



1701 North Congress Ave. • Austin, Texas 78701-1494 • 512 463-9734 • 512 463-9838 FAX • [www.tea.state.tx.us](http://www.tea.state.tx.us)

# **THE NONPUBLIC SCHOOL REVIEW PROCESS**

## **FOR PRIVATE NONPUBLIC SCHOOLS THAT PROVIDE SPECIAL EDUCATION INSTRUCTION**

**Division of Program Monitoring and Interventions**

## Table of Contents

General Overview .....	3
LEA Initial Request for Approval of a Nonpublic School .....	4
Contracting with a Previously Approved Nonpublic School .....	5
Nonpublic School Reapproval Process.....	5
Modifications to Approved Areas of Disability, Locations, and/or Age Ranges .....	7
Financial Assistance for Contract Placements .....	7

## General Overview

The Individuals with Disabilities Act (IDEA) entitles a student with a disability to a free appropriate public education in the least restrictive environment (LRE). When a student has educational needs that cannot be met in a public school setting, that student may be educated in a private school or facility, referred to as a nonpublic school, at public expense. In order for a student to be educated in a nonpublic school, the student's admission, review, and dismissal (ARD) committee must determine that the local education agency (LEA) cannot provide the student with the special education instruction and related services necessary to meet the student's unique needs and must identify a nonpublic school that can provide the student an appropriate educational program.

Under 34 Code of Federal Regulations (CFR) §300.146 and 19 Texas Administrative Code (TAC) §89.61, the Texas Education Agency (TEA or agency) must ensure that students placed in or referred to nonpublic schools by LEAs are provided with special education and related services that meet federal and state special education program requirements. Accordingly, if a nonpublic day or residential school is to provide any special education and related services listed in the student's individualized education program (IEP), the nonpublic school's education program must be approved by the commissioner of education. Furthermore, nonpublic schools that provide special education to students are monitored by the TEA to ensure their compliance with federal and state standards.

The nonpublic school review process consists of procedures established by the TEA's Division Program Monitoring and Interventions. The nonpublic school review process is not required for a private school or facility that provides only related services or whose special education instructional program is provided by an accredited Texas public LEA. When a student is placed in a nonpublic school by an LEA, the LEA remains responsible for ensuring that appropriate educational services are provided to the student.

When placing a student in a nonpublic setting, the LEA has the following responsibilities:

- The LEA must initiate and conduct a meeting of the student's ARD committee to develop an IEP for the student;
- The ARD committee must list in the student's IEP the services that the LEA is unable to provide and the services that the nonpublic school will provide;
- The ARD committee must establish, in writing, criteria and estimated timelines for the student's return to the LEA.
- The ARD committee must document in the student's IEP the appropriateness of the nonpublic school for the student; and
- The LEA must make an initial and annual visit to the nonpublic school to verify that the day and/or residential nonpublic school can, and will, provide the services listed in the student's IEP.

Under 34 CFR §300.325, an LEA must ensure that a representative of the nonpublic school attends the ARD committee meeting. If the representative cannot attend, the LEA must use other means to ensure participation by the nonpublic school, including individual or conference telephone calls.

## LEA Initial Request for Approval of a Nonpublic School

If the LEA intends to contract with a nonpublic school that is not currently approved by the TEA, the LEA must notify the agency in writing of its intent to place a student in the nonpublic school. To begin the initial approval process, the LEA must submit the following documents to the TEA:

- A letter of intent to contract signed by the LEA superintendent;
- A completed *LEA Assurance Checklist for Contracting with a Nonpublic School*; and
- A copy of the student's IEP (that includes the information described above in the **General Overview** section).

The *LEA Assurance Checklist for Approval of a Nonpublic School Placement* may be downloaded the Program Monitoring and Interventions website at: and selecting the **Special Education-Nonpublic Monitoring** link, then selecting the **Guidance and Resources** link.

Upon receipt of the required documentation, TEA staff will review the student's IEP to ensure that it meets federal and state requirements. If the IEP does not meet the requirements, the TEA will not approve the nonpublic school and will notify the LEA and the nonpublic school of the decision. The LEA may request an informal review of the determination.

If TEA's preliminary review of the student's IEP meets federal and state requirements, the TEA will contact the nonpublic school to verify the length of time it has been in operation and confirm that the entity operates its own educational program. In addition, TEA staff will request that the nonpublic school submit a copy of the most current financial statement and submit the Nonpublic School Assurance Checklist for Contracting with LEAs. The nonpublic schools also will be required to provide evidence of appropriate state licenses.

After the preliminary document review, the TEA will schedule an on-site review of the nonpublic school to verify compliance with state and federal requirements. After the TEA on-site review, the TEA will issue the nonpublic school a letter of approval or a letter of findings that identifies corrective actions for each area of identified noncompliance. If the TEA identifies any noncompliance on the part of the LEA, the TEA will issue a letter of findings and require the LEA to develop a corrective action plan to address the noncompliance. When all compliance standards are met, the TEA staff will recommend approval to the Director of Program Monitoring and Interventions. The initial approval period for a nonpublic school is one year.

The nonpublic school's approval is based on the educational program and services that the TEA determines the nonpublic school has the expertise and ability to provide. The nonpublic school is reviewed in terms of the area(s) of disability, and age ranges served, and whether the nonpublic school has appropriate staffing. If at any time the nonpublic school does not have any students placed by an LEA, the nonpublic school will be removed from the approved list.

An LEA may not negotiate and enter into a contract with a nonpublic school to provide educational programs and services prior to the nonpublic school being approved by the TEA. Both the LEA and the nonpublic school must maintain a copy of the contract for the current year. The contract must provide a termination clause that may be exercised by the LEA if the nonpublic school loses its approval status.

## Contracting with a Previously Approved Nonpublic School

An LEA that is considering whether to place a student at a nonpublic school that is already approved by the TEA must convene an ARD committee meeting for the student to develop the IEP to be implemented by the nonpublic school. A representative of the nonpublic school must attend the ARD committee meeting or participate through another means, such as a telephone call or video conferencing.

After the ARD committee meeting, the LEA must submit the following documents to the TEA:

- A letter of intent to contract with the nonpublic school signed by the LEA superintendent;
- A completed *LEA Assurance Checklist for Contracting with a Nonpublic School*; and
- A copy of the student's IEP (that includes the information described above in the **General Overview** section.)

Upon receipt of the required documentation, TEA staff will review the student's IEP to ensure that it meets federal and state requirements. If the IEP does not meet the requirements, the TEA will notify the LEA and the nonpublic school that TEA cannot approve the placement of the student into the nonpublic school. An explanation for the decision will be provided by TEA, and the LEA may reconvene the ARD committee to revise the IEP to meet federal and state requirements. The LEA may resubmit the IEP to the TEA for further review. The LEA also may request an informal review of the determination.

Each year that it places at least one student at the nonpublic school, the LEA is required to conduct an on-site visit to the nonpublic school to ensure that the nonpublic school continues to meet health and safety standards and federal and state requirements, provide appropriate special education services, and employs teachers, related services personnel, and other special education personnel that are properly certified and/or appropriately licensed.

## Nonpublic School Reapproval Process

Before the end of a nonpublic school's approval period, the TEA will conduct an on-site visit to the nonpublic school. Prior to the on-site visit, nonpublic schools must complete and submit to the TEA a *Nonpublic School Self-Analysis for Nonpublic Placements* template. The self-analysis evaluates compliance with state and federal regulations for the following categories:

- Properly Constituted ARD Committee Meetings;
- *IEP Implementation*;
- *Disciplinary Removals*;
- *Discipline*;
- *Confidentiality*;
- *Personnel Credentials*;
- *Program Activities/Contractual Obligations*; and
- *Written Curriculum*.

The *Nonpublic School Self-Analysis for Nonpublic Placements* template may be downloaded from the Program Monitoring and Interventions website at: <http://www.tea.state.tx.us/pmi>, selecting the **Special Education-Nonpublic Monitoring** link, and then selecting the **Guidance and Resources** link.

As part of the reapproval process, LEAs must complete and submit to the TEA the following documents:

- *LEA Compliance Review*;
- *LEA Assurance Checklist for Contracting with a Nonpublic School*;
- *Documentation of LEA Visit to Nonpublic School*; and
- *Longitudinal History of Individual Student Progress*.

The above-referenced documents are available on the LEA's template page of the *Intervention Stage and Activity Manager* (ISAM) application within the Texas Education Agency Secure Environment (TEASE). These documents also can be downloaded from the Program Monitoring and Interventions website at <http://www.tea.state.tx.us/pmi>, selecting the **Special Education-Nonpublic Monitoring** link, then selecting the **Guidance and Resources** link. The LEA must submit all documents via ISAM. Instructions regarding the use of ISAM can be found under "How Do I" section of the Program Monitoring and Interventions website at [www.tea.state.tx.us/pmi](http://www.tea.state.tx.us/pmi).

Upon receipt of the nonpublic school and the LEA submissions, the TEA will review the information to determine if additional information is necessary prior to the on-site visit. Once all documentation has been reviewed, the TEA will schedule an on-site review to the nonpublic school. The nonpublic school's programs and services are reviewed in the same areas reviewed during the initial approval process.

Within 30 business days of the date of the on-site review, the TEA will issue the nonpublic school a letter of reapproval or a letter of findings that identifies corrective actions for areas of noncompliance. If the TEA identifies any noncompliance on the part of a contracting LEA, the TEA will issue a letter of findings and require the LEA to develop a corrective action plan to address the noncompliance. If necessary, within 30 business days of the date of the letter of findings, the nonpublic school and each LEA must submit a corrective action plan to the TEA to address areas of identified noncompliance. When all compliance standards are met, TEA staff will recommend reapproval of the nonpublic school to the Director of Program Monitoring and Interventions. If there are no issues of concern and/or identified noncompliance, the nonpublic school will be reapproved. If there are concerns and/or identified noncompliance, the effective date of the nonpublic school's approval will be the date in which discrepancies are removed.

The reapproval period for a nonpublic school may be for one, two, or three years. The reapproval period is based on the educational program and services that the TEA determines the nonpublic school has the expertise and ability to provide at the time of the on-site visit.

