

The Texas Education Agency (TEA) proposes amendments to §§89.1001, 89.1005, 89.1075, 89.1076, 89.1085, 89.1090, 89.1092, and 89.1094, concerning special education general provisions and clarification of provisions in federal regulations and state law. The proposed amendments would clarify current program practices and requirements, including clarifying existing statutory obligations for school districts to extend their Child Find activities to residential facilities, as well as facilities under the direction and control of the Texas Juvenile Justice Department and the Texas Department of Criminal Justice when those facilities are located in the district's boundaries; reflecting the qualifications that instructional arrangements and settings listed in Texas Education Code (TEC), §48.102, must meet in order to be funded through the state special education allotment; adding an existing federal requirement for school districts to develop policies and procedures that implement the established state policies and procedures and an existing statutory requirement reminding transition and employment designees to complete required training; specifying interventions and sanctions that TEA may, or is required to, implement under state and federal law when noncompliance is identified; clarifying when the Texas School for the Blind and Visually Impaired (TSBVI) and the Texas School for the Deaf (TSD) are considered the resident school district for purposes of §89.1085 and §89.1090; addressing transportation to and from TSBVI and TSD when students are expected to leave the residential campus setting; providing clarity and aligning with current expectations and nonpublic residential placement guidance; and clarifying the phrases "off-campus program" and "off-home campus."

BACKGROUND INFORMATION AND JUSTIFICATION: Section 89.1001 references the scope and applicability of commissioner rules associated with special education and related services. The proposed amendment to subsection (a) would align with current terminology and practices of federal law and add a reference to the State Board for Educator Certification.

The proposed amendment to §89.1001(c) would clarify existing statutory obligations for school districts to extend their Child Find activities to residential facilities, as well as facilities under the direction and control of the Texas Juvenile Justice Department and the Texas Department of Criminal Justice when those facilities are located in the district's boundaries.

Section 89.1005 reflects the qualifications that instructional arrangements and settings listed in TEC, §48.102, must meet in order to be funded through the state special education allotment.

Proposed new §89.1005(a) would identify definitions for terms used in the rule to provide clarity.

The proposed amendment to re-lettered §89.1005(c) would align with the wording in §89.1075, which is referenced in the subsection.

Proposed new §89.1005(d) would clarify the alignment between the rule and the Student Attendance Accounting Handbook adopted by reference in 19 TAC §129.1025.

Re-lettered §89.1005(e) would be amended to revise the descriptions of the instructional arrangements/settings listed in the rule. Following is a summary of the proposed changes to those descriptions.

Terminology in the mainstream description would be updated to the term "general education," which is more commonly used than "regular education." A statement would also be added that only monitoring a student's progress does not equate to a special education service.

The homebound description would be revised to adjust for more current circumstances in which homebound instruction might be required, and clarification would be added about the instances when children ages three through five could be classified under this setting. Information about serving infants and toddlers who have a visual impairment (VI), who are deaf or hard of hearing (DHH), or who are deafblind (DB) would be deleted and added to re-lettered subsection (f).

The hospital class setting would be revised for clarity based on questions received from stakeholders.

The speech therapy setting would be modified to clarify the current structures laid out in the Student Attendance Accounting Handbook.

Both resource room/services and self-contained would be aligned to reflect the differentiation in codes that the current Student Attendance Accounting Handbook uses.

Based on numerous questions from stakeholders, clarification would be added about when an instructional arrangement would be considered the off-home campus setting.

The nonpublic day school instructional arrangement/setting would be clarified to reference the alignment with §89.1094.

The vocational adjustment class description would be amended to better align with current practices.

Clarification about the residential care and treatment facility setting would be added based on requests from stakeholders.

The state school description would be modified to use the terminology of the TEC.

Re-lettered subsection (f) would be amended to clarify instances when a child from birth through age two who has a VI, is DHH, or is DB is entitled to enrollment in school districts and funding through the state special education allotment.

Additional edits would be made throughout §89.1005 to align with current terminology and for conciseness.

Section 89.1075 references general program requirements and local district procedures. The proposed changes would add an existing federal requirement for school districts to develop policies and procedures that implement the established state policies and procedures, a provision about prior written notice that is currently located in 19 TAC §89.1050, and an existing statutory requirement reminding transition and employment designees to complete required training. Additional revisions would be made for clarity and alignment with current law.

Section 89.1076 is related to interventions and sanctions that TEA may, or is required to, implement under state and federal law when noncompliance is identified. The proposed amendment would align terminology throughout the rule as well as add a federally required intervention to place specific conditions on funds or redirect funds.

Section 89.1085 addresses referrals to TSBVI and TSD. The proposed amendment would clarify that if a student is enrolled in an open-enrollment charter school and the student's ARD committee places a student in TSBVI or TSD, that school becomes the resident school district for purposes of §89.1085 and §89.1090.

Section 89.1090 references transportation to and from TSBVI and TSD when students are expected to leave the residential campus setting. The proposed amendment would clarify when a resident district would be required to cover transportation costs for a student placed at TSBVI or TSD. Transportation costs for students in other residential settings when placed by a student's ARD committee would likely be covered in those contracts for services. The section title would be modified to clarify that the rule pertains only to placements at TSBVI and TSD.

Section 89.1092 describes the requirements when a school district places a student in a residential placement for the provision of a free appropriate public education (FAPE) to a student. The proposed amendment would provide clarity and align with current expectations and nonpublic residential placement guidance. In addition, the proposed changes would include adding definitions for school district, nonpublic residential program, and nonpublic residential program provider; listing the requirements related to any nonpublic residential placement, including school district responsibilities prior to placement and during such placement; clarifying language related to notification; and expanding information on the approval process. The section title would also be modified to clarify the purpose of the rule.

Section 89.1094 refers to placement in off-campus programs. Based on requests for clarification from stakeholders related to the phrases "off-campus program" and "off-home campus" as described in §89.1005, the section title would be modified to clarify these types of placements. The new title would be "Contracting for Nonpublic or Non-District Operated Day Placements for the Provision of a Free Appropriate Public Education (FAPE)," which would align with the wording in §89.1092 regarding nonpublic residential placement.

The proposed amendment to §89.1094(a) would address placements at nonpublic day schools; a county system operating under former TEC, §11.301; a regional education service center; or any other public or private entity with which a school district enters a contract for the provision of special education services in a facility not operated by a school district.

The placement requirements listed in §89.1094(b) would be amended for clarity and to reference criminal background checks and the requirement for the provider to develop policies, procedures, and operating guidelines to ensure the student maintains the same rights as other public school students while in this placement.

The proposed amendment to §89.1094(c), regarding notification, would provide clarity and alignment.

Proposed new §89.1094(d), regarding the approval process for a nonpublic residential program, would clarify TEA's authority to place conditions on a program provider, not reapprove an approval, or withdraw an approval from a program provider.

The proposed amendment to §89.1094(e), related to funding procedures, would provide clarity and reflect that contracts must not begin prior to August 1 and must not extend past July 31 of the following year.

FISCAL IMPACT: Justin Porter, associate commissioner and chief program officer for special populations, has determined that for the first five-year period the proposal is in effect, there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

LOCAL EMPLOYMENT IMPACT: The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT: The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

COST INCREASE TO REGULATED PERSONS: The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

TAKINGS IMPACT ASSESSMENT: The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would expand existing regulations by increasing the required number of times a school district must contact residential facilities within the district's boundaries to conduct Child Find activities. It would also modify instructional arrangement descriptions and add specific descriptions for instructional arrangements associated with children from birth through age two. In addition, it would add that open-enrollment charter schools can be considered a resident district for purposes of placement and transportation to the Texas School for the Blind and Visually Impaired and the Texas School for the Deaf, and a change to transportation responsibilities would require a resident district to cover transportation during any period at which all students are supposed to leave the residential campus. Likewise, proposed amendments would explicitly clarify requirements regarding the approval, contracting, and compliance monitoring processes when students with disabilities require a nonpublic day or residential placement, including requirements regarding criminal background checks, onsite visits, written verification that certain health and safety standards are met, and the requirement for the provider to develop policies, procedures, and operating guidelines to ensure the student maintains the same rights as other public school students while in this placement. It would also add a contract length requirement for these placements.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency;

would not create a new regulation; would not limit or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: Mr. Porter has determined that for each year of the first five years the proposal is in effect, the following public benefits are anticipated as a result of enforcing the proposal. The proposed amendment to §89.1001 would align with current terminology and practices of federal law. It would clarify existing statutory obligations for school districts to extend their Child Find activities to residential facilities, as well as facilities under the direction and control of the Texas Juvenile Justice Department and the Texas Department of Criminal Justice when those facilities are in the district's boundaries.

