

## PLACEMENT IN A RESIDENTIAL FACILITY

Authorities: Texas Education Code; 19 TAC Chapter 89

	<b>Additional Resources</b>
	<b>FEDERAL AND STATE REQUIREMENTS</b>
<u>Practice</u>	<p>Subject to the provisions of the <a href="#">ADMISSION, REVIEW, AND DISMISSAL COMMITTEE</a> frameworks, including the <a href="#">LEAST RESTRICTIVE ENVIRONMENT</a> framework, and this framework, the local education agency (LEA) may contract with a <a href="#">nonpublic residential program -provider</a> when the child's Admission, Review and Dismissal (ARD) committee determines that a residential placement is necessary in order for the student to receive FAPE. <del>facility to provide some or all of the special education services listed in the contracted child's individualized education program (IEP).</del></p> <p><b>Citations:</b>  <a href="#">89.1092(b)a(2)</a></p>
<u>Practice</u>	The LEA must comply with the <a href="#">USE OF FUNDS FOR CONTRACT SERVICES INCLUDING RESIDENTIAL PLACEMENTS</a> framework.
	<b><u>NONPUBLIC RESIDENTIAL PLACEMENT REQUIREMENTS</u></b>
<u>Practice</u>	<p>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.</p> <p><b>Citations:</b>  <a href="#">89.1092(a)</a>  <a href="#">300.104</a></p>
<u>Practice</u>	<p><del>A school district may contract with a nonpublic residential program provider when the child's ARD committee determines that a residential placement is necessary in order for the child to receive a FAPE</del></p> <p><del>CITATION</del>  <del>89.1092(b)</del></p>
<u>Practice</u>	<p><del>Before a child's ARD committee places a child with a disability in, or refers a child to, a nonpublic residential program, the LEA must:</del></p> <p><del>CITATION:</del>  <del>89.1092(b)(1)&amp;(2)</del></p>

<b>FEDERAL AND STATE REQUIREMENTS</b>	
<u>Practice</u>	<ul style="list-style-type: none"> <li>• <u>Comply with the ADMISSION REVIEW AND DISMISSAL COMMITTEE MEETING FRAMEWORK.</u></li> </ul> <p>CITATION 89.1092(b)(1)</p>
<u>Practice</u>	<ul style="list-style-type: none"> <li>• <u>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 student's educational needs.</u></li> </ul> <p>CITATION 89.;1092(b)(2)</p>
<u>Doc</u>	<p>The appropriateness of the placement and the facility shall be documented in the Individualized Education Program (IEP) annually.</p> <p>CITATION 89.1092(b)(3)</p>
<u>Doc</u>	<p>The 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>CITATION 89.1092(b)(3)</p>
<u>Doc</u>	<ul style="list-style-type: none"> <li>• <u>The child's IEP must list which services the LEA is unable to provide and which services the nonpublic residential program will provide.</u></li> </ul> <p>CITATION 89.1092(b)(3)(A)</p>
<u>Doc</u>	<ul style="list-style-type: none"> <li>• <u>At the time the ARD committee determines placement, the ARD committee shall establish, in writing, criteria and a projected date for the child's return to the LEA and document this information in the IEP.</u></li> </ul> <p>CITATION 89.1092(b)(3)(B)</p>
<b><u>TEXAS EDUCATION AGENCY (TEA) APPROVAL OF FACILITY REQUIRED LEA PLACEMENT NOTIFICATION TO TEA</u></b>	
<u>Practice</u>	<p><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 must electronically submit to TEA notice of, and information regarding, placement in accordance with submission procedures specified by TEA.</u></p> <p><b><u>Citations:</u></b> <u>89.1092(c)</u></p>

