

Section 5 INSTRUCTIONAL ARRANGEMENTS
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Section 5 INSTRUCTIONAL ARRANGEMENTS

I. INSTRUCTIONAL ARRANGEMENTS AND SETTINGS

TAC §89.63. Instructional Arrangements and Settings.

- (a) The Devine Independent School District will provide services with special education personnel to students with disabilities in order to meet the special needs of those students in accordance with 34 Code of Federal Regulations, §§300.550-300.554.
- (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, the regular school day is defined as the period of time determined appropriate by the admission, review, and dismissal (ARD) committee.
- (c) Instructional arrangements/settings shall be based on the individual needs and individualized education programs (IEPs) of eligible students receiving special education 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 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, education aides, curricular or instructional modifications/accommodations, special materials/equipment, 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.
 - (2) **Homebound**. This instructional arrangement/setting is for providing special education and related services to students who are served at home or hospital bedside.
 - (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 DISD 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. This arrangement/setting also applies to school districts described in Texas Education Code, §29.014.

- (3) Hospital class. This instructional arrangement/setting is for providing special education instruction in a classroom, in a hospital facility, or a residential care and treatment facility not operated by DISD. 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.
- (4) Speech therapy. This 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.
- (5) Resource room/services. This 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% of the regular school 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 self-contained program for 50% or more of the regular school day on a regular school campus.
- (7) Off home campus. This instructional arrangement/setting is for providing special education and related services to the following, including students at South Texas Independent School District and Windham Independent School District:
 - (A) a student who is one of a group of students from more than one school district served in a single location when a free appropriate public education is not available in the respective sending district;
 - (B) a student whose instruction is provided by school district personnel in a facility (other than a nonpublic day school) not operated by a school district; or
 - (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 for special education.
- (9) Vocational adjustment class/program. This instructional arrangement/setting is for providing special education and related services to a student who is placed on a job 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 plan and only after DISD's career and technology classes have been considered and determined inappropriate for the student.
- (10) Residential care and treatment facility (not DISD resident). This 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 school district providing educational services to the students. In order to be considered in this arrangement, the services must be provided on a DISD 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. Students with disabilities who reside in these facilities may be included in the average daily attendance of DISD in the same way as all other students receiving special education.

- (11) State school for persons with mental retardation. This instructional arrangement/setting is for providing special education and related services to a student who resides at a state school when the services are provided at the state school location. If services are provided on a local DISD campus, the student is considered to be served in the residential care and treatment facility arrangement/setting.
- (d) The appropriate instructional arrangement for students from birth through the age of two with visual and/or auditory impairments shall be determined in accordance with the IFSP, current attendance guidelines, and the agreement memorandum between the Texas Education Agency (TEA) and the Texas Interagency Council on Early Childhood Intervention.
- (e) For nonpublic day school placements, DISD will submit information to the 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. The TEA will 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.
- (f) Other program options which 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 the TEA.

II. PRIVATE SCHOOLS: ENROLLED BY THE PARENTS

§300.129 State responsibility regarding children in private schools.

The State must have in effect policies and procedures that ensure that LEAs, and, if applicable, the SEA, meet the private school requirements in §§300.130 through 300.148. (Authority: 20 U.S.C. 1412(a)(10))

§300.130 Definition of parentally-placed private school children with disabilities.

Parentally-placed private school children with disabilities means children with disabilities enrolled by their parents in private schools or facilities other than children with disabilities covered under §§300.145 through 300.147. (Authority: 20 U.S.C. 1412(a)(10)(A))

§300.131 Child find for parentally-placed private school children with disabilities.