The proposed amendment to §89.1005 would modify qualifications that instructional arrangements and settings listed in TEC, §48.102, must meet to be funded through the state special education allotment. The proposed amendment would also include term changes to provide clarity and alignment between this rule and the Student Attendance Accounting Handbook and incorporate current practices based on requests from stakeholders.

The proposed amendment to §89.1075 would include for practical reference the addition of an existing requirement that school districts develop policies and procedures that implement the established state policies and procedures and the statutory requirements for a district's transition and employment designee. The proposed amendment would also add a provision about prior written notice that is currently located in 19 TAC §89.1050 to this more appropriate rule and make revisions for clarity and alignment with current law.

The proposed amendment to §89.1076 would revise the criteria for interventions and sanctions that TEA is required to implement under state and federal law when noncompliance is identified. The criteria includes steps related to the appointment of a monitor and a conservator/management team and adds reference to the possibility of a federally required intervention to place specific conditions on funds.

The proposed amendment to §89.1085 would provide clarification that if a student is enrolled in an open-enrollment charter school and the student's ARD committee places a student in TSBVI or TSD, that school becomes the resident school district for purposes of §89.1085 and §89.1090.

The proposed amendment to §89.1090 would provide clarification as to when a resident district would be required to cover transportation costs for a student placed at TSBVI or TSD.

The proposed amendment to §89.1092 would clarify and align the rule with current expectations, outline nonpublic residential placement guidance, and better describe the rule's purpose.

The proposed amendment to §89.1094 would clarify longstanding requests from stakeholders to differentiate the phrase "off-campus program" from "off-home campus" as described in §89.1005. A proposed title change would align with the wording in the nonresidential placement rule in §89.1092.

There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have no data and reporting impact.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

PUBLIC COMMENTS: The public comment period on the proposal begins May 3, 2024, and ends June 3, 2024. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_\(TAC\)/Proposed_Commissioner_of_Education_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/). Public hearings will be conducted to solicit testimony and input on the proposed amendments at 9:30 a.m. on May 15 and 16, 2024. The public may participate in either hearing virtually by linking to the hearing at <https://zoom.us/j/98675068834>. Anyone wishing to testify must be present at 9:30 a.m. and indicate to TEA staff their intent to comment and are encouraged to also send written testimony to sped@tea.texas.gov. The hearing will conclude once all who have signed in have been given the opportunity to comment. Questions about the hearing

should be directed to Derek Hollingsworth, Special Populations Policy, Reporting, and Technical Assistance, Derek.Hollingsworth@tea.texas.gov.

STATUTORY AUTHORITY. The amendments are proposed under Texas Education Code (TEC), §29.001, which requires the agency to develop and modify as necessary a statewide plan for the delivery of services to children with disabilities that ensures the availability of a free appropriate public education to children between the ages of 3-21; TEC, §29.003, which requires the agency to develop eligibility criteria for students receiving special education services; TEC, §29.005, which establishes criteria for developing a student's individualized education program prior to a student enrolling in a special education program; TEC, §29.008, which establishes contracts for services for residential placement; TEC, §29.010, which requires the agency to develop and implement a monitoring system for school district compliance with federal and state laws regarding special education; TEC, §29.012, which requires the commissioner to develop and implement procedures for compliance with federal requirements relating to transition services for students enrolled in a special education program; TEC, §29.013, which requires the agency to establish procedures and criteria for the distribution of funds to school districts for noneducational community-based support services to certain students with disabilities to ensure they receive a free appropriate education in the least restrictive environment; TEC, §29.014, which establishes criteria for school districts that provide education solely to students confined to or educated in hospitals; TEC, §30.002, which requires the agency to develop and administer a statewide plan for the education of children with visual impairments; TEC, §30.003, which establishes requirements for support of students enrolled in Texas School for the Blind and Visually Impaired or Texas School for the Deaf; TEC, §30.005, which establishes a memorandum of understanding between the Texas Education Agency and the Texas School for the Blind and Visually Impaired; TEC, §30.021, which establishes a school for the blind and visually impaired in Texas; TEC, §30.051, which establishes the purpose for Texas School for the Deaf; TEC, §30.057, which establishes admission criteria for eligible students with disabilities to the Texas School for the Deaf; TEC, §30.083, which requires the development of a statewide plan for educational services for students who are deaf or hard of hearing; TEC, §30.087, which establishes criteria for funding the cost of educating students who are deaf or hard of hearing; TEC, §39A.001, which establishes grounds for commissioner action; TEC, §39A.002, which establishes actions that the commissioner of education is authorized to take if a school district is subject to action under §39A.001; TEC, §48.102, which establishes criteria for school districts to receive an annual allotment for students in a special education program; 34 Code of Federal Regulations (CFR), §300.8, which defines terms regarding a child with a disability; 34 CFR, §300.101, which defines the requirement for all children residing in the state between ages of 3-21 to have a free appropriate public education available; 34 CFR, §300.111, which defines the requirement of the state to have policies and procedures in place regarding child find; 34 CFR, §300.114, which defines least restrictive environment requirements; 34 CFR §300.115, which establishes criteria for a continuum of alternative placements; 34 CFR §300.116, which establishes criteria for determining the educational placement of a child with a disability; 34 CFR, §300.121, which establishes the requirement for a state to have procedural safeguards; 34 CFR, §300.124, which establishes the requirement of the state to have policies and procedures in place regarding the transfer of children from the Part C program to the preschool program; 34 CFR, §300.129, which establishes criteria for the state responsibility regarding children in private schools; 34 CFR, §300.147, which establishes the criteria for the state education agency when implementing the responsibilities each must ensure for a child with a disability who is placed in or referred to a private school or facility by a public agency; 34 CFR, §300.149, which establishes the state education agency's responsibility for general supervision; 34 CFR, §300.201, which establishes the requirement for local education agencies to have policies, procedures, and programs that are consistent with the state policies and procedures; 34 CFR, §300.500, which establishes the responsibility of a state education agency and other public agencies to ensure the establishment, maintenance, and implementation of procedural safeguards; and 34 CFR, §300.600, which establishes requirements for state monitoring and enforcement.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code, §§29.001, 29.003, 29.005, 29.008, 29.010, 29.012, 29.013, 29.014, 30.002, 30.003, 30.005, 30.021, 30.051, 30.057, 30.083, 30.087, 39A.001, 39A.002, and 48.102, and 34 Code of Federal Regulations, §§300.8, 300.101, 300.111, 300.114, 300.115, 300.116, 300.121, 300.124, 300.129, 300.147, 300.149, 300.201, 300.500, and 300.600.

<rule>

§89.1001. Scope and Applicability.

- (a) Special education and related services shall be provided to eligible students in accordance with all applicable federal law and regulations, state statutes, rules of the State Board of Education, State Board for Educator Certification, ~~[(SBOE)]~~ and commissioner of education, and the ~~[(State Plan Under Part B of the)]~~ Individuals with Disabilities Education Act (IDEA).
- (b) Education programs under the direction and control of the Texas Juvenile Justice Department, Texas School for the Blind and Visually Impaired, Texas School for the Deaf, and schools within the Texas Department of Criminal Justice shall comply with state and federal law and regulations concerning the delivery of special education and related services to eligible students and shall be monitored by the Texas Education Agency in accordance with the requirements identified in subsection (a) of this section.
- (c) Residential facility refers to a facility defined by Texas Education Code, §5.001(8), which includes any person, facility, or entity that provides 24-hour custody or care of a person residing in the facility for detention, treatment, foster care, or any noneducational purpose. A school district must initiate Child Find outreach activities to locate, evaluate, and identify eligible students in any residential facility within its boundaries, including facilities or schools under the direction and control of the Texas Juvenile Justice Department or Texas Department of Criminal Justice. If a student is eligible, a school district must provide educational services to the student unless, after contacting the facility to offer educational services to eligible students with disabilities, the facility can demonstrate that educational services are provided by another educational program provider, such as a charter school, approved nonpublic school, or a facility operated private school. However, the district shall, at minimum, contact the facility at least twice per year to conduct Child Find activities and to offer services to eligible students with disabilities.
- ~~[(e) — A school district having a residential facility that is licensed by appropriate state agencies and located within the district's boundaries must provide special education and related services to eligible students residing in the facility. If, after contacting the facility to offer services to eligible students with disabilities, the district determines that educational services are provided through a charter school, approved non-public school, or a facility operated private school, the district is not required to provide services. However, the district shall annually contact the facility to offer services to eligible students with disabilities.]~~

§89.1005. Instructional Arrangements and Settings.