<b>FEDERAL AND STATE REQUIREMENTS</b>	
Practice	<p>If the nonpublic residential program provider is on the commissioner's list of approved providers, TEA will review the student'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.</p> <p><u>CITATION</u> 89.1092(c)(1)</p>
Practice	<p>If the nonpublic residential program provider is not on the commissioner's list of approved providers, TEA will begin the approval procedures.</p> <p><u>CITATION</u> 89.1092(c)(2)</p>
Practice	<p>The LEA must ensure there is no delay in implementing a child's IEP.</p> <p><u>CITATION</u> 89.1092(c)(2)</p>
<b><u>TEA APPROVAL OF NONPUBLIC RESIDENTIAL PROGRAM REQUIRED</u></b>	
Doc	<p>Nonpublic residential program providers must have their educational programs approved for contracting purposes by TEA.</p> <p><u>CITATION</u> 89.1092(d)</p>
Doc	<p>Requests for approval of state and federal funding for nonpublic residential program placements shall be negotiated on an individual student basis through a residential application submitted by the LEA to TEA.</p> <p><u>CITATION</u> 89.1092(e)</p>
Doc	<p>A residential application may be submitted for educational purposes only.</p> <p><u>CITATION</u> 89.1092(e)(1)</p>
Doc	<p>The residential application WILL NOT be approved by TEA if the application indicates that the:</p> <p><u>CITATION</u> 89.1092(e)(1)</p>
Practice	<ul style="list-style-type: none"> <li>• placement is due primarily to the child's medical problems;</li> </ul> <p><u>CITATION</u></p>

<b>FEDERAL AND STATE REQUIREMENTS</b>	
	<u>89.1092(e)(1)(A)</u>
Doc	<ul style="list-style-type: none"> <li>• <u>placement is due primarily to problems in the child's home;</u></li> </ul> CITATION <u>89.1092(e)(1)(B)</u>
Doc	<ul style="list-style-type: none"> <li>• <u>the LEA does not have a plan, including criteria and a projected date, for the child's return to the local school program</u></li> </ul> CITATION <u>89.1092(e)(1)(C)</u>
Doc	<ul style="list-style-type: none"> <li>• <u>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);</u></li> </ul> CITATION <u>89.1092(e)(1)(D)</u>
Doc	<ul style="list-style-type: none"> <li>• <u>placement is not cost effective when compared with other alternative placements; or</u></li> </ul> CITATION <u>89.1092(e)(1)(E)</u>
Doc	<ul style="list-style-type: none"> <li>• <u>residential facility provides unfundable or unapprovable services.</u></li> </ul> CITATION <u>89.1092(e)(1)(F)</u>
Practice	<p><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 students or that have a pending request from a school district.</u></p> CITATION <u>89.1092(d)</u>
Doc	<p><u>For a program provider to be approved or reapproved, the LEA must electronically submit to TEA notice of, and information regarding, the placement in accordance with submission procedures specified by TEA.</u></p> CITATION <u>89.1092(d)(1)</u>
Doc	<p><u>Initial approval of the provider shall be for one calendar year.</u></p> CITATION <u>89.1092(d)(1)</u>

<b>FEDERAL AND STATE REQUIREMENTS</b>	
<u>Pract</u>	<p>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.</p> <p><u>CITATION</u> 89.1092(d)(2)</p>
<u>Doc</u>	<p>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.</p> <p><u>CITATION</u> 89.1092(d)(3)</p>
<u>Pract</u>	<p>If TEA does not approve, does not reapprove, or withdraws an approval from a program provider, the LEA must take steps to remove any children currently placed at the provider's facility, or cancel a child's planned placement, as expeditiously as possible.</p> <p><u>CITATION</u> 89.1092(d)(4)</p>
<u>Practice</u>	<p>If the residential facility provides any educational services listed in the child's IEP, the facility's education program must be approved by TEA.</p> <p><b>Citations:</b>  <u>89.1092(a)(2)</u>  <u>89.1092(b)(1)</u>  <u>89.1092(b)(2)</u>  <u>89.1092(b)(3)</u>  <u>89.1092(e)</u>  <u>89.1092(d)</u></p>
<u>Practice</u>	<ul style="list-style-type: none"> <li>• If the education program of a residential facility that is not approved by TEA is being considered by an LEA, the LEA should notify TEA in writing of its intent to place a child at the facility, so that TEA may begin approval procedures.</li> </ul> <p><b>Citations:</b>  <u>89.1092(b)</u>  <u>89.1092(d)(1)</u></p>
<u>Practice</u>	<ul style="list-style-type: none"> <li>• For out-of-state residential facilities, the facility must be approved by the appropriate agency in the state in which the facility is located, and the LEA must follow the TEA application process.</li> </ul> <p><b>Citations:</b>  <u>89.1092(d)(3)</u></p>