Following reapproval the TEA will notify each LEA that has students placed at the nonpublic school of the nonpublic school's approval status, including areas of disability age ranges that may be served, and the approval period. A current list of nonpublic schools that are approved for contracting purposes is posted on the Program Monitoring and Interventions website at: <http://www.tea.state.tx.us/pmi> and may be found by selecting the **Special Education-Nonpublic Monitoring** link.

Reapproval must be granted before the LEA may continue to contract for services with the nonpublic

school. Both the LEA and the nonpublic school must maintain a copy of the contract for the current year. An LEA may not continue to contract with a nonpublic school that is not reapproved. The contract must provide a termination clause that may be exercised by the LEA if the nonpublic school loses its approval status.

## **Modifications to Approved Areas of Disability, Locations, and/or Age Ranges**

When an approved nonpublic school wants to modify the approved locations, areas of disability, and/or age ranges served, the nonpublic school and an LEA must submit a written request to the TEA. The nonpublic school and the contracting LEAs will receive a written response from the TEA to this request within 15 business days. Depending upon the nature of the modification requested, the TEA may schedule and conduct an on-site review within 30 days to determine if the modification request is warranted.

## **Financial Assistance for Contract Placements**

Financial assistance for placements in approved nonpublic schools is available. The LEA must submit the following information to the Division of Federal and State Education Policy, as appropriate:

### **A. Nonpublic Day School Report (SPE-106)**

1. This report indicates each student's identification number, date of birth, primary disability, the name of the approved nonpublic school, and the number of months contracted for each student? The report must be submitted to the TEA for previous year placements by the designated timeline.
2. State special education funds are generated by this report and are included on the Summary of Finances from the TEA.

### **B. Application for Approval of Funding for Residential Placement (SAS-A111-12)**

1. The LEA must submit to the regional education service center (ESC) a separate application for each student (one original and one copy).
2. For students with an emotional disturbance, the LEA is required to confer with the local mental health authority (MHA). The signature of the executive director of the MHA or his/her designee is required on the application.
3. For students with intellectual disability or autism, the LEA is required to confer with the local mental retardation authority (MRA). The signature of the superintendent of a state school, director of a state center, or executive director of a community center for the MRA or his/her designee is required on the application.
4. For students with other areas of disability, consultation with the above authorities is not required.

5. The superintendent of the fiscal agent LEA (or ESC executive director) for a special education shared services arrangement (SSA) or his/her designee or the superintendent of an LEA that is not a member of an SSA or his/her designee also must sign each application. A letter of authorization must be included with the application if someone other than the superintendent/ESC executive director signs the application.
6. Prior to a residentially-placed student returning to the community, it is highly recommended that a Community Resources Coordinating Group (CRCG) meeting be held to discuss the student's needs for local resources and to review the most recent reintegration plan.
7. Approval is provided for an individual student's application via an approval letter from the TEA. This letter will be mailed to the superintendent of the LEA or to the fiscal agent superintendent/ESC executive director if the student is a resident of a member LEA of a special education SSA. The LEA also will receive a Recapitulation of Funding Sources and Approved Costs page that will indicate the total amount of funds and the fund sources approved for residential placement. If Individuals with Disabilities Education Act-Part B (IDEA-B) Discretionary funds are approved for the residential application, a Notice of Grant Award for Programs Funded Under SAS-A111-12 also will be included. IDEA-B Discretionary funds are approved only if the total cost of the placement exceeds the required 25 percent set aside of the IDEA-B Formula tentative base entitlement for the single-member LEA or SSA (or local fund equivalent) and the local tax share amount.
8. Cost revisions to approved applications involve amending the Application for Approval of Funding for Residential Placement (SAS-A111-12). Amendments including only cost revisions and not affecting the scope of the original application require only pages 1, 2, and 8, with the superintendent's/ESC executive director's original signature on page 2.
9. Amendments to residential applications are necessary when any student's IEP is revised by an ARD committee. Amendments, like applications, require that one original and one copy be submitted to the ESC for each student. All amendments must be signed by the fiscal agent superintendent/ESC executive director and the appropriate authority representative.
10. ARD committee decisions regarding residential placement are binding. If the application for funding is not approved, the residential placement costs must be paid from local funds.
11. All students placed by ARD committees in private residential facilities should be coded Instructional Setting Code "50" in the Public Education Information Management System (PEIMS). The average daily attendance (ADA) eligibility code for these students is "0" (enrolled, not in membership). The students cannot be counted for attendance.
12. If the LEA intends to request approval of funds for residential placement effective September 1, 2011, an original and one copy of the application for each student must have been received by the ESC on or before September 1, 2011. Should additional students be identified later in the year, the LEA must submit an original and one copy of the application to the ESC for each of the students.
13. The approved application(s) will be effective:
  - September 1, 2011, if received by the ESC on or before September 1, 2011.

- As of the stamp-in date (i.e., the date the application was received by the ESC), if received after September 1, 2011.
- Through August 31, 2012, unless otherwise indicated.

14. Questions concerning the completion of any part of the application should be directed to your regional ESC.