- (a) The following terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.
 - (1) Instructional arrangement/setting. Instructional arrangement/setting refers to the arrangement listed in Texas Education Code (TEC), §48.102, and the weight assigned to it that is used to generate funds from the state special education allotment.
 - (2) Instructional day. Instructional day has the meaning assigned to it in §129.1025 of this title (relating to Adoption by Reference: Student Attendance Accounting Handbook).
- (b) ~~[(a)]~~ Each ~~[(local)]~~ school district must ~~[(shall be able to)]~~ provide special education and related services ~~[(with special education personnel)]~~ to eligible students with disabilities in order to meet the unique ~~[(special)]~~ needs of those students in accordance with 34 Code of Federal Regulations, §§300.114-300.118, and state law.
- (c) ~~[(b)]~~ Subject to §89.1075(e) of this title (relating to General Program Requirements and Local District Procedures), for the purpose of determining the student's instructional arrangement/setting, a student receiving special education and related services must have available an instructional day commensurate with that of students who are not receiving special education and related services. A student's admission, review, and dismissal (ARD) committee shall determine the length of the student's instructional day and will determine the student's instructional arrangement/setting based on the percentage of the student's instructional day that the student receives special education and related services in a setting other than general education ~~[(the regular school day is defined as the period of time determined appropriate by the admission, review, and dismissal (ARD) committee)]~~.
- (d) While this section uses the names of the instructional arrangements/settings as they are described in TEC, §48.102, there may be additional instructional arrangement/setting codes that are created by the Texas Education Agency (TEA) within the student attendance accounting requirements defined in §129.1025 of

this title. While the codes may be titled differently, each will align to an arrangement/setting as described in this section and in TEC, §48.102.

(c) [(e)] Instructional arrangements/settings shall be based on the individual needs and individualized education programs (IEPs) of eligible students receiving special education and related services and shall include the following.

(1) Mainstream. This instructional arrangement/setting is for providing special education and related services to a student in the general education [regular] classroom in accordance with the student's IEP. Qualified special education personnel must be involved in the implementation of the student's IEP through the provision of direct, indirect, and/or support services to the student and/or the student's general education [regular] classroom teacher(s) necessary to enrich the general education [regular] classroom and enable student success. The student's IEP must specify the services that will be provided by qualified special education personnel to enable the student to appropriately progress in the general education curriculum and/or appropriately advance in achieving the goals set out in the student's IEP. Examples of services provided in this instructional arrangement include, but are not limited to, direct instruction, helping teacher, team teaching, co-teaching, interpreter, educational aides, curricular or instructional modifications/accommodations, special materials/equipment, positive classroom behavioral interventions and supports, consultation with the student and his/her general education [regular] classroom teacher(s) regarding the student's progress in general [regular] education classes, staff development, and reduction of ratio of students to instructional staff. Monitoring student progress in and of itself is not a special education service; this cannot be listed as the only specially designed instruction documented in a student's IEP.

(2) Homebound. This instructional arrangement/setting , also referred to as home-based instruction, is for providing special education and related services to students who are served at their home for the following reasons [or hospital bedside] .

(A) Medical reasons. Homebound instruction is used for a student whose ARD committee has received medical documentation from a physician licensed to practice in the United States that the student is expected to incur full-day absences from school for a minimum of four weeks for medical reasons, which could include psychological disorders, and the ARD committee has determined that this is the most appropriate placement for the student. The weeks do not have to be consecutive. For the ARD committee to approve this placement, the committee will review documentation related to anticipated periods of student confinement to the home, as well as whether the student is determined to be chronically ill or any other unique medical circumstances that would require this placement in order to provide a free appropriate public education (FAPE) to the student. Documentation by a physician does not guarantee the placement of a student in this instructional arrangement/setting, as the student's ARD committee shall determine whether the placement is necessary, and, if so, will determine the amount of services to be provided to the student at home in this instructional arrangement/setting in accordance with federal and state laws, rules, and regulations, including the provisions specified in subsection (c) of this section.

(B) Children ages three through five years of age. Home-based instruction may be used for children ages three through five when determined appropriate by the child's ARD committee and as documented in the student's IEP. While this setting would generate the same weight as the homebound instructional arrangement/setting, the data on this setting may be collected differently than the medical homebound arrangement/setting.

~~(A) Students served on a homebound or hospital bedside basis are expected to be confined for a minimum of four consecutive weeks as documented by a physician licensed to practice in the United States. Homebound or hospital bedside instruction may, as provided by local district policy, also be provided to chronically ill students who are expected to be confined for any period of time totaling at least four weeks throughout the school year as documented by a physician licensed to practice in the United States. The student's ARD committee shall determine the amount of services to be provided to the student in this~~

~~instructional arrangement/setting in accordance with federal and state laws, rules, and regulations, including the provisions specified in subsection (b) of this section.~~

~~(B) Home instruction may also be used for services to infants and toddlers (birth through age 2) and young children (ages 3-5) when determined appropriate by the child's individualized family services plan (IFSP) committee or ARD committee.~~

(C) Students confined to or educated in hospitals. This instructional arrangement/setting also applies to school districts described in TEC [Texas Education Code] , §29.014.

(3) Hospital class. This instructional arrangement/setting is for providing special education and related services by school district personnel: ~~[instruction in a classroom.]~~

(A) at a hospital or other medical facility; ~~[]~~ or

(B) at a residential care and treatment facility not operated by the school district. If a student ~~[the students]~~ residing in the facility is ~~[are]~~ provided special education and related services at a school district campus but the student's parent is not a school district resident, the student is considered to be in the residential care and treatment facility instructional arrangement/setting. If a student residing in the facility is provided special education and related services at a school district campus and the parent, including a surrogate parent, is a school district resident, the student's instructional arrangement/setting would be assigned based on the services that are provided at the campus on the same basis as a resident student residing with his or her parents ~~[outside the facility, they are considered to be served in the instructional arrangement in which they are placed and are not to be considered as in a hospital class]~~ .

(4) Speech therapy. This instructional arrangement/setting is for providing speech therapy services whether in a ~~general~~ ~~[regular]~~ education classroom or in a setting other than a ~~general~~ ~~[regular]~~ education classroom.

(A) When the only special education ~~[or related]~~ service provided to a student is speech therapy, then this instructional arrangement may not be combined with any other instructional arrangement. If a student's IEP indicates that a special education teacher is involved in the implementation of the student's IEP but there is no indication of how that teacher provides a special education service, the student is in the speech therapy instructional arrangement/setting.