- (a) **General.** DISD must locate, identify, and evaluate all children with disabilities who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by DISD, in accordance with paragraphs (b) through (e) of this section, and §§300.111 and 300.201.
- (b) **Child find design.** The child find process must be designed to ensure--
- (1) The equitable participation of parentally-placed private school children; and
 - (2) An accurate count of those children.
- (c) **Activities.** In carrying out the requirements of this section, DISD, or, if applicable, the SEA, must undertake activities similar to the activities undertaken for the agency's public school children.
- (d) **Cost.** The cost of carrying out the child find requirements in this section, including individual evaluations, may not be considered in determining if an LEA has met its obligation under §300.133.
- (e) **Completion period.** The child find process must be completed in a time period comparable to that for other students attending public schools in DISD consistent with §300.301.
(Authority: 20 U.S.C. 1412(a)(10)(A)(ii))

§300.132 Provision of services for parentally-placed private school children with disabilities--basic requirement.

- (a) **General.** To the extent consistent with the number and location of children with disabilities who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by DISD, provision is made for the participation of those children in the program assisted or carried out under Part B of the Act by providing them with special education and related services, including direct services determined in accordance with §300.137, unless the Secretary has arranged for services to those children under the by-pass provisions in §§300.190 through 300.198.
- (b) **SEA responsibility--services plan.** In accordance with paragraph (a) of this section and §§300.137 through 300.139, a services plan must be developed and implemented for each private school child with a disability who has been designated by DISD in which the private school is located to receive special education and related services under this part.
- (c) **Record keeping.** DISD must maintain in its records, and provide to the SEA, the following information related to parentally-placed private school children covered under §§300.130 through 300.144:
- (1) The number of children evaluated;
 - (2) The number of children determined to be children with disabilities; and
 - (3) The number of children served.
- (Authority: 20 U.S.C. 1412(a)(10)(A)(i))

§300.133 Expenditures.

- (a) **Formula.** To meet the requirement of §300.132(a), DISD shall spend the following on providing special education and related services (including direct services) to parentally-placed private school children with disabilities:
- (1) For children aged 3 through 21, an amount that is the same proportion of DISD's total subgrant under section 611(g) of the Act as the number of private school children with disabilities aged 3 through 21 who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by DISD, is to the total number of children with disabilities in its jurisdiction aged 3 through 21.
 - (2) For children aged three through five, an amount that is the same proportion of DISD's total subgrant under section 619(g) of the Act as the number of parentally-placed private school children with disabilities aged three through five who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by DISD, is to the total number of children with disabilities in its jurisdiction aged three through five.
- (b) **Calculating proportionate amount.** In calculating the proportionate amount of Federal funds to be provided for parentally-placed private school children with disabilities, DISD, after timely and meaningful consultation with representatives of private schools under §300.134, must conduct a thorough and complete child find process to determine the number of parentally-placed children with disabilities attending private schools located in DISD.
- (c) **Child count.**
- (1) The Devine Independent School District must--
 - (i) Consult with representatives of parentally-placed private school children with disabilities (consistent with §300.134) in deciding how to conduct the annual count of the number of parentally-placed private school children with disabilities; and
 - (ii) Ensure that the count is conducted on any date between October 1 and December 1 of each year.
 - (2) The child count must be used to determine the amount that DISD must spend on providing special education and related services to parentally-placed private school children with disabilities in the next subsequent fiscal year.
- (d) **Supplement, not supplant.** State and local funds may supplement and in no case supplant the proportionate amount of Federal funds required to be expended for parentally-placed private school children with disabilities under this part.
- (Authority: 20 U.S.C. 1412(a)(10)(A))

§300.134 Consultation.

To ensure timely and meaningful consultation, DISD, or, if appropriate, an SEA, must consult with private school representatives and representatives of parents of parentally-placed private school children with disabilities during the design and development of special education and related services for the children regarding the following:

- (a) **Child find.** The child find process, including--
 - (1) How parentally-placed private school children suspected of having a disability can participate equitably; and
 - (2) How parents, teachers, and private school officials will be informed of the process.
- (b) **Proportionate share of funds.** The determination of the proportionate share of Federal funds available to serve parentally-placed private school children with disabilities under §300.133(b), including the determination of how the proportionate share of those funds was calculated.
- (c) **Consultation process.** The consultation process among DISD, private school officials, and representatives of parents of parentally-placed private school children with disabilities, including how the process will operate throughout the school year to ensure that parentally-placed children with disabilities identified through the child find process can meaningfully participate in special education and related services.
- (d) **Provision of special education and related services.** How, where, and by whom special education and related services will be provided for parentally-placed private school children with disabilities, including a discussion of--
 - (1) The types of services, including direct services and alternate service delivery mechanisms; and
 - (2) How special education and related services will be apportioned if funds are insufficient to serve all parentally-placed private school children; and
 - (3) How and when those decisions will be made;
- (e) **Written explanation by DISD regarding services.** How, if DISD disagrees with the views of the private school officials on the provision of services or the types of services (whether provided directly or through a contract) DISD will provide to the private school officials a written explanation of the reasons why DISD chose not to provide services directly or through a contract.
(Authority: 20 U.S.C. 1412(a)(10)(A)(iii))

§300.135 Written affirmation.

- (a) When timely and meaningful consultation, as required by §300.134, has occurred, DISD must obtain a written affirmation signed by the representatives of participating private schools.
- (b) If the representatives do not provide the affirmation within a reasonable period of time, DISD must forward the documentation of the consultation process to the SEA.
(Authority: 20 U.S.C. 1412(a)(10)(A)(iv))

§300.136 Compliance.

- (a) **General.** A private school official has the right to submit a complaint to the SEA under §§300.151 through 300.153 that DISD--
 - (1) Did not engage in consultation that was meaningful and timely; or
 - (2) Did not give due consideration to the views of the private school official.
- (b) **Procedure.**
 - (1) If the private school official wishes to submit a complaint, the official must provide to the SEA the basis of the noncompliance by DISD with the applicable private school provisions in this part; and
 - (2) DISD must forward the appropriate documentation to the SEA.
 - (3) (i) If the private school official is dissatisfied with the decision of the SEA, the official may submit a complaint to the Secretary by providing the information on noncompliance described in paragraph (b)(1) of this section; and
 - (ii) The SEA must forward the appropriate documentation to the Secretary.
(Authority: 20 U.S.C. 1412(a)(10)(A)(v))

§300.137 Equitable services determined.

- (a) **No individual right to special education and related services.** No private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school.
- (b) **Decisions.**

- (1) Decisions about the services that will be provided to parentally-placed private school children with disabilities under §§300.130 through 300.144 must be made in accordance with paragraph (c) of this section and §300.134(c).
- (2) DISD must make the final decisions with respect to the services to be provided to eligible parentally-placed private school children with disabilities.
- (c) **Services plan for each child served under §§300.130 through 300.144.** If a child with a disability is enrolled in a religious or other private school by the child's parents and will receive special education or related services from DISD, DISD must--
 - (1) Initiate and conduct meetings to develop, review, and revise a services plan for the child, in accordance with §300.138(b); and
 - (2) Ensure that a representative of the religious or other private school attends each meeting. If the representative cannot attend, DISD shall use other methods to ensure participation by the religious or other private school, including individual or conference telephone calls.
(Authority: 20 U.S.C. 1412(a)(10)(A))

§300.138 Equitable services provided.

(a) General.

- (1) The services provided to parentally-placed private school children with disabilities must be provided by personnel meeting the same standards as personnel providing services in the public schools.
- (2) Parentally-placed private school children with disabilities may receive a different amount of services than children with disabilities in public schools.

(b) Services provided in accordance with a services plan.

- (1) Each parentally-placed private school child with a disability who has been designated to receive services under §300.132 must have a services plan that describes the specific special education and related services that DISD will provide to the child in light of the services that DISD has determined, through the process described in §§300.134 and 300.137, it will make available to parentally-placed private school children with disabilities.
- (2) The services plan must, to the extent appropriate--
 - (i) Meet the requirements of §300.320, or for a child ages three through five, meet the requirements of §300.323(b) with respect to the services provided; and
 - (ii) Be developed, reviewed, and revised consistent with §§300.321 through 300.324.

(c) Provision of equitable services.