<b>FEDERAL AND STATE REQUIREMENTS</b>	
<u>Practice</u>	<p>If the residential education program is not on the commissioner's list of approved residential education programs, TEA will begin the approval process.</p> <p><b>Citations:</b>  <u>89.1092(b)(2)</u></p>
<u>Practice</u>	<p>The approval does not apply to residential facilities that only provide related services or residential facilities in which the accredited LEA where the facility is located provides the educational program.</p> <p><b>Citations:</b>  <u>89.1092(d)(2)</u></p>
<b>ADMISSION, REVIEW, AND DISMISSAL (ARD) COMMITTEE DETERMINATION OF RESIDENTIAL PLACEMENT</b>	
<u>Practice</u>	<p>When the ARD committee determines that a residential placement is necessary in order for the child to receive a free appropriate public education, the ARD committee must:</p> <p><b>Citations:</b>  <u>89.1092(a)</u>  <u>89.1092(a)(4)(A)</u></p>
<u>Document</u>	<ul style="list-style-type: none"> <li>• List the services in the child's IEP that the LEA is unable to provide and that the facility will provide;</li> </ul> <p><b>Citations:</b>  <u>89.1092(a)(4)(B)</u></p>
<u>Document</u>	<ul style="list-style-type: none"> <li>• Establish, in writing, criteria and estimated timelines for the child's return to the LEA;</li> </ul> <p><b>Citations:</b>  <u>89.1092(a)(4)(C)</u></p>
<u>Document</u>	<ul style="list-style-type: none"> <li>• Document in the child's IEP the appropriateness of the facility for the individual child; and</li> </ul> <p><b>Citations:</b>  <u>89.1092(a)(4)(D)</u></p>
<u>Practice</u>	<ul style="list-style-type: none"> <li>• Verify during the initial residential placement ARD committee meeting and each annual ARD committee meeting that:</li> </ul> <p><b>Citations:</b>  <u>89.1092(a)(4)(E)</u></p>
<u>Practice</u>	<ul style="list-style-type: none"> <li>• The facility meets minimum standards for health and safety;</li> </ul> <p><b>Citations:</b></p>

<b>FEDERAL AND STATE REQUIREMENTS</b>	
	<del>89.1092(a)(4)(F)(i)</del>
<u>Practice</u>	<p><del>○ The residential placement is needed and is documented in the IEP; and</del></p> <p><b>Citations:</b> <del>89.1092(a)(4)(F)(ii)</del></p>
<u>Practice</u>	<p><del>○ The educational program provided at the residential facility is appropriate and the placement is the least restrictive environment for the child.</del></p> <p><b>Citations:</b> <del>89.1092(a)(4)(F)(iii)</del></p>
<u>Practice</u>	<p><del>Within 30 calendar days from an ARD committee's decision to place a child in a residential education program, the LEA must electronically submit to TEA notice of and information regarding placement in accordance with submission procedures specified by TEA.</del></p> <p><b>Citations:</b> <del>89.1092(b)</del></p>
<b>TEXAS SCHOOL FOR THE BLIND AND VISUALLY IMPAIRED (TSBVI) AND TEXAS SCHOOL FOR THE DEAF (TSD)</b>	
<u>Practice</u>	<p>When placing the child at the TSBVI or the TSD, the ARD committee must include in the child's IEP:</p> <p><b>Citations:</b> <a href="#">89.1085(c)</a></p>
<u>Document</u>	<ul style="list-style-type: none"> <li>Those services which the TSBVI or the TSD can appropriately provide; and</li> </ul> <p><b>Citations:</b> <a href="#">89.1085(c)(1)</a></p>
<u>Document</u>	<ul style="list-style-type: none"> <li>The criteria and estimated timelines for returning the child to the resident LEA.</li> </ul> <p><b>Citations:</b> <a href="#">89.1085(c)(3)</a></p>
<u>Practice</u>	<p>When placing the child at the TSBVI or the TSD, the LEA may make an onsite 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><b>Citations:</b> <a href="#">89.1085(c)(2)</a></p>
<u>Practice</u>	<p><del>For a child placed by the ARD committee in the TSBVI 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</del></p>

