

**USE OF FUNDS FOR CONTRACT SERVICES  
INCLUDING RESIDENTIAL PLACEMENTS**

Authorities: 34 CFR Part 300; Texas Education Code; 19 TAC Chapter 89

[Additional Resources](#)

DOCUMENT/ PRACTICE	FEDERAL AND STATE REQUIREMENTS	CITATIONS
P	The local education agency (LEA) must comply with the <a href="#">GENERAL AND FISCAL GUIDELINES</a> framework.	
P	The LEA must comply with the <a href="#">PLACEMENT IN A RESIDENTIAL FACILITY</a> framework.	
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.	<a href="#">89.61(a)</a> <a href="#">89.1092(a)</a> <a href="#">300.104</a>
	<b><a href="#">TEXAS EDUCATION AGENCY (TEA) APPROVAL OF FACILITY REQUIRED</a></b>	
P	If the residential facility provides any educational services listed in the child's individualized education program (IEP), the facility's education program must be approved by TEA.	<a href="#">89.1092(a)(2)</a> <a href="#">89.1092(b)(1)</a> <a href="#">89.1092(b)(2)</a> <a href="#">89.1092(b)(3)</a> <a href="#">89.1092(c)</a> <a href="#">89.1092(d)</a>
P	<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 will notify TEA in writing of its intent to place a child at the facility, so that TEA may begin approval procedures.</li> </ul>	<a href="#">89.1092(d)(1)</a>
P	<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</li> </ul>	<a href="#">89.1092(a)(1)</a> <a href="#">89.1092(d)(3)</a>

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	must follow the TEA application process.	
P	<u>If the residential education program is not on the commissioner's list of approved residential education programs, TEA will begin the approval process.</u>	<u>89.1092(b)(2)</u>
P	<u>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.</u>	<u>89.1092(d)(2)</u>
	<b><u>RESIDENTIAL CONTRACT APPLICATION PROCESS</u></b>	
P	The LEA that intends to contract for residential placement of the child for educational purposes with a residential facility to meet some or all of the child's special education needs must notify TEA of its intent to contract for the residential placement through the residential application process.	<u>89.1092(a)(3)</u> <u>89.1092(b)(3)</u>
P	<u>Within 30 calendar days from an Admission, Review, and Dismissal (ARD) committee's decision to place the child in a residential education program, LEAs must electronically submit to the TEA notice of and information regarding the placement.</u>	<u>89.1092(b)</u> <u>89.1092(b)(3)</u>
P	<u>The LEA may contract for an in-state residential placement of the child only with public or private residential facilities that maintain current and valid licensure for the particular disabling condition and age of the child.</u>	<u>89.1092(a)(1)</u>
P	<u>The LEA may contract for an out-of-state residential placement in accordance with the rules for in-state residential placement in this framework, except that the facility must be approved by the appropriate agency in the state in which the facility is located, rather than by TEA.</u>	<u>89.1092(a)(1)</u> <u>89.1092(d)(3)</u>
P	<u>Requests for approval of state and federal funding for residentially-placed children must be negotiated on an individual child</u>	<u>89.1092(c)</u>

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	<u>basis through a residential application submitted by the LEA to TEA.</u>	
P	<u>A residential application may be submitted for educational purposes only.</u>	<u>89.1092(c)(1)</u>
P	<u>The residential application will not be approved if the application indicates that the:</u>	<u>89.1092(c)(1)</u>
P	<ul style="list-style-type: none"> <li><u>Placement is due primarily to the child's medical problems;</u></li> </ul>	<u>89.1092(c)(1)(A)</u>
P	<ul style="list-style-type: none"> <li><u>Placement is due primarily to problems in the child's home;</u></li> </ul>	<u>89.1092(c)(1)(B)</u>
P	<ul style="list-style-type: none"> <li><u>The LEA does not have a plan, including timelines and criteria, for the child's return to the local school program;</u></li> </ul>	<u>89.1092(c)(1)(C)</u>
P	<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>	<u>89.1092(c)(1)(D)</u>
P	<ul style="list-style-type: none"> <li><u>Placement is not cost effective when compared with other alternative placements; or</u></li> </ul>	<u>89.1092(c)(1)(E)</u>
P	<ul style="list-style-type: none"> <li><u>Residential facility provides unfundable or unapprovable services.</u></li> </ul>	<u>89.1092(c)(1)(F)</u>
P	<u>If the residential education program is on the commissioner's list of approved residential education programs, TEA will review the child's IEP and placement, and, in case of placement in or referral to a private school or facility.</u>	<u>89.1092(b)(1)</u> <u>300.120</u> <u>300.146</u>
P	<u>After review, TEA will notify the LEA whether federal or state funds for the residential education program placement are approved. If TEA does not approve</u>	<u>89.1092(b)(1)</u>