~~(B) When a student receives speech therapy and a related service but no other special education service, the student is in the speech therapy instructional arrangement/setting.~~

(5) Resource room/services. This instructional arrangement/setting is for providing special education and related services to a student in a setting other than ~~general~~ ~~[regular]~~ education for less than 50% of the regular school day. ~~For funding purposes, this will be differentiated between the provision of special education and related services to a student in a setting other than general education for less than 21% of the instructional day and special education and related services provided to a student in a setting other than general education for at least 21% of the instructional day but less than 50% of the instructional day.~~

(6) Self-contained (mild, moderate, or severe) regular campus. This instructional arrangement/setting is for providing special education and related services to a student who is in a setting other than ~~general education~~ ~~[self-contained program]~~ for 50% or more of the regular school day on a regular school campus. ~~For funding purposes, mild/moderate will be considered at least 50% but no more than 60% of the student's instructional day, and severe will be considered more than 60% of the student's instructional day.~~

(7) Off-home campus. This instructional arrangement/setting is for providing special education and related services to the following : ~~[including, but not limited to, students]~~

(A) a student at South Texas Independent School District or ~~[and]~~ Windham School District ; ~~[]~~

- (B) ~~(A)~~ a student who is one of a group of students from one or more ~~than one~~ school districts ~~district~~ served in a single location in another school district when a FAPE ~~free appropriate public education~~ is not available in the respective sending district;
- (C) ~~(B)~~ a student in a community setting, facility, or environment operated by a school district ~~(not operated by a school district)~~ that prepares the student for postsecondary education/training, integrated employment, and/or independent living in coordination with the student's individual transition goals and objectives; ~~including~~
- (D) a student in a community setting or environment not operated by a school district that prepares the student for postsecondary education/training, integrated employment, and/or independent living in coordination with the student's individual transition goals, with regularly scheduled instruction or direct involvement provided by school district personnel; ~~or~~
- (E) a student in a facility not operated by a school district ~~(other than a nonpublic day school)~~ with instruction provided by school district personnel; or
- (F) ~~(C)~~ a student in a self-contained program at a separate campus operated by the school district that provides only special education and related services.
- (8) Nonpublic day school. This instructional arrangement/setting is for providing special education and related services to students through a contractual agreement with a nonpublic school when the school district is unable to provide a FAPE for the student. This instructional arrangement/setting includes the providers listed in §89.1094 of this title (relating to Contracting for Nonpublic or Non-District Operated Day Placements for the Provision of FAPE) ~~for special education~~.
- (9) Vocational adjustment class ~~class/program~~. Although referred to as a class, this ~~This~~ instructional arrangement/setting is a support program for providing special education and related services to a student who is placed on a job (paid or unpaid unless otherwise prohibited by law) with regularly scheduled direct involvement by special education personnel in the implementation of the student's IEP. This instructional arrangement/setting shall be used in conjunction with the student's transition plan, as documented in the student's IEP, and may include special education services received in career and technical education work-based learning programs ~~individual transition goals and only after the school district's career and technical education classes have been considered and determined inappropriate for the student~~.
- (10) Residential care and treatment facility (not school district resident). For purposes of this section, residential care and treatment facility refers to a facility at which a student with a disability currently resides, who was not placed at the facility by the student's ARD committee, and whose parent or guardian does not reside in the district providing educational services to the student. This instructional arrangement/setting is for providing special education ~~instruction~~ and related services to a student on a school district campus who resides in a residential ~~students who reside in~~ care and treatment facility ~~facilities~~ and whose parents do not reside within the boundaries of the school district that is providing educational services to the student ~~students~~. ~~In order to be considered in this arrangement, the services must be provided on a school district campus.~~ If the instruction is provided at the facility, rather than on a school district campus, the instructional arrangement is considered to be the hospital class arrangement/setting rather than this instructional arrangement, or if the student resides at a state-supported living center, the instructional arrangement will be considered the state school arrangement/setting. Students with disabilities who reside in these facilities may be included in the average daily attendance of the district in the same way as all other students receiving special education.
- (11) State school ~~State supported living center~~. This instructional arrangement/setting is for providing special education and related services to a student who resides at a state-supported living center when the services are provided at the state-supported living center location. If services are provided on a local school district campus, the student is considered to be served in the residential care and treatment facility arrangement/setting.

(f) ~~(d)~~ Children from birth through the age of two with visual impairments (VI), who are deaf or hard of hearing (DHH), or who are deaf blind (DB) must be enrolled at the parent's request by a school district when the district becomes aware of a child needing services. The appropriate instructional arrangement for students from birth through the age of two with VI, DHH, or DB ~~[visual impairments or who are deaf or hard of hearing]~~ shall be determined in accordance with the individualized family services plan [IFSP], current attendance guidelines, and the agreement memorandum between TEA ~~[the Texas Education Agency (TEA)]~~ and Texas Health and Human Services Commission Early Childhood Intervention (ECI) Services. However, the following guidelines shall apply.

- (1) A home-based instructional arrangement/setting is used when the child receives services at home. This arrangement/setting would generate the same weight as the homebound instructional arrangement/setting, and average daily attendance (ADA) funding will depend on the number of hours served per week.
- (2) A center-based instructional arrangement/setting is used when the child receives services in a day care center, rehabilitation center, or other school/facility contracted with the Health and Human Services Commission (HHSC) as an ECI provider/program. This arrangement/setting would generate the same weight as the self-contained, severe instructional arrangement/setting, and ADA funding will depend on the number of hours served per week.
- (3) Funding may only be claimed if the district is involved in the provision of the ECI and other support services for the child. Otherwise, the child would be enrolled and indicated as not in membership for purposes of funding. If the district is contracted with HHSC as an ECI provider, funding would be generated under that contract.

(g) ~~(e)~~ For nonpublic day and residential ~~[school]~~ placements, the school district must comply with the requirements under §89.1092 of this title (relating to Contracting for Nonpublic Residential Placements for the Provision of a Free Appropriate Public Education (FAPE)) or §89.1094 of this title, as appropriate ~~[or shared service arrangement shall submit information to TEA indicating the students' identification numbers, initial dates of placement, and the names of the facilities with which the school district or shared service arrangement is contracting. The school district or shared service arrangement shall not count contract students' average daily attendance as eligible. TEA shall determine the number of contract students reported in full-time equivalents and pay state funds to the district according to the formula prescribed in law]~~.

(h) ~~(f)~~ Other program options that may be considered for the delivery of special education and related services to a student may include the following:

- (1) contracts with other school districts; and
- (2) other program options as approved by TEA.

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STATUTORY AUTHORITY. The amendments are proposed under Texas Education Code (TEC), §29.001, which requires the agency to develop and modify as necessary a statewide plan for the delivery of services to children with disabilities that ensures the availability of a free appropriate public education to children between the ages of 3-21; TEC, §29.003, which requires the agency to develop eligibility criteria for students receiving special education services; TEC, §29.005, which establishes criteria for developing a student's individualized education program prior to a student enrolling in a special education program; TEC, §29.008, which establishes contracts for services for residential placement; TEC, §29.010, which requires the agency to develop and implement a monitoring system for school district compliance with federal and state laws regarding special education; TEC, §29.012, which requires the commissioner to develop and implement procedures for compliance with federal requirements relating to transition services for students enrolled in a special education program; TEC, §29.013, which requires the agency to establish procedures and criteria for the distribution of funds to school districts for noneducational community-based support services to certain students with disabilities to ensure they receive a free appropriate education in the least restrictive environment; TEC, §29.014, which establishes criteria for school districts that provide education solely to students confined to or educated in hospitals; TEC, §30.002, which requires the agency to develop and administer a statewide plan for the education of children with visual impairments; TEC, §30.003, which establishes requirements for support of students enrolled in Texas School for the Blind and Visually Impaired or Texas School for the Deaf; TEC, §30.005, which establishes a memorandum of understanding between the Texas Education Agency and the Texas School for the Blind and Visually Impaired; TEC, §30.021, which establishes a school for the blind and visually impaired in Texas; TEC, §30.051, which establishes the purpose for Texas School for the Deaf; TEC, §30.057, which establishes admission criteria for eligible students with disabilities to the Texas School for the Deaf; TEC, §30.083, which requires the development of a statewide plan for educational services for students who are deaf or hard of hearing; TEC, §30.087, which establishes criteria for funding the cost of educating students who are deaf or hard of hearing; TEC, §39A.001, which establishes grounds for commissioner action; TEC, §39A.002, which establishes actions that the commissioner of education is authorized to take if a school district is subject to action under §39A.001; TEC, §48.102, which establishes criteria for school districts to receive an annual allotment for students in a special education program; 34 Code of Federal Regulations (CFR), §300.8, which defines terms regarding a child with a disability; 34 CFR, §300.101, which defines the requirement for all children residing in the state between ages of 3-21 to have a free appropriate public education available; 34 CFR, §300.111, which defines the requirement of the state to have policies and procedures in place regarding child find; 34 CFR, §300.114, which defines least restrictive environment requirements; 34 CFR §300.115, which establishes criteria for a continuum of alternative placements; 34 CFR §300.116, which establishes criteria for determining the educational placement of a child with a disability; 34 CFR, §300.121, which establishes the requirement for a state to have procedural safeguards; 34 CFR, §300.124, which establishes the requirement of the state to have policies and procedures in place regarding the transfer of children from the Part C program to the preschool program; 34 CFR, §300.129, which establishes criteria for the state responsibility regarding children in private schools; 34 CFR, §300.147, which establishes the criteria for the state education agency when implementing the responsibilities each must ensure for a child with a disability who is placed in or referred to a private school or facility by a public agency; 34 CFR, §300.149, which establishes the state education agency's responsibility for general supervision; 34 CFR, §300.201, which establishes the requirement for local education agencies to have policies, procedures, and programs that are consistent with the state policies and procedures; 34 CFR, §300.500, which establishes the responsibility of a state education agency and other public agencies to ensure the establishment, maintenance, and implementation of procedural safeguards; and 34 CFR, §300.600, which establishes requirements for state monitoring and enforcement.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code, §§29.001, 29.003, 29.005, 29.008, 29.010, 29.012, 29.013, 29.014, 30.002, 30.003, 30.005, 30.021, 30.051, 30.057, 30.083, 30.087, 39A.001, 39A.002, and 48.102, and 34 Code of Federal Regulations, §§300.8, 300.101, 300.111, 300.114, 300.115, 300.116, 300.121, 300.124, 300.129, 300.147, 300.149, 300.201, 300.500, and 300.600.

<rule>

§89.1075. General Program Requirements and Local District Procedures.

- (a) Each school district must maintain an eligibility folder for each student receiving special education and related services, in addition to the student's cumulative record. The eligibility folder must include, but will

~~[need]~~ not be limited to ~~2~~ ~~[2]~~ copies of referral data; documentation of notices and consents; evaluation reports and supporting data; admission, review, and dismissal (ARD) committee reports; and the student's individualized education programs (IEPs) and supporting data .

- (b) ~~Each school district must develop policies, procedures, programs, and practices that are consistent with the state's established policies, procedures, programs, and services to implement the Individuals with Disabilities Education Act.~~
- (c) ~~(b)~~ For school districts providing special education services to students with visual impairments, there must be written procedures as required in ~~the~~ Texas Education Code (TEC), §30.002(c)(10).
- (d) ~~(e)~~ Each school district must ensure that each teacher who provides instruction to a student with disabilities:
- (1) has access to relevant sections of the student's current IEP;
 - (2) is informed of the teacher's specific responsibilities related to implementation of the IEP, such as goals and objectives, and of needed accommodations, modifications, and supports for the student; and
 - (3) has an opportunity to request assistance regarding implementation of the student's IEP.
- (e) ~~(d)~~ Each school district must develop a process to be used by a teacher who instructs a student with a disability in a general education ~~regular~~ classroom setting:
- (1) to request a review of the student's IEP;
 - (2) to provide input in the development of the student's IEP;
 - (3) that provides for a timely district response to the teacher's request; and
 - (4) that provides for notification to the student's parent or legal guardian of that response.
- (f) ~~(e)~~ Students with disabilities must have available an instructional day commensurate with that of students without disabilities. The ARD committee must determine the appropriate instructional setting and length of day for each student, and these must be specified in the student's IEP.
- (g) ~~(f)~~ School districts that contract for services from nonpublic ~~non-public~~ day schools or residential placements must do so in accordance with 34 Code of Federal Regulations (CFR) , §300.147, and §89.1092 and §89.1094 of this title (relating to Contracting for Nonpublic Residential Placements for the Provision of a Free Appropriate Public Education (FAPE) and Contracting for Nonpublic or Non-District Operated Day Placements for the Provision of a Free Appropriate Public Education (FAPE)) ~~[Students Receiving Special Education and Related Services in an Off-Campus Program]~~ .
- (h) ~~Whenever a school district proposes or refuses to initiate or change the identification, evaluation, or educational placement of a student or the provision of a free appropriate public education to the student, the school district must provide prior written notice as required in 34 CFR, §300.503, including providing the notice in the parent's native language or other mode of communication. This notice must be provided to the parent at least five school days before the school district proposes or refuses the action unless the parent agrees to a shorter timeframe.~~
- (i) ~~The transition and employment designee required of each school district or shared services arrangement by TEC, §29.011, must complete the required training as developed by the commissioner of education and provide information about transition requirements and coordination among parents, students, and appropriate state agencies to ensure that school staff can communicate and collaborate effectively.~~

§89.1076. Interventions and Sanctions.

The Texas Education Agency (TEA) must establish and implement a system of interventions and sanctions ~~[2]~~ in accordance with the Individuals with Disabilities Education Act, 20 United States Code, §§1400 et seq. ; ~~[2]~~ Texas Education Code (TEC), §29.010 ; ~~[2 and]~~ TEC, Chapter 39 ; and TEC, Chapter 39A , as necessary to ensure program effectiveness and compliance with federal and state requirements regarding the implementation of special education and related services. ~~[In accordance with TEC, §39.102, the]~~ TEA

may combine any intervention and sanction. The system of interventions and sanctions will include, but not be limited to, the following:

- (1) onsite ~~on-site~~ review for failure to meet program or compliance requirements;
- (2) required program or compliance audits ~~[fiscal audit of specific programs and/or of the district]~~, paid for by the district;
- (3) required submission of corrective actions, including , but not limited to, compensatory services, paid for by the district;
- (4) required technical assistance and support, paid for by the district;
- (5) public release of program or compliance review or audit findings;
- (6) special investigation and/or follow-up verification visits;
- (7) required public hearing conducted by the local school board of trustees;
- (8) assignment of a ~~[special purpose]~~ monitor, conservator, or management team, as these terms are defined in TEC, Chapter 39A, paid for by the district;
- (9) hearing before the commissioner of education or designee;
- (10) placing specific conditions on grant funds, reduction in payment , required redirection of funds, or withholding of funds;
- (11) lowering of the special education monitoring/compliance status and/or the accreditation rating of the district; and/or
- (12) other authorized interventions and sanctions as determined by the commissioner.

§89.1085. Referral for the Texas School for the Blind and Visually Impaired and the Texas School for the Deaf Services.

- (a) A student's admission, review, and dismissal (ARD) committee may place the student at the Texas School for the Blind and Visually Impaired (TSBVI) or the Texas School for the Deaf (TSD) in accordance with the provisions of 34 Code of Federal Regulations (CFR), Part 300 ~~;~~ ^[2] the Texas Education Code (TEC), including, specifically, §§30.021, 30.051, and 30.057 ~~;~~ ^[2] and the applicable rules of this subchapter.
- (b) In the event that a student is placed by his or her ARD committee at either the TSBVI or the TSD, the student's "resident school district," as defined in subsection (e) of this section, shall be responsible for assuring that a free appropriate public education (FAPE) is provided to the student at the TSBVI or the TSD, as applicable, in accordance with the Individuals with Disabilities Education Act (IDEA), 20 United States Code (USC), §§1400 et seq. ~~;~~ ^[2] 34 CFR, Part 300 ~~;~~ ^[2] state statutes ~~;~~ ^[2] and rules of the State Board of Education (SBOE) , the State Board for Educator Certification (SBEC), and the commissioner of education. If representatives of the resident school district and representatives of the TSBVI or the TSD disagree, as members of a student's ARD committee, with respect to a recommendation by one or more members of the student's ARD committee that the student be evaluated for placement, initially placed, or continued to be placed at the TSBVI or TSD, as applicable, the representatives of the resident school district and the TSBVI or TSD, as applicable, may seek resolution through the mediation procedures adopted by the Texas Education Agency or through any due process hearing to which the resident school district or the TSBVI or the TSD are entitled under the IDEA, 20 USC, §§1400, et seq.
- (c) When a student's ARD committee places the student at the TSBVI or the TSD, the student's resident school district shall comply with the following requirements.
 - (1) For each student, the resident school district shall list those services in the student's individualized education program (IEP) which the TSBVI or the TSD can appropriately provide.
 - (2) The district may make an onsite ~~on-site~~ visit to verify that the TSBVI or the TSD can and will offer the services listed in the individual student's IEP and to ensure that the school offers an appropriate educational program for the student.

- (3) For each student, the resident school district shall include in the student's IEP the criteria and estimated ~~timelines~~ [time-lines] for returning the student to the resident school district.
- (d) In addition to the provisions of subsections (a)-(c) of this section, and as provided in TEC, §30.057, the TSD shall provide services in accordance with TEC, §30.051, to any eligible student with a disability for whom the TSD is an appropriate placement if the student has been referred for admission by the student's parent or legal guardian, a person with legal authority to act in place of the parent or legal guardian, or the student, if the student is age 18 or older, at any time during the school year if the referring person chooses the TSD as the appropriate placement for the student rather than placement in the student's resident school district or regional program determined by the student's ARD committee. For students placed at the TSD pursuant to this subsection, the TSD shall be responsible for assuring that a FAPE is provided to the student at the TSD, in accordance with IDEA, 20 USC, §§1400, et seq. ; [x] 34 CFR, Part 300 ; [x] state statutes ; [z] and rules of the SBOE , the SBEC, and the commissioner [of education] .
- (e) For purposes of this section and §89.1090 of this title (relating to Transportation of Students Placed in [a Residential Setting, Including] the Texas School for the Blind and Visually Impaired and the Texas School for the Deaf), the "resident school district" is the school district in which the student would be enrolled under TEC, §25.001, if the student were not placed at the TSBVI or the TSD. If the student is enrolled in an open-enrollment charter school at the time of placement in the TSBVI or TSD, then the open-enrollment charter school is considered the resident school district for purposes of this section and §89.1090 of this title, since the student's IEP will include the criteria and estimated timelines for returning the student to that school.

§89.1090. Transportation of Students Placed in [a Residential Setting, Including] the Texas School for the Blind and Visually Impaired and the Texas School for the Deaf.

- (a) For each student placed [in a residential setting] by the student's admission, review, and dismissal (ARD) committee [, including those students placed] in the Texas School for the Blind and Visually Impaired and the Texas School for the Deaf that includes placement at the residential campus , the resident school district , as defined in §89.1085 of this title (relating to Referral for the Texas School for the Blind and Visually Impaired and the Texas School for the Deaf Services), shall be responsible for transportation from the campus as well as the return to campus [at the beginning and end of the term and for regularly scheduled school holidays] when all students are expected to leave the residential campus. This includes weekends, holiday breaks, and beginning and end of school terms, when all students are expected to leave the campus because the school will not be providing services.
- (b) The resident school district is not responsible for transportation costs for students placed in these [residential] settings by their parents.
- (c) Transportation costs shall not exceed state approved per diem and mileage rates unless excess costs can be justified and documented. Transportation shall be arranged by the school using the most cost efficient means.
- (d) When it is necessary for the safety of the student, as determined by the ARD committee and as documented in the student's individualized education program , for an adult designated by the ARD committee to accompany the student, round-trip transportation for that adult shall also be provided.
- (e) The resident school district and the school [residential facility] shall coordinate to ensure that students are transported safely, including the periods of departure and arrival.

§89.1092. Contracting for Nonpublic Residential [Educational] Placements for the Provision of a Free Appropriate Public Education (FAPE) [Students with Disabilities] .

- (a) Definitions. The following words and terms, when used in this section, shall have the following meanings unless the context clearly indicates otherwise.
- (1) School district--The definition of a school district includes independent school districts established under Texas Education Code (TEC), Chapter 11, Subchapters A-F, and open-enrollment charter schools established under TEC, Chapter 12, Subchapter D.

- (2) Nonpublic residential program--A nonpublic residential program includes the provision of special education and related services to one or more Texas public school students by someone other than school district personnel at a facility not operated by a school district. A student placed in this program has been determined by his or her admission, review, and dismissal (ARD) committee to require a residential placement in order to facilitate the student's attainment of reasonable educational progress and to provide the student a free appropriate public education (FAPE). It is not a placement intended primarily for the provision of medical care and treatment.
- (3) Nonpublic residential program provider--A nonpublic residential program provider is a public or private entity with one or more facilities that contracts with a school district for the provision of some or all of a student's special education and related services when the school district is unable to provide those services and maintains current and valid licensure by the Texas Department of Family and Protective Services, the Texas Health and Human Services Commission, or another appropriate state agency. A provider that a school district contracts with only for the provision of related services is not subject to the requirements of this section.
- (b) ~~(a)~~ Nonpublic residential program requirements [Residential placement]. A school district may contract with a nonpublic [for] residential program provider [placement of a student] when the student's ARD [admission, review, and dismissal (ARD)] committee determines that a residential placement is necessary in order for the student to receive a FAPE in accordance with the requirements of this section [free appropriate public education (FAPE)].
- (1) Before a student's ARD committee places a student with a disability in, or refers a student to, a nonpublic residential program, the ARD committee shall initiate and conduct a meeting to develop an individualized education program (IEP) for the student in accordance with 34 Code of Federal Regulations (CFR), §§300.320-300.325, state statutes, and commissioner of education rules in this chapter'.
- (2) Before a student's ARD committee places a student with a disability in, or refers a student with a disability to, a nonpublic residential program, the district shall 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.
- (3) The appropriateness of the placement and the facility shall be documented in the IEP annually. The student's ARD committee may only recommend a nonpublic residential program if the committee determines that the nature and severity of the student's disability and special education needs are such that the student cannot be satisfactorily educated in the school district.
- (A) The student's IEP must list which services the school district is unable to provide and which services the nonpublic residential program will provide.
- (B) At the time the ARD committee determines placement, the ARD committee shall establish, in writing, criteria and a projected date for the student's return to the school district and document this information in the IEP.
- (C) The school district shall make a minimum of two onsite, in-person visits annually, one announced and one unannounced, and more often if directed by the Texas Education Agency (TEA), to:
- (i) verify that the program provider can and will provide the services listed in the student's IEP that the provider has agreed to provide to the student;
- (ii) obtain written verification that the facility meets minimum standards for health and safety and holds all applicable local and state accreditation and permit requirements;
- (iii) 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;
- (iv) verify that the program provider, in conjunction with the school district, 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, including when the student is subject to emergency behavioral interventions or disciplinary actions; and

(v) verify that the educational program provided at the facility is appropriate and the placement is the least restrictive environment for the student.

~~[(1) A school district may contract for a residential placement of a student only with either public or private residential facilities that maintain current and valid licensure by the Texas Department of Aging and Disability Services, Texas Department of Family and Protective Services, or Department of State Health Services for the particular disabling condition and age of the student. A school district may contract for an out-of-state residential placement in accordance with the provisions of subsection (d)(3) of this section.]~~

~~[(2) Subject to subsections (c) and (d) of this section, the district may contract with a residential facility to provide some or all of the special education services listed in the contracted student's individualized education program (IEP). If the facility provides any educational services listed in the student's IEP, the facility's education program must be approved by the commissioner of education in accordance with subsection (d) of this section.]~~

~~[(3) A school district that intends to contract for residential placement of a student with a residential facility under this section shall notify the Texas Education Agency (TEA) of its intent to contract for the residential placement through the residential application process described in subsection (e) of this section.]~~

~~[(4) The school district has the following responsibilities when making a residential placement:]~~

~~[(A) Before the school district places a student with a disability in, or refers a student to, a residential facility, the district shall initiate and conduct a meeting of the student's ARD committee to develop an IEP for the student in accordance with 34 Code of Federal Regulations (CFR), §§300.320-300.325, state statutes, and commissioner rules.]~~

~~[(B) For each student, the services that the school district is unable to provide and that the facility will provide shall be listed in the student's IEP.]~~

~~[(C) For each student, the ARD committee shall establish, in writing, criteria and estimated timelines for the student's return to the school district.]~~

~~[(D) The appropriateness of the facility for each student residentially placed shall be documented in the IEP. General screening by a regional education service center is not sufficient to meet the requirements of this subsection.]~~

~~[(E) The school district shall make one announced initial visit and two subsequent onsite visits annually, one announced and one unannounced, to verify that the residential facility can and will provide the services listed in the student's IEP that the facility has agreed to provide to the student.]~~

~~[(F) For each student placed in a residential facility (both initial and continuing placements), the school district shall verify, during the initial residential placement ARD committee meeting and each subsequent annual ARD committee meeting, that:]~~

~~[(i) the facility meets minimum standards for health and safety;]~~

~~[(ii) residential placement is needed and is documented in the IEP; and]~~

~~[(iii) the educational program provided at the residential facility is appropriate and the placement is the least restrictive environment for the student.]~~

~~[(G)]~~ (4) The placement of more than one student in the same ~~[residential]~~ facility may be considered in the same onsite visit to ~~the [a]~~ facility. However ~~[:however]~~, the IEP of each student must be individually reviewed and a determination of appropriateness of placement and service must be made for each student.