<b>FEDERAL AND STATE REQUIREMENTS</b>	
	<p><u>scheduled school holidays when all students are expected to leave the residential campus.</u></p> <p><b><u>Citations:</u></b> <u>89.1090(a)</u></p>
<u>Practice</u>	<ul style="list-style-type: none"> <li>• <u>The LEA is not responsible for transportation costs for a child placed in these settings by their parents</u></li> </ul> <p><b><u>Citations:</u></b> <u>89.1090(b)</u></p>
<u>Practice</u>	<p><u>When it is necessary for the safety of the child, as determined by the ARD committee and as documented in the child's IEP, for an adult designated by the ARD committee to accompany the child, round-trip transportation for that adult must also be provided</u></p> <p><b><u>Citations:</u></b> <u>89.1090(d)</u></p>
<u>Practice</u>	<p><u>The LEA and the TSBVI or TSD must coordinate to ensure that an eligible child with a disability is transported safely, including the periods of departure and arrival.</u></p> <p><b><u>Citations:</u></b> <u>89.1090(e)</u></p>
<b><u>REPORTING AND RESPONSIBILITIES FOR FAPE, ONSITE VISITS, COSTS &amp; REPORTING</u></b>	
<u>Practice</u>	<p><u>An approved facility, institution, or agency with whom the LEA contracts must periodically report to the LEA on the services the 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 the Individuals with Disabilities Education Act.</u></p> <p><b><u>Citations:</u></b> <u>TEC 29.008(d)</u></p>
<u>Practice</u>	<p><u>The LEA must make one announced initial visit and two subsequent onsite visits annually, one announced and one unannounced, onsite to verify that the residential facility can, and will, provide the services listed in the child's IEP that the facility has agree to provide to the child.</u></p> <p><b><u>Citations:</u></b> <u>89.1092(a)(4)(E)</u> <u>89.1092(a)(4)(G)</u></p>
<u>Practice</u>	<p><u>An LEA that contracts for the provision of education services rather than providing the services itself shall oversee the implementation of the child's IEP and shall annually reevaluate the appropriateness of the arrangement.</u></p>



<b>FEDERAL AND STATE REQUIREMENTS</b>	
	<p><u>CITATION</u>  <u>TEC 29.008(d)</u></p>
Doc	<p><u>An approved facility, institution, or agency with whom the LEA contracts shall periodically report to the LEA on the services the 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 federal and state law.</u></p> <p><u>CITATION</u>  <u>TEC 29.008(d)</u></p>
Practice	<p><u>The LEA must make a minimum of two onsite, in-person visits annually, one announced and one unannounced, and more often if directed by the TEA, to:</u></p> <p><u>CITATION</u>  <u>89.1092(b)(3)(C)</u></p>
Doc	<ul style="list-style-type: none"> <li>• <u>verify that the program provider can and will provide the services listed in the child's IEP that the provider has agreed to provide to the child;</u></li> </ul> <p><u>CITATION</u>  <u>89.1092(b)(3)(C)(i)</u></p>
Doc	<ul style="list-style-type: none"> <li>• <u>obtain written verification that the facility meets minimum standards for health and safety and holds all applicable local and state accreditation and permit requirements;</u></li> </ul> <p><u>CITATION</u>  <u>89.1092(b)(3)(C)(ii)</u></p>
Doc	<ul style="list-style-type: none"> <li>• <u>verify that the program provider's staff who work with the student have been subject to criminal background checks (to include fingerprinting) that meet the standards applicable to public school employees;</u></li> </ul> <p><u>CITATION</u>  <u>89.1092(b)(3)(C)(iii)</u></p>
Doc	<ul style="list-style-type: none"> <li>• <u>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 student maintains the same rights as other public school students with disabilities, including when the student 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</u></li> </ul> <p><u>CITATION</u></p>

<b>FEDERAL AND STATE REQUIREMENTS</b>	
	<a href="#"><u>89.1092(b)(3)(C)(iv)</u></a>
Doc	<ul style="list-style-type: none"> <li>• <a href="#"><u>verify that the educational program provided at the facility is appropriate and the placement is the least restrictive environment for the studentchild.</u></a></li> </ul> <p><b>CITATION</b> <a href="#"><u>89.1092(b)(3)(C)(v)</u></a></p>
Practice	<p><a href="#"><u>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 must be individually reviewed and a determination of appropriateness of placement and service must be made for each child.</u></a></p> <p><b>CITATION</b> <a href="#"><u>89.1092(b)(4)</u></a></p>
Practice	<p><a href="#"><u>TEA may conduct announced or unannounced onsite visits at a program provider's facility that is serving one or more Texas public school students and will monitor the program provider's compliance.</u></a></p> <p><b>CITATION</b> <a href="#"><u>89.1092(d)(5)</u></a></p>
Practice	<p><a href="#"><u>When a child who is placed by a 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 shall be responsible for the residential contract for the remainder of the school year.</u></a></p> <p><b>CITATION</b> <a href="#"><u>89.1092(b)(5)</u></a></p>

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