- (1) The provision of services pursuant to this section and §§300.139 through 300.143 must be provided:
 - (i) By employees of DISD; or
 - (ii) Through contract by DISD with an individual, association, agency, organization, or other entity.
- (2) Special education and related services provided to parentally-placed private school children with disabilities, including materials and equipment, must be secular, neutral, and nonideological.
(Authority: 20 U.S.C. 1412(a)(10)(A)(vi))

§300.139 Location of services and transportation.

(a) Services on private school premises. Services to parentally-placed private school children with disabilities may be provided on the premises of private, including religious, schools, to the extent consistent with law.

(b) Transportation.

(1) General.

- (i) If necessary for the child to benefit from or participate in the services provided under this part, a parentally-placed private school child with a disability must be provided transportation--
 - (A) From the child's school or the child's home to a site other than the private school; and
 - (B) From the service site to the private school, or to the child's home, depending on the timing of the services.
- (ii) LEAs are not required to provide transportation from the child's home to the private school.

(2) Cost of transportation. The cost of the transportation described in paragraph (b)(1)(i) of this section may be included in calculating whether DISD has met the requirement of §300.133.

(Authority: 20 U.S.C. 1412(a)(10)(A))

§300.140 Due process complaints and State complaints.

(a) Due process not applicable, except for child find.

- (1) Except as provided in paragraph (a)(2) of this section, the procedures in §§300.504 through 300.519 do not apply to complaints that an LEA has failed to meet the requirements of §§300.132 through 300.139, including the provision of services indicated on the child's services plan.
- (2) The procedures in §§300.504 through 300.519 do apply to complaints that an LEA has failed to meet the requirements of §300.131, including the requirements of §§300.300 through 300.311.
- (b) **State complaints.** Complaints that an SEA or LEA has failed to meet the requirements of §§300.132 through 300.144 must be filed under the procedures in §§300.151 through 300.153.
(Authority: 20 U.S.C. 1412(a)(10)(A))

§300.141 Requirement that funds not benefit a private school.

- (a) DISD may not use funds provided under section 611 or 619 of the Act to finance the existing level of instruction in a private school or to otherwise benefit the private school.
- (b) DISD must use funds provided under Part B of the Act to meet the special education and related services needs of parentally-placed private school children with disabilities, but not for--
 - (1) The needs of a private school; or
 - (2) The general needs of the students enrolled in the private school.
 (Authority: 20 U.S.C. 1412(a)(10)(A))

§300.142 Use of personnel.

- (a) **Use of public school personnel.** DISD may use funds available under sections 611 and 619 of the Act to make public school personnel available in other than public facilities--
 - (1) To the extent necessary to provide services under §§300.130 through 300.144 for parentally-placed private school children with disabilities; and
 - (2) If those services are not normally provided by the private school.
- (b) **Use of private school personnel.** DISD may use funds available under sections 611 and 619 of the Act to pay for the services of an employee of a private school to provide services under §§300.130 through 300.144 if--
 - (1) The employee performs the services outside of his or her regular hours of duty; and
 - (2) The employee performs the services under public supervision and control.
 (Authority: 20 U.S.C. 1412(a)(10)(A))

§300.143 Separate classes prohibited.

DISD may not use funds available under section 611 or 619 of the Act for classes that are organized separately on the basis of school enrollment or religion of the students if—

- (a) The classes are at the same site; and
- (b) The classes include students enrolled in public schools and students enrolled in private schools.
(Authority: 20 U.S.C. 1412(a)(10)(A))

§300.144 Property, equipment, and supplies.