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	<p><u>the use of funds, it will notify the LEA the basis for the non-approval.</u></p>	
	<p><b><u>RESIDENTIAL PLACEMENT ORDERED BY TEA HEARING OFFICER OR COURT</u></b></p>	
P	<p><u>If a residential education program placement is ordered by a special education hearing officer or court of competent jurisdiction, the LEA must notify TEA of the order within 30 calendar days. The residential education program serving the child is not required to go through the approval procedures.</u></p>	<p><u>89.1092(b)(3)</u></p>
	<p><b><u>ALLOCATION OF COSTS FOR RESIDENTIAL PLACEMENT</u></b></p>	
P	<p>Costs of an approved educationally-based contract for residential placement may be paid from a combination of federal, state, and local funds:</p>	<p><u>TEC 29.008(b)</u> <u>TEC 29.008(c)</u> <u>TEC 48.102(g)</u> <u>300.103(a)</u></p>
P	<ul style="list-style-type: none"> <li>• The local share of the total contract cost for each child is that portion of the local tax effort that exceeds the LEA's local fund assignment, divided by the average daily attendance (ADA) in the LEA:</li> </ul>	<p><u>TEC 29.008(b)</u></p>
P	<ul style="list-style-type: none"> <li>○ For purposes of this framework, <i>local tax effort</i> means the total amount of money generated by taxes imposed for debt service and maintenance and operation less any amounts paid into a tax increment fund under Chapter 311, Tax Code;</li> </ul>	<p><u>TEC 29.008(b)</u></p>
P	<ul style="list-style-type: none"> <li>• The education cost of residential contracts must be funded with state funds on the same basis as nonpublic day school contract costs:</li> </ul>	<p><u>89.61(b)(2)(A)</u> <u>89.1092(c)(2)(A)</u> <u>TEC 48.102(a)</u></p>
P	<ul style="list-style-type: none"> <li>○ If the contract involves a private facility, the state</li> </ul>	<p><u>TEC 29.008(b)</u></p>

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	<p>share of the total contract cost is that amount remaining after subtracting the local share; and</p>	
P	<ul style="list-style-type: none"> <li>○ If the contract involves a public facility, the state share is that amount remaining after subtracting the local share from the portion of the contract that involves the costs of instructional and related services;</li> </ul>	<p><a href="#">TEC 29.008(b)</a></p>
P	<ul style="list-style-type: none"> <li>• State special education funds may be used for transportation only to and from residential placements:</li> </ul>	<p><a href="#">89.1125(f)</a> <a href="#">89.1092(c)(2)(B)</a></p>
P	<ul style="list-style-type: none"> <li>○ Prior to using federal funds for transportation costs to and from a residential facility, the LEA must use state or local funds based on actual expenses up to the state transportation maximum for private transportation contracts; and</li> </ul>	<p><a href="#">89.1125(f)</a></p>
P	<ul style="list-style-type: none"> <li>• <u>Related services and residential costs for residential contract children will be funded from a combination of fund sources.</u></li> </ul>	<p><a href="#">89.1092(c)(2)(B)</a></p>
P	<ul style="list-style-type: none"> <li>• After expending any other available funds, the LEA must expend its local tax share per ADA and 25 percent 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:</li> </ul>	<p><del><a href="#">89.61(b)(2)(B)</a></del><a href="#">89.1092(c)(2)(B)</a></p>

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P	<ul style="list-style-type: none"> <li>○ If this is not sufficient to cover all costs of the residential placement, the LEA through the residential application process may receive additional IDEA-B discretionary funds to pay the balance of the residential contract placement costs; and</li> </ul>	<del>89.61(b)(2)(B)89.1092(c)(2)(B)</del>
P	<ul style="list-style-type: none"> <li>○ Funds generated by the formula for residential costs must not exceed the daily rate recommended by the Texas Department of Family and Protective Services for the specific level of care in which a child is placed.</li> </ul>	<del>89.61(b)(2)(C)89.1092(c)(2)(C)</del>
	<p><b><u>FUNDING MECHANISM FOR RESIDENTIAL PLACEMENT WHEN CHILDREN WHO ARE RESIDENTIALLY PLACED CHANGE DISTRICTS OF RESIDENCE DURING THE SCHOOL YEAR</u></b></p>	
P	<p><del>The LEA may contract for a residential placement of the child only with either public or private residential facilities which maintain current and valid licensure by the Texas Department of Aging and Disability Services, the DFPS, or the Department of State Health Services for the particular disabling condition and age of the child.</del></p>	<del>89.61(a)(1)</del>
P	<p><del>The LEA which intends to contract for residential placement of the child for educational purposes with a residential facility to meet some or all of the child's special education needs must notify the Texas Education Agency (TEA) of its intent to contract for the residential placement through the residential application process.</del></p>	<del>89.61(a)(2) 89.61(a)(3)</del>
P	<p><del>Requests for approval of state and federal funding for residentially placed children must be negotiated on an individual child</del></p>	<del>89.61(b)</del>

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	<del>basis through a residential application submitted by the LEA to the TEA.</del>	
P	When the child who is residentially placed by an LEA changes residence to another LEA in Texas, 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.	<del>89.61(a)(4)(H)</del> 89.1092(a)(4)(H)
P	<del>Residential facilities which provide educational services must have their educational programs approved for contracting purposes by the commissioner of education.</del>	<del>89.61(c)</del>
P		<del>89.61(c)(3)</del>
	<b>NON-PUBLIC DAY SCHOOLS</b>	
P	LEAs that contract for services from non-public day schools must comply with procedures developed by the TEA for monitoring the provision of special education and related services at no cost to the parent in conformance with the IEP.	<u>300.146</u> <u>300.147</u> <u>89.1050(h)</u>

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