(5) ~~(4)~~ When a student who is ~~residentially~~ placed by a school district in a nonpublic residential program changes his or her residence to another Texas school district and the student continues in the contracted placement, the school district that negotiated the contract shall be responsible for the residential contract for the remainder of the school year.

(c) ~~(b)~~ Notification. Within 30 calendar days from an ARD committee's decision to place or continue the placement of a student in a nonpublic residential ~~education~~ program, a school district must electronically submit to TEA ~~the Texas Education Agency (TEA)~~ notice of, and information regarding, the placement in accordance with submission procedures specified by TEA.

(1) If the nonpublic residential ~~education~~ program provider is on the commissioner's list of approved providers ~~residential education programs~~, TEA will review the student's IEP and placement as required by 34 CFR, §300.120, and, in the case of a placement in or referral to a private school or facility, 34 CFR, §300.146. After review, TEA will notify the school district whether federal or state funds for the ~~residential education~~ 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.

(2) If the nonpublic residential ~~education~~ program provider is not on the commissioner's list of approved providers ~~residential education programs~~, TEA will begin the approval procedures described in subsection (d) ~~(d)(1)~~ of this section. School districts must ensure there is no delay in implementing a child's IEP in accordance with 34 CFR, §300.103(c).

(3) If a nonpublic residential ~~education~~ program placement is ordered by a special education hearing officer or court of competent jurisdiction, the school district must notify TEA of the order within 30 calendar days. The ~~residential education~~ program provider serving the student is not required to go through the approval procedures described in subsection (d) ~~(d)(1)~~ of this section for the ordered placement. If, however, the school district or other school districts intend to place other students in the ~~residential education~~ program, the ~~residential education~~ program provider will be required to go through the approval procedures to be included on the commissioner's list of approved providers ~~residential programs~~.

~~(d) Approval of a nonpublic residential program. Nonpublic residential program providers must have their educational programs approved for contracting purposes by the commissioner. 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. Reapproval can be for one, two, or three years, at the discretion of TEA.~~

~~(1) For a program provider to be approved or reapproved, the school district must electronically submit to TEA notice of, and information regarding, the placement in accordance with submission procedures specified by TEA. TEA shall begin approval procedures and conduct an onsite visit to the provider's facility within 30 calendar days after TEA has been notified by the school district and has received the required submissions as outlined by TEA. Initial approval of the provider shall be for one calendar year.~~

~~(2) 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.~~

~~(3) TEA may place conditions on the provider to ensure the provision of a FAPE for students who have been placed in a nonpublic residential program during the provider's approval period or during a reapproval process.~~

~~(4) If TEA does not approve, does not reapprove, or withdraws an approval from a program provider, a school district must take steps to remove any students currently placed at the provider's facility, or cancel a student's planned placement, as expeditiously as possible.~~

~~(5) TEA may conduct announced or unannounced onsite visits at a program provider's facility that is serving one or more Texas public school students in accordance with this section and will monitor the program provider's compliance with the requirements of this section.~~

~~(e)~~ ~~(e)~~ Criteria for approval [Application approval process] . Requests for approval of state and federal funding for nonpublic residential program placements [residentially placed students] shall be negotiated on an individual student basis through a residential application submitted by the school district to TEA.

- (1) A residential application may be submitted for educational purposes only. The residential application shall not be approved if the application indicates that the:
 - (A) placement is due primarily to the student's medical problems;
 - (B) placement is due primarily to problems in the student's home;
 - (C) district does not have a plan, including criteria and a projected date [timelines and criteria] , for the student's return to the local school program;
 - (D) district did not attempt to implement lesser restrictive placements prior to residential placement (except in emergency situations as documented by the student's ARD committee);
 - (E) placement is not cost effective when compared with other alternative placements; or
 - (F) residential facility provides unfundable or unapprovable services.
- (2) The [residential] placement, if approved by TEA, shall be funded as follows:
 - (A) the education cost of nonpublic residential program contracts shall be funded with state funds on the same basis as nonpublic day program [school] contract costs according to TEC, §48.102 [Texas Education Code, §42.151] ;
 - (B) related services and residential costs for nonpublic residential program contracts [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 base planning amount [tentative entitlement] (or an equivalent amount of state and/or local funds) for related services and residential costs. 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 residential funds to pay the balance of the nonpublic residential contract placement(s) costs; and
 - (C) funds generated by the formula for residential costs described in subparagraph (B) of this paragraph shall not exceed the daily rate recommended by the Texas Department of Family and Protective Services for the general residential operation intense service [specifie] level of care [in which the student is placed] .
- ~~(3) Contracts between school districts and approved nonpublic residential program providers shall not begin prior to August 1 of the contracted program year and must not extend past July 31.~~
- ~~(4) Amendments to a contract must be electronically submitted to TEA in accordance with submission procedures specified by TEA no later than 30 calendar days from the change in placement or services.~~

~~[(d) Approval of the education program for facilities that provide educational services. Residential facilities that provide educational services must have their educational programs approved for contracting purposes by the commissioner.]~~

- ~~[(1) If the education program of a residential facility that is not approved by the commissioner is being considered for a residential placement by a local school district, the school district should notify TEA in writing of its intent to place a student at the facility. TEA shall begin approval procedures and conduct an onsite visit to the facility within 30 calendar days after TEA has been notified by the local school district. Approval of the education program of a residential facility may be for one, two, or three years.]~~
- ~~[(2) The commissioner shall renew approvals and issue new approvals only for those facilities that have contract students already placed or that have a pending request for residential placement from a school district. This approval does not apply to residential facilities that only provide related~~

~~services or residential facilities in which the local accredited school district where the facility is located provides the educational program.]~~

- (f) ~~(3)~~ Contract for out-of-state nonpublic residential programs. School districts that contract for out-of-state nonpublic residential programs [placement] shall do so in accordance with the rules ~~[for in-state residential placement]~~ in this section, except that the program provider [facility] must be approved by the appropriate agency in the state in which the facility is located rather than by TEA.

§89.1094. Contracting for Nonpublic or Non-District Operated Day Placements for the Provision of a Free Appropriate Public Education (FAPE) [Students Receiving Special Education and Related Services in an Off-Campus Program] .

- (a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.
- (1) Nonpublic or non-district operated day program--A nonpublic or non-district operated day program includes the provision of special education and related services to one or more Texas public school students during school hours by someone other than school district personnel in a facility not operated by a school district. A student placed in this program has been determined by his or her admission, review, and dismissal (ARD) committee to require a day placement in order to facilitate the student's attainment of reasonable educational progress and to provide the student a free appropriate public education (FAPE).
- (2) Nonpublic or non-district operated day program provider--A nonpublic or non-district operated day program provider is an entity with one or more facilities that contracts with a school district for the provision of some or all of a student's special education and related services when the school district is unable to provide these services. These providers include:
- (A) a county system operating under application of former law as provided in Texas Education Code (TEC), §11.301;
- (B) a regional education service center established under TEC, Chapter 8;
- (C) a nonpublic day school; or
- (D) 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 not operated by a school district.
- (3) ~~(1)~~ School district--The definition of a school district includes independent school districts established under TEC [Texas Education Code (TEC)] , Chapter 11, Subchapters A-F, and open-enrollment charter schools established under TEC, Chapter 12, Subchapter D.
- ~~(2) Off campus program An off campus program includes special education and related services provided during school hours by someone other than school district personnel in a facility other than a school district campus.]~~
- ~~(3) Off campus program provider An off campus program provider is an entity that provides the services identified in subsection (a)(2) of this section and includes:~~
- ~~(A) a county system operating under application of former law as provided in TEC, §11.301;]~~
- ~~(B) a regional education service center established under TEC, Chapter 8;]~~
- ~~(C) a nonpublic day school; or]~~
- ~~(D) 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.]~~
- (b) Nonpublic or non-district operated day program requirements [Off-campus program placement] . A school district may contract with a nonpublic or non-district operated day [an off-campus] program provider [to

~~provide some or all of the special education and related services to a student~~ in accordance with the requirements in this section.

~~(1) — Before the school district places a student with a disability in, or refers a student to, an off-campus program, the district shall initiate and conduct an onsite review to ensure that the off-campus program is appropriate for meeting the student's educational needs.]~~

(1) ~~(2)~~ Before a student's ARD committee ~~[the school district]~~ places a student with a disability in, or refers a student to, a nonpublic or non-district operated day ~~[an off-campus]~~ program, the ARD committee ~~[district]~~ shall initiate and conduct a meeting ~~[of the student's admission, review, and dismissal (ARD) committee]~~ to develop an individualized education program (IEP) for the student in accordance with 34 Code of Federal Regulations (CFR), §§300.320-300.325, state statutes, and commissioner of education rules in this chapter ~~[Chapter 89 of this title (relating to Commissioner's Rules Concerning Special Education Services)]~~ .

(2) Before a student's ARD committee places a student with a disability in, or refers a student to, a nonpublic or non-district operated day program, the district shall initiate and conduct an onsite, in-person review of the program provider's facility to ensure that the program is appropriate for meeting the student's educational needs.

(3) The appropriateness of the placement and the facility ~~[off-campus program for each student placed]~~ shall be documented in the IEP annually. The student's ARD committee may only recommend a nonpublic or non-district operated day ~~[an off-campus]~~ program ~~[placement for a student]~~ if the committee determines that the nature and severity of the student's disability and special education needs are such that the student cannot be satisfactorily educated in the school district.

(A) The student's IEP must list which services the school district is unable to provide and which services the ~~program~~ ~~[facility]~~ will provide.

(B) At the time the ARD committee determines placement, the ARD committee shall establish, in writing, criteria and a projected date ~~[estimated timelines]~~ for the student's return to the school ~~district~~ and document this information in the IEP.

(C) The school district shall make a minimum of two onsite, in-person ~~[on-site]~~ visits annually, one announced and one unannounced , and more often if directed by TEA , to:

(i) verify that the ~~program provider~~ ~~[off-campus program]~~ can, and will, provide the services listed in the student's IEP that the ~~provider~~ ~~[off-campus program]~~ has agreed to provide to the student;

(ii) obtain written verification that the facility meets minimum standards for health and safety and holds all applicable local and state accreditation and permit requirements; ~~[and]~~

~~(iii) 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;~~

~~(iv) verify that the program provider, in conjunction with the school district, 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, including when the student is subject to emergency behavioral interventions or disciplinary actions; and~~

~~(v) [(iii)] verify that the educational program provided at the [off-campus program] facility is the least restrictive environment for the student.~~

(4) The placement of more than one student in the same ~~[off-campus program]~~ facility may be considered in the same onsite ~~[on-site]~~ visit to ~~the~~ ~~[a]~~ facility. However, the IEP of each student must be individually reviewed, and a determination of appropriateness of placement and services must be made for each student.

- (c) Notification. Within 30 calendar days from an ARD committee's decision to place or continue the placement of a student in a nonpublic or non-district operated day [an off-campus] program, a school district must electronically submit to the Texas Education Agency (TEA) notice of, and information regarding, the placement in accordance with submission procedures specified by [the] TEA.
- (1) If the nonpublic or non-district operated day [off-campus] program provider is on the commissioner's list of approved providers, [off-campus programs, the] TEA will review the student's IEP and placement as required by 34 CFR, §300.120, and, in the case of a placement in or referral to a private school or facility, 34 CFR, §300.146. After review, [the] TEA will notify the school district whether federal or state funds for the [off-campus] program placement are approved. If [the] TEA does not approve the use of funds, it will notify the school district of the basis for the non-approval.
 - (2) If the nonpublic or non-district day [off-campus] program provider is not on the commissioner's list of approved providers, [off-campus programs, the] TEA will begin the approval procedures described in subsection (d) of this section. School districts must ensure there is no delay in implementing a child's IEP in accordance with 34 CFR, §300.103(c).
 - (3) If a nonpublic or non-district operated day [an off-campus] program placement is ordered by a special education hearing officer or court of competent jurisdiction, the school district must notify [the] TEA of the order within 30 calendar days. The [off-campus] program provider serving the student is not required to go through the approval procedures described in subsection (d) of this section for the ordered placement. If, however, the school district or other school districts intend to place other students in the [off-campus] program, the [off-campus] program provider will be required to go through the approval procedures to be included on the commissioner's list of approved providers [off-campus programs] .
- (d) Approval of the nonpublic or non-district operated day [off-campus] program. Nonpublic or non-district operated day program providers [Off-campus programs] must have their educational programs approved for contracting purposes by the commissioner. 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. Reapproval can be for one, two, or three years, at the discretion of TEA.
- (1) For a program provider to be approved or reapproved , the school district must electronically submit to [the] TEA notice of, and information regarding, the placement in accordance with submission procedures specified by [the] TEA. [The] TEA shall begin approval procedures and conduct an onsite [on-site] visit to the provider's facility within 30 calendar days after [the] TEA has been notified by the school district and has received the required submissions as outlined by TEA . Initial approval of the provider [off-campus program] shall be for one calendar year.
 - (2) The [off-campus] 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.
 - (3) TEA may place conditions on the provider to ensure the provision of a FAPE for students who have been placed in a nonpublic or non-district operated day program during the provider's approval period or during a reapproval process.
 - (4) If TEA does not approve, does not reapprove, or withdraws an approval from a program provider, a school district must take steps to remove any students currently placed at the provider's facility, or cancel a student's planned placement, as expeditiously as possible.
 - (5) TEA may conduct announced or unannounced onsite visits at a program provider's facility that is serving one or more Texas public school students in accordance with this section and will monitor the program provider's compliance with the requirements of this section.
 - ~~(3) — The commissioner shall renew approvals and issue new approvals only for those facilities 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. This approval does not apply to facilities that only provide related services. Nor does it apply to facilities when the school district, within which~~

~~the facility is located, provides the educational program. Re approval of the off campus program may be for one, two, or three years at the TEA's discretion.~~

- (e) Funding procedures and other requirements. The cost of nonpublic or non-district operated day ~~[off-campus]~~ program placements will be funded according to TEC, §48.102 (Special Education) ; ~~[-and]~~ §89.1005(e) of this title (relating to Instructional Arrangements and Settings) ; and §129.1025 of this title (relating to Adoption by Reference: Student Attendance Accounting Handbook).
- (1) Contracts between school districts and approved nonpublic or non-district operated day program providers shall not begin prior to August 1 of the contracted program year and must not extend past July 31 ~~[off-campus programs must not exceed a school district's fiscal year and shall not begin prior to July 1 of the contracted fiscal year]~~ .
 - (2) Amendments to a contract must be electronically submitted to ~~[the]~~ TEA in accordance with submission procedures specified by ~~[the]~~ TEA no later than 30 calendar days from the change in placement or services ~~[within the school district's fiscal year]~~ .
 - (3) If a student who is placed in a nonpublic or non-district operated day ~~[an off-campus]~~ program by a school district changes his or her residence to another Texas school district during the school year, the school district must notify ~~[the]~~ TEA within 10 calendar days of the date on which the school district ceased contracting with the ~~[off-campus]~~ program provider for the student's placement. The student's new school district must meet the requirements of 34 CFR, §300.323(e), by providing comparable services to those described in the student's IEP from the previous school district until the new school district either adopts the student's IEP from the previous school district or develops, adopts, and implements a new IEP. The new school district must comply with all procedures described in this section for continued or new ~~[off-campus]~~ program placement.