- (a) DISD must control and administer the funds used to provide special education and related services under §§300.137 through 300.139, and hold title to and administer materials, equipment, and property purchased with those funds for the uses and purposes provided in the Act.
- (b) DISD may place equipment and supplies in a private school for the period of time needed for the Part B program.
- (c) DISD must ensure that the equipment and supplies placed in a private school--
 - (1) Are used only for Part B purposes; and
 - (2) Can be removed from the private school without remodeling the private school facility.
- (d) DISD must remove equipment and supplies from a private school if--
 - (1) The equipment and supplies are no longer needed for Part B purposes; or
 - (2) Removal is necessary to avoid unauthorized use of the equipment and supplies for other than Part B purposes.
- (e) No funds under Part B of the Act may be used for repairs, minor remodeling, or construction of private school facilities.(Authority: 20 U.S.C. 1412(a)(10)(A)(vii))

III. PRIVATE SCHOOLS: PLACED OR REFERRED BY DISTRICT

§300.145 Applicability of §§300.145 through 300.147.

Sections 300.146 through 300.147 apply only to children with disabilities who are or have been placed in or referred to a private school or facility by a public agency as a means of providing special education and related services. (Authority: 20 U.S.C. 1412(a)(10)(B))

§300.146 Responsibility of State educational agency.

Each SEA must ensure that a child with a disability who is placed in or referred to a private school or facility by a public agency--

- (a) Is provided special education and related services--
 - (1) In conformance with an IEP that meets the requirements of §§300.320 through 300.325; and
 - (2) At no cost to the parents;
- (b) Is provided an education that meets the standards that apply to education provided by the SEA and LEAs including the requirements of this part, except for §300.18 and §300.156(c); and
- (c) Has all of the rights of a child with a disability who is served by DISD.
(Authority: 20 U.S.C. 1412(a)(10)(B))

§300.147 Implementation by State educational agency. In implementing §300.146, the SEA must--

- (a) Monitor compliance through procedures such as written reports, on-site visits, and parent questionnaires;
- (b) Disseminate copies of applicable standards to each private school and facility to which DISD has referred or placed a child with a disability; and
- (c) Provide an opportunity for those private schools and facilities to participate in the development and revision of State standards that apply to them.
(Authority: 20 U.S.C. 1412(a)(10)(B))

TAC §89.1075. General Program Requirements and Local District Procedures.

- (f) School districts that contract for services from non-public day schools shall do so in accordance with §300.402 (Implementation by SEA) (*which in new IDEA is §300.147 above*) and procedures developed by the TEA.

IV. PRIVATE SCHOOLS: ENROLLED BY PARENT - WHEN FAPE IS AT ISSUE

§300.148 Placement of children by parents if FAPE is at issue.

- (a) **General.** This part does not require DISD to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if DISD made FAPE available to the child and the parents elected to place the child in a private school or facility. However, DISD must include that child in the population whose needs are addressed consistent with §§300.131 through 300.144.
- (b) **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 preschool, elementary school, or secondary school without the consent of 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 FAPE available to the child in a timely manner prior to that enrollment and that the private placement is appropriate. A parental placement may be found to be appropriate by a hearing officer or a court even if it does not meet the State standards that apply to education provided by the SEA and LEAs.
- (c) **Limitation on reimbursement.** The cost of reimbursement described in paragraph (b) of this section may be reduced or denied--

- (1) **If--**
 - (i) **At the most recent IEP meeting that the parents attended prior to removal of the child from DISD, the parents did not inform the IEP Team that they were rejecting the placement proposed by DISD to provide FAPE to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or**
 - (ii) **At least ten (10) business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parents did not give written notice to DISD of the information described in paragraph (c)(1)(i) of this section;**
- (2) **If, prior to the parents' removal of the child from the public school, DISD informed the parents, through the notice requirements described in §300.503(a)(1), of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for the evaluation; or**
- (3) **Upon a judicial finding of unreasonableness with respect to actions taken by the parents.**
- (d) **Exception.** Notwithstanding the notice requirement in paragraph (c)(1) of this section, the cost of reimbursement--
 - (1) **Must not be reduced or denied for failure to provide the notice if--**
 - (i) **The school prevented the parent from providing the notice;**
 - (ii) **The parents had not received notice, pursuant to section 615 of the Act, of the notice requirement in paragraph (c)(1) of this section; or**
 - (iii) **Compliance with paragraph (c)(1) of this section would likely result in physical harm to the child; and**
 - (2) **May, in the discretion of the court or a hearing officer, not be reduced or denied for failure to provide this notice if--**
 - (i) **The parent is not literate or cannot write in English; or**
 - (ii) **Compliance with paragraph (c)(1) of this section would likely result in serious emotional harm to the child.**

(Authority: 20 U.S.C. 1412(a)(10)(C))

V. CONTRACTING FOR EDUCATIONAL PLACEMENT

A. Residential Placements

TEC §29.008. Contracts for Services; Residential Placement.

