

SPECIAL EDUCATION  
STUDENTS IN NONDISTRICT PLACEMENT

EHBAC  
(LEGAL)

RELATED SERVICES  
DEFINITION

“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.

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 a free appropriate public education as described in the child’s individualized education program (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, or the replacement of such device.

*20 U.S.C. 1401(26)*

TRANSPORTATION

The District shall provide special transportation with federal funds only when the ARD committee determines that the condition of the student warrants the service in order for the student to receive the special education and related services (if any) set forth in the IEP.  
*19 TAC 89.1096(d)*

ASSISTIVE  
TECHNOLOGY  
DEVICES

The term “assistive technology device” (ATD) means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve functional capabilities of a child with a disability. The term does not include a medical device that is surgically implanted, or the replacement of such a device. *20 U.S.C. 1401(1)*

TEA shall annually disseminate standards for a district’s transfer of an assistive technology device (ATD) when a student with a disability using the device changes the school of attendance in a district or ceases to attend school in the district that purchased the device, and the student’s parents, or the student if the student has the legal capacity to enter into a contract, agrees to the transfer.

A transfer of an ATD shall be in accordance with a transfer agreement which incorporates the standards described in Education Code 30.0015(c) and 19 TAC 89.1056.

*Education Code 30.0015; 19 TAC 89.1056*

EXTENDED  
SCHOOL YEAR  
(ESY) SERVICES

The District shall ensure that extended school-year (ESY) services are available as necessary to provide a student with a disability with a free appropriate public education.

SPECIAL EDUCATION  
STUDENTS IN NONDISTRICT PLACEMENT

EHBAC  
(LEGAL)

The need for ESY services must be determined on an individual student basis by the ARD committee. In determining the need for and in providing ESY services, the District may not limit ESY services to particular categories of disability or unilaterally limit the type, amount, or duration of ESY services.

If the District does not propose ESY services for discussion at the annual review of a student's IEP, the parent may request that the ARD committee discuss ESY services.

*34 CFR 300.309(a); 19 TAC 89.1065(1), (5)*

SHARED SERVICES  
ARRANGEMENTS

The District may enter into a written contract to jointly operate its special education program. The contract must be approved by the Commissioner. *Education Code 29.007*

NONDISTRICT  
PLACEMENT  
ADULT PRISONS

The following requirements do not apply to children with disabilities who are convicted as adults under state law and incarcerated in adult prisons:

1. Federal requirements pertaining to participation of students with disabilities in general assessments;
2. Requirements concerning transition planning and transition services, if the children's eligibility will end, because of their age, before they will be released from prison.

If a child with a disability is convicted as an adult under state law and incarcerated in an adult prison, the child's ARD committee may modify the child's IEP or placement, notwithstanding the least restrictive environment requirements, if the state has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.

*20 U.S.C. 1414(d)(6)(B); 34 CFR 300.311*

PRIVATE SCHOOLS  
AND FACILITIES

ENROLLED BY  
STATE OR  
DISTRICT

The District shall ensure that children with disabilities in private schools and facilities are provided special education and related services, at no cost to their parents, if the children are placed in, or referred to, such schools or facilities by the state or District. *20 U.S.C. 1412(a)(10)(B)(i); 34 CFR 300.401(a); 19 TAC 89.1090*

ENROLLED BY  
PARENT

If a child with a disability is enrolled in a private school and will receive special education or related services from the District, the District shall initiate and conduct ARD committee meetings to develop, review, and revise a services plan for the child and ensure that a representative of the private school attends that meeting.

PRIVATE  
SCHOOL  
PERSONNEL

The District shall give appropriate representatives of private school children with disabilities a genuine opportunity to express their views regarding educational needs of private school children with

SPECIAL EDUCATION  
STUDENTS IN NONDISTRICT PLACEMENT

EHBAC  
(LEGAL)

disabilities. However, the services provided to private school children with disabilities must be provided by personnel meeting the same standards as personnel providing services in the public schools.

The District shall make the final decisions with respect to eligible private school children.

*34 CFR 300.454*

REIMBURSEMENT  
FOR PRIVATE  
SCHOOL  
PLACEMENT

If the parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private school without the consent or referral by the public agency, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made a free and appropriate public education available to the child in a timely manner before the enrollment. *20 U.S.C. 1412(a)(10)(B)*

When a student with disabilities who has been placed by his or her parents directly in a private school or facility is referred to the District, the District shall convene an ARD committee meeting to determine whether the District can offer to the student a free appropriate public education. If the District determines that it can, the District is not responsible for providing educational services to that student until the parents enroll the child in the public school full-time or request services under the dual enrollment rule [see DUAL ENROLLMENT, below]. *20 U.S.C. 1412(a), 1413(a); 34 CFR 300.454*

