
Note: The policies in the EHBA series are statements of principles governing special education programs for Texas school districts. In no way are these policies intended to cover the entire scope and detail involved in administering any special education program.

Nondiscrimination

No qualified student with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any district service, program, or activity. *42 U.S.C. 12132; 29 U.S.C. 794(a); 34 C.F.R. 104.4(a)* [See also FB]

**Free Appropriate
Public Education
(FAPE)**

Eligible students with disabilities shall enjoy the right to a free appropriate public education, which may include instruction in the regular classroom, instruction through special teaching, or instruction through approved contracts. Instruction shall be supplemented by the provision of related services when appropriate. *Education Code 29.003(a)*

“Free appropriate public education” (FAPE) means special education and related services that:

1. Have been provided at public expense, under public supervision and direction, and without charge;
2. Meet standards set out by the Texas Education Agency (TEA);
3. Include an appropriate preschool, elementary school, or secondary school education; and
4. Are provided in conformity with the student’s individualized education program (IEP).

20 U.S.C. 1401(9); 34 C.F.R. 300.13, .17, .36

**Least Restrictive
Environment**

A district shall ensure that, to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, shall be educated with children who are not disabled. Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment shall occur only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. *20 U.S.C. 1412(a)(5); 34 C.F.R. 300.114(a)(2)*

Discipline

All disciplinary actions regarding students with disabilities shall be in accordance with federal requirements, Education Code Chapter 37, and 19 Administrative Code 89.1053. *19 TAC 89.1050(k)* [See FOF]

**Instructional
Arrangements and
Settings**

Instructional arrangements/settings shall be based on the individual needs and IEPs of eligible students receiving special education services and shall include the following:

Mainstream

The mainstream instructional arrangement/setting is for providing special education and related services to a student in the 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 regular classroom teacher(s) necessary to enrich the 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 regular classroom teacher(s) regarding the student's progress in regular education classes, staff development, and reduction of ratio of students to instructional staff.

Homebound

The homebound instructional arrangement/setting is for providing special education and related services to students who are served at home or hospital bedside.

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 [see EEH(LOCAL)], 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 19 Administrative Code 1005(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.

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| Hospital Class | The hospital class instructional arrangement/setting is for providing special education instruction in a classroom, a hospital facility, or a residential care and treatment facility not operated by the district. If the students residing in the facility are provided special education services 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. |
| Speech Therapy | The speech therapy instructional arrangement/setting is for providing speech therapy services whether in a regular education classroom or in a setting other than a regular education classroom. 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. |
| Resource Room/Services | The resource room/services instructional arrangement/setting is for providing special education and related services to a student in a setting other than regular education for less than 50 percent of the regular school day. |
| Self-Contained (Mild, Moderate, or Severe) Regular Campus | The self-contained (mild, moderate, or severe) regular campus instructional arrangement/setting is for providing special education and related services to a student who is in a self-contained program for 50 percent or more of the regular school day on a regular school campus. |
| Off-Home Campus | <p>The off-home campus instructional arrangement/setting is for providing special education and related services to the following, including, but not limited to, students at South Texas Independent School District and Windham School District:</p> <ol style="list-style-type: none">1. A student who is one of a group of students from more than one district served in a single location when a free appropriate public education is not available in the respective sending district;2. A student in a community setting or environment (not operated by a school district) that prepares the student for post-secondary education/training, integrated employment, and/or independent living in coordination with the student's individual transition goals and objectives, including a student with regularly scheduled instruction or direct involvement provided by district personnel or a student in a facility not operated by a school district (other than a nonpublic day school) with instruction provided by district personnel; or3. A student in a self-contained program at a separate campus operated by the district that provides only special education and related services. |

SPECIAL PROGRAMS
SPECIAL EDUCATION

EHBA
(LEGAL)

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| Nonpublic Day School | The nonpublic day school instructional arrangement/setting is for providing special education and related services to students through a contractual agreement with a nonpublic school for special education. |
| Vocational Adjustment Class/Program | The vocational adjustment class/program instructional arrangement/setting is 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 individual transition goals and only after the district's career and technical education classes have been considered and determined inappropriate for the student. |
| Residential Care and Treatment Facility (Not District Resident) | The residential care and treatment facility (not district resident) instructional arrangement/setting is for providing special education instruction and related services to students who reside in care and treatment facilities and whose parents do not reside within the boundaries of the district providing educational services to the students. In order to be considered in this arrangement, the services must be provided on a district campus. If the instruction is provided at the facility, rather than on a district campus, the instructional arrangement is considered to be the hospital class arrangement/setting rather than this instructional arrangement. 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. |
| State-Supported Living Center | The state-supported living center 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 district campus, the student is considered to be served in the residential care and treatment facility arrangement/setting. <i>19 TAC 89.63(c), .1005(b)</i> |
| Other Program Options | Other program options that may be considered for the delivery of special education and related services to a student include contracts with other districts and programs approved by TEA. <i>19 TAC 89.63(f), .1005(f)</i> |
| Regular School Day | Subject to 19 Administrative Code 89.1075(e) (General Program Requirements and Local District Procedures) [see EHBAB], for the purpose of determining the student's instructional arrangement/set- |

ting, the regular school day is defined as the period of time determined appropriate by the admission, review, and dismissal (ARD) committee. *19 TAC 89.1005(b)*

**Nonpublic Day
School Placements**

For nonpublic day school placements [see Nonpublic Day School, above], the district 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 district or shared service arrangement is contracting. The 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. *19 TAC 89.1005(e)*

Related Services

"Related services" means transportation, and such developmental, corrective, and other supportive services as may be required to assist a child with a disability to benefit from special education, including the early identification and assessment of disabling conditions in children.

The term includes speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, school nurse services designed to enable a child with a disability to receive FAPE as described in the child's IEP, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services, except that medical services shall be for diagnostic and evaluation purposes only.

The term does not include a medical device that is surgically implanted, the optimization of the device's functioning, or the replacement of such device.

20 U.S.C. 1401(26); 34 C.F.R. 300.34

**Extended School
Year Services**

Extended school year (ESY) services are defined as individualized instructional programs beyond the regular school year for eligible students with disabilities.

A district shall ensure that ESY services are available as necessary to provide a student with a disability with FAPE.

ESY services must be provided only if the ARD committee determines, on an individual basis, that the services are necessary for FAPE. A district may not limit ESY services to particular categories

of disability or unilaterally limit the type, amount, or duration of ESY services.

34 C.F.R. 300.106; 19 TAC 89.1065

Off-Campus Program An off-campus program includes special education and related services provided during school hours in a facility other than a school district campus.

Program Provider An off-campus program provider is an entity that provides the services identified above and includes:

1. A county system operating under application of former law as provided in Education Code 11.301;
2. A regional education service center established under Education Code, Chapter 8;
3. A nonpublic day school; or
4. Any other public or private entity with which a school district enters into a contract under Education Code 11.157(a), for the provision of special education services in a facility other than a district campus operated by a district.

19 TAC 89.1094(a)(2)–(3)

Program Placement A district may contract with 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 19 Administrative Code 89.1094.

Before the district places a student with a disability in, or refers a student to, an off-campus program, the district shall initiate and conduct:

1. An onsite review to ensure that the off-campus program is appropriate for meeting the student's educational needs; and
2. A meeting of the student's ARD committee to develop an IEP for the student in accordance with 34 C.F.R. 300.320–.325, state statutes, and commissioner of education rules in 19 Administrative Code Chapter 89 (Commissioner's Rules Concerning Special Education Services).

The appropriateness of the off-campus program for each student placed shall be documented in the IEP annually. The student's ARD committee may only recommend 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

district. The district must follow the requirements of 19 Administrative Code 89.1094(b)(3)(A)–(C), regarding the review of the placement of the off-campus program for each student.

The placement of more than one student in the same off-campus program facility may be considered in the same on-site visit to 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.

19 TAC 89.1094(b)

Notification and
Review

Within 30 calendar days from an ARD committee's decision to place or continue the placement of a student in an off-campus program, a district must electronically submit to TEA notice of, and information regarding, the placement in accordance with submission procedures specified by TEA.

If the off-campus program is on the commissioner's list of approved off-campus programs, TEA will review the student's IEP and placement as required by 34 C.F.R. 300.120, and, in the case of a placement in or referral to a private school or facility, 34 C.F.R. 300.146. After review, TEA will notify the district whether federal or state funds for the off-campus program placement are approved. If TEA does not approve the use of funds, it will notify the district of the basis for the non-approval.

If the off-campus program is not on the commissioner's list of approved off-campus programs, TEA will begin the approval procedures described below. Districts must ensure there is no delay in implementing a child's IEP in accordance with 34 C.F.R. 300.103(c).

If an off-campus program placement is ordered by a special education hearing officer or court of competent jurisdiction, the district must notify TEA of the order within 30 calendar days. The off-campus program serving the student is not required to go through the approval procedures described in 19 Administrative Code 89.1094 for the ordered placement. If, however, the district or other districts intend to place other students in the off-campus program, the off-campus program will be required to go through the approval procedures to be included on the commissioner's list of approved off-campus programs.

19 TAC 89.1094(c)

Approval

Off-campus programs must have their educational programs approved for contracting purposes by the commissioner in accordance with 19 Administrative Code 89.1094(d).

SPECIAL PROGRAMS
SPECIAL EDUCATION

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Funding Procedures The cost of off-campus program placements will be funded according to Education Code 48.102 and 19 Administrative Code 89.1005(e).

Contracts Contracts between districts and approved off-campus programs must not exceed a district's fiscal year and shall not begin prior to July 1 of the contracted fiscal year.

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 within the school district's fiscal year.

19 TAC 89.1094(e)(1)–(2)

Change of Residence If a student who is placed in an off-campus program by a district changes his or her residence to another Texas district during the school year, the district must notify TEA within ten calendar days of the date on which the district ceased contracting with the off-campus program for the student's placement. The student's new district must meet the requirements of 34 C.F.R. 300.323(e), by providing comparable services to those described in the student's IEP from the previous district until the new district either adopts the student's IEP from the previous district or develops, adopts, and implements a new IEP. The new district must comply with all procedures described in 19 Administrative Code 89.1094 for continued or new off-campus program placement. *19 TAC 89.1094(e)(3)*