or unapprovable services. Citations:

FEDERAL AND STATE REQUIREMENTS	
	<u>89.1092(e)(1)(F)</u>
<u>Practice</u>	Approvals and reapprovals will only be considered for those providers that have a contract already in place with a school district for the placement of one or more children or that have a pending request from a school district. Citations: <u>89.1092(d)</u>
<u>Document</u>	For a program provider to be approved or reapproved, the LEA will electronically submit to TEA notice of, and information regarding, the placement in accordance with submission procedures specified by TEA. Citations: <u>89.1092(d)(1)</u>
<u>Document</u>	Initial approval of the provider will be for one calendar year. Citations: <u>89.1092(d)(1)</u>
<u>Practice</u>	The program provider may be approved or reapproved only after, at minimum, a programmatic evaluation and a review of personnel qualifications, adequacy of physical plant and equipment, and curriculum content. Citations: <u>89.1092(d)(2)</u>
<u>Document</u>	TEA may place conditions on the provider to ensure the provision of a FAPE for children who have been placed in a nonpublic residential program during the provider's approval period or during a reapproval process. Citations: <u>89.1092(d)(3)</u>
<u>Practice</u>	If TEA does not approve, does not reapprove, or withdraws an approval from a program provider, the LEA will take steps to remove any children currently placed at the provider's facility, or cancel a child's planned placement, as expeditiously as possible. Citations: <u>89.1092(d)(4)</u>

FEDERAL AND STATE REQUIREMENTS	
TEXAS SCHOOL FOR THE BLIND AND VISUALLY IMPAIRED (TSBVI) AND TEXAS SCHOOL FOR THE DEAF (TSD)	
<u>Practice</u>	<p>When placing a child at the TSBVI or the TSD, the ARD committee must include in the child's IEP:</p> <p>Citations: <u>89.1085(c)</u></p>
<u>Document</u>	<ul style="list-style-type: none"> Those services which the TSBVI or the TSD can appropriately provide; and <p>Citations: <u>89.1085(c)(1)</u></p>
<u>Document</u>	<ul style="list-style-type: none"> The criteria and estimated timelines for returning the child to the resident LEA. <p>Citations: <u>89.1085(c)(3)</u></p>
<u>Practice</u>	<p>When placing a child at the TSBVI or the TSD, the LEA may make an on-site visit to verify that the TSBVI or the TSD can and will offer the services listed in the child's IEP and to ensure that the school offers an appropriate educational program for the child.</p> <p>Citations: <u>89.1085(c)(2)</u></p>
<u>Practice</u>	<p>For a child placed by the ARD committee in the TSVBI or TSD that includes placement at the residential campus, the LEA is responsible for transportation from the campus as well as the return to campus at the beginning and end of school terms and for regularly scheduled school holidays when all children are expected to leave the residential campus.:</p> <p>Citations: <u>89.1090(a)</u></p>
<u>Practice</u>	<ul style="list-style-type: none"> The LEA is not responsible for transportation costs for a child placed in these settings by their parents. <p>Citations: <u>89.1090(b)</u></p>
<u>Practice</u>	<p>When it is necessary for the safety of a child, as determined by the ARD committee and as documented in the child's IEP, for an adult</p>

FEDERAL AND STATE REQUIREMENTS	
	designated by the ARD committee to accompany the child, round-trip transportation for that adult must also be provided. Citations: <u>89.1090(d)</u>
<u>Practice</u>	The LEA and the TSBVI and TSD will coordinate to ensure that an eligible child with a disability is transported safely, including the periods of departure and arrival. Citations: <u>89.1090(e)</u>
	RESPONSIBILITIES FOR FAPE, ONSITE VISITS, COSTS, AND REPORTING
<u>Practice</u>	An LEA that contracts for the provision of education services rather than providing the services itself will oversee the implementation of a child's IEP and will annually reevaluate the appropriateness of the arrangement. <u>The reevaluation must include standards and expectations that must be met to reintegrate the child to the general education setting.</u> Citations: <u>TEC 29.008(d)</u>
<u>Document</u>	An approved facility, institution, <u>or agency, or business</u> with whom the LEA contracts will periodically report to the LEA <u>and agency</u> on the services a child has received or will receive in accordance with the contract as well as diagnostic or other evaluative information that the LEA requires in order to fulfill its obligations under federal and state law. Citations: <u>TEC 29.008(d)</u>
<u>Practice</u>	The LEA will make a minimum of two onsite, in-person visits annually, one announced and one unannounced, and more often if directed by the TEA, to: Citations: <u>89.1092(b)(3)(C)</u>
<u>Document</u>	<ul style="list-style-type: none"> Verify that the program provider can and will provide the services listed in a child's IEP that the provider has agreed to provide to a child; Citations:

FEDERAL AND STATE REQUIREMENTS	
	<u>89.1092(b)(3)(C)(i)</u>
<u>Document</u>	<ul style="list-style-type: none"> • Obtain written verification that the facility meets minimum standards for health and safety and holds all applicable local and state accreditation and permit requirements; <p>Citations: <u>89.1092(b)(3)(C)(ii)</u></p>
<u>Document</u>	<ul style="list-style-type: none"> • Verify that the program provider's staff who work with the child have been subject to criminal background checks (to include fingerprinting) that meet the standards applicable to public school employees; <p>Citations: <u>89.1092(b)(3)(C)(iii)</u></p>
<u>Document</u>	<ul style="list-style-type: none"> • Verify that the program provider has developed written policies, procedures, and operating guidelines that set forth necessary standards and steps to be followed to ensure the child maintains the same rights as other public school children with disabilities, including when the child is subject to emergency behavioral interventions or disciplinary actions, as well as to ensure the prohibition of aversive techniques as defined by TEC, §37.0023; and <p>Citations: <u>89.1092(b)(3)(C)(iv)</u></p>
<u>Document</u>	<ul style="list-style-type: none"> • Verify that the educational program provided at the facility is appropriate and the placement is the least restrictive environment for the child. <p>Citations: <u>89.1092(b)(3)(C)(v)</u></p>
<u>Practice</u>	<p>The placement of more than one child in the same facility may be considered in the same onsite visit to the facility. However, the IEP of each child will be individually reviewed and a determination of appropriateness of placement and service will be made for each child.</p> <p>Citations: <u>89.1092(b)(4)</u></p>

FEDERAL AND STATE REQUIREMENTS	
<u>Practice</u>	<p>TEA may conduct announced or unannounced onsite visits at a program provider's facility that is serving one or more Texas public school children and will monitor the program provider's compliance.</p> <p>Citations: <u>89.1092(d)(5)</u> </p>
<u>Practice</u>	<p>When a child who is placed by an LEA in a nonpublic residential program changes his or her residence to another Texas school district and the child continues in the contracted placement, the LEA that negotiated the contract will be responsible for the residential contract for the remainder of the school year.</p> <p>Citations: <u>89.1092(b)(5)</u> </p>

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