Children with disabilities who are enrolled by their parents in private elementary and secondary schools shall be provided special education and related services in accordance with a services plan that describes the specific special education and related services that the District will provide. Such services may be provided on the premises of private, including parochial, schools to the extent consistent with law. *19 TAC 89.1096(b)-(c); 34 CFR 300.455(b), 300.456(a)*

DUAL ENROLLMENT

Parents of an eligible student age three or four shall have the right to "dual enroll" their student in both the public school and a private school beginning on the student's third birthday and continuing until the end of the school year in which the student turns five, or until the student is eligible to attend the District's public school program, whichever comes first, subject to the following:

1. The student's ARD committee shall develop an IEP.

SPECIAL EDUCATION  
STUDENTS IN NONDISTRICT PLACEMENT

EHBAC  
(LEGAL)

2. The parent and the District shall determine which special education and/or related services will be provided to the student and the location where those services will be provided, based on the requirements concerning placement in the least restrictive environment and the policies and procedures of the District.
3. The District shall be responsible for employing and supervising the personnel providing the service, providing the needed instructional materials, and maintaining pupil accounting records. Materials and services provided shall be consistent with those provided for students enrolled only in the public school and shall remain the property of the District.

*19 TAC 89.1096(c)*

CHARTER  
SCHOOLS

The District shall serve children with disabilities attending District charter schools in the same manner as it serves children with disabilities in its other schools and shall provide federal special education funds to those schools in the same manner as it provides those funds to its other schools. *20 U.S.C. 1413(a)(5); 34 CFR 300.312*

RESIDENTIAL  
FACILITIES  
WITHIN DISTRICT

A 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.

*19 TAC 89.1001(c); 19 TAC 89.1115*

CONTRACTS FOR  
RESIDENTIAL  
PLACEMENTS

The District may contract with a public or private facility, institution, or agency inside or outside of Texas for residential placement for students with disabilities. The District may contract only with facilities that are approved by the Commissioner. Contracts for residential placement must be approved by the Commissioner. Residential contracts shall be negotiated on an individual student basis. *Education Code 29.0087(a)*

RESPONSIBILITY

If the District contracts for education services, rather than providing the services itself, it shall oversee the implementation of the student's IEP and shall annually reevaluate the appropriateness of the arrangement. *Education Code 29.008(d)*

SPECIAL EDUCATION  
STUDENTS IN NONDISTRICT PLACEMENT

EHBAC  
(LEGAL)

The District shall have the following responsibilities when making a residential placement:

1. Before placing a student with a disability in a residential facility, the District shall initiate and conduct a meeting to develop an IEP for the student.
2. The District shall list in each student's IEP the services the District is unable to provide and the facility is able to provide.
3. The District shall make an annual on-site visit to verify that the facility can and will offer the services listed in the individual student's IEP and to ensure that the facility offers the student an appropriate educational program.
4. The District shall document in each student's IEP the appropriateness of the facility. General approval by TEA or a general screening by a regional education service center (RESA) is not sufficient.
5. For each student, the ARD committee shall establish written criteria and estimated time frames for returning the student to the District.
6. For all contract students, the District shall verify in the initial and each subsequent annual ARD review that:
  - a. The facility continues to meet minimum standards for health and safety;
  - b. Continued contracting is needed and the need is documented in the IEP; and
  - c. The facility continues to offer an appropriate program for the student and is the least restrictive environment for the student.

OUT-OF-STATE  
PLACEMENTS

If the District contracts for out-of-state residential placements, it shall do so in accordance with the rules for in-state residential placement, except that the facility shall be approved by the appropriate agency in the state in which the facility is located rather than by the Texas Commissioner of Education.

IN-STATE  
TRANSFERS

When a student on a residential contract in one district moves to another district in Texas and the student is to continue on the contract, the district that negotiated the contract shall be responsible for the residential contract for the remainder of the school year.

*19 TAC 89.61(a)(4)*

SPECIAL EDUCATION  
STUDENTS IN NONDISTRICT PLACEMENT

EHBAC  
(LEGAL)

SCHOOL FOR THE  
BLIND AND  
VISUALLY IMPAIRED  
AND SCHOOL FOR  
THE DEAF

For each of its students enrolled in the Texas School for the Blind and Visually Impaired or Texas School for the Deaf, the District shall share the cost of the student's education (excluding the summer program). Before considering the student's educational placement for special education services, the District shall provide each parent of a student with visual or auditory impairments the following written information regarding the Texas School for the Deaf or Texas School for the Blind and Visually Impaired:

1. The availability of programs offered.
2. The eligibility and admissions requirements.
3. Student's rights to admission and to appeal admission decisions.

*Education Code 30.003(a), 30.004(a); 19 TAC 89.62*

The District may request services through the Texas School for the Blind and Visually Impaired or the Texas School for the Deaf in accordance with 19 TAC 89.1085. *19 TAC 89.1085*