- (a) A school district, shared services arrangement unit, or regional education service center may contract with a public or private facility, institution, or agency inside or outside of this state for the provision of services to students with disabilities. Each contract for residential placement must be approved by the commissioner. The commissioner may approve a residential placement contract only after at least a programmatic evaluation of personnel qualifications, adequacy of physical plant and equipment, and curriculum content. The commissioner may approve either the whole or a part of a facility or program.
- (b) Except as provided by Subsection (c), costs of an approved contract for residential placement may be paid from a combination of federal, state, and local funds. The local share of the total contract cost for each student is that portion of the local tax effort that exceeds the district's local fund assignment under Section 42.252, divided by the average daily attendance in the district. If the contract involves a private facility, the state share of the total contract cost is that amount remaining after subtracting the local share. If the contract involves a public facility, the state share is that amount remaining after subtracting the local share from the portion of the contract that involves the costs of instructional and related services. For purposes of this subsection, "local tax effort" means the total amount of money generated by taxes imposed for debt service and maintenance and operation less any amounts paid into a tax increment fund under Chapter 311, Tax Code.
- (c) When a student, including one for whom the state is managing conservator, is placed primarily for care or treatment reasons in a private residential facility that operates its own private education

program, none of the costs may be paid from public education funds. If a residential placement primarily for care or treatment reasons involves a private residential facility in which the education program is provided by the school district, the portion of the costs that includes appropriate education services, as determined by the school district's admission, review, and dismissal committee, shall be paid from state and federal education funds.

- (d) A district that contracts for the provision of education services rather than providing the services itself shall oversee the implementation of the student's individualized education program and shall annually reevaluate the appropriateness of the arrangement. An approved facility, institution, or agency with whom the district contracts shall periodically report to the district on the services the student has received or will receive in accordance with the contract as well as diagnostic or other evaluative information that the district requires in order to fulfill its obligations under this subchapter.

TAC §89.61. Contracting for Residential Educational Placements for Students with Disabilities.

- (a) Residential placement. DISD may contract for residential placement of a student when the student's admission, review, and dismissal (ARD) committee determines that a residential placement is necessary in order for the student to receive a free appropriate public education (FAPE).
 - (1) DISD may contract for a residential placement of a student only with either public or private residential facilities which maintain current and valid licensure by the Texas Department of Mental Health and Mental Retardation, Texas Department of Human Services, Texas Department of Health, Texas Department of Protective and Regulatory Services, or Texas Council on Alcohol and Drug Abuse for the particular disabling condition and age of the student. DISD may contract for an out-of-state residential placement in accordance with the provisions of subsection (c)(3) of this section.
 - (2) Subject to subsections (b) and (c) 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 (c) of this section.
 - (3) A school district which 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 (b) of this section.
 - (4) DISD has the following responsibilities when making a residential placement.
 - (A) Before DISD 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, §§300.342-300.347, state statutes, and commissioner of education rules.
 - (B) For each student, the services which the school district is unable to provide and which 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 an initial and an annual on-site visit to verify that the residential facility can, and will, provide the services listed in the student's IEP which 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) The placement of more than one student, in the same residential 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 service must be made for each student.
 - (H) When a student who is residentially placed by a school district changes his residence to another Texas school district, and the student continues in the contracted placement, the school district which negotiated the contract shall be responsible for the residential contract for the remainder of the school year.
- (b) Application approval process. Requests for approval of state and federal funding for residentially placed students shall be negotiated on an individual student basis through a residential application submitted by the school district to the 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 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; and/or
 - (F) residential facility provides unfundable/unapprovable services.
 - (2) The residential placement, if approved by the TEA, shall be funded as follows:
 - (A) the education cost of residential contracts shall be funded with state funds on the same basis as nonpublic day school contract costs according to Texas Education Code, §42.151;
 - (B) related services and residential costs for residential 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 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 funds to pay the balance of the residential contract placement(s) costs; and
 - (C) funds generated by the formula for residential costs described in subsection (b)(2)(B) of this section shall not exceed the daily rate recommended by the Texas Department of Protective and Regulatory Services for the specific level of care in which the student is placed.
- (c) Approval of the education program for facilities which provide educational services. Residential facilities which provide educational services must have their educational programs approved for contracting purposes by the commissioner of education.
- (1) If the education program of a residential facility which is not approved by the commissioner of education is being considered for a residential placement by a local school district, the school district should notify the TEA in writing of its intent to place a student at the facility. The TEA shall begin approval procedures and conduct an on-site visit to the facility within 30 calendar days after the 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 of education shall renew approvals and issue new approvals only for those facilities which have contract students already placed or which have a pending request for

residential placement from a school district. This approval does not apply to residential facilities which only provide related services or residential facilities in which the local accredited school district where the facility is located provides the educational program.

- (3) School districts which contract for out-of-state residential placement shall do so in accordance with the rules for in-state residential placement in this section, except that the facility must be approved by the appropriate agency in the state in which the facility is located, rather than by the commissioner of education in Texas.

TEC §29.012. Residential Facilities

- (a) Except as provided by Subsection (b)(2), not later than the third day after the date a person 22 years of age or younger is placed in a residential facility, the residential facility shall:
 - (1) if the person is three years of age or older, notify the school district in which the facility is located, unless the facility is an open-enrollment charter school; or
 - (2) if the person is younger than three years of age, notify a local early intervention program in the area in which the facility is located.
- (b) An agency or political subdivision that funds, licenses, certifies, contracts with, or regulates a residential facility must:
 - (1) require the facility to comply with Subsection (a) as a condition of the funding, licensing, certification, or contracting; or
 - (2) if the agency or political subdivision places a person in a residential facility, provide the notice under Subsection (a) for that person.
- (c) For purposes of enrollment in a school, a person who resides in a residential facility is considered a resident of the school district or geographical area served by the open-enrollment charter school in which the facility is located.
- (d) The Texas Education Agency, the Texas Department of Mental Health and Mental Retardation, the Texas Department of Human Services, the Texas Department of Health, the Department of Protective and Regulatory Services, the Interagency Council on Early Childhood Intervention, the Texas Commission on Alcohol and Drug Abuse, the Texas Juvenile Probation Commission, and the Texas Youth Commission by a cooperative effort shall develop and by rule adopt a memorandum of understanding. The memorandum must:
 - (1) establish the respective responsibilities of school districts and of residential facilities for the provision of a free, appropriate public education, as required by the Individuals with Disabilities Education Act (20 U.S.C. Section 1400 et seq.) and its subsequent amendments, including each requirement for children with disabilities who reside in those facilities;
 - (2) coordinate regulatory and planning functions of the parties to the memorandum;
 - (3) establish criteria for determining when a public school will provide educational services;
 - (4) provide for appropriate educational space when education services will be provided at the residential facility;
 - (5) establish measures designed to ensure the safety of students and teachers; and
 - (6) provide for binding arbitration consistent with Chapter 2009, Government Code, and Section 154.027, Civil Practice and Remedies Code.

B. Texas School for the Blind and Visually Impaired (TSBVI)

TEC §30.021. Purpose of Texas School for the Blind and Visually Impaired. (TSBVI)

- (a) The Texas School for the Blind and Visually Impaired is a state agency established to serve as a special school in the continuum of statewide alternative placements for students who are 21 years of age or younger on September 1 of any school year and who have a visual impairment and who may have one or more other disabilities. The school is intended to serve students who require specialized

or intensive educational or related services related to the visual impairment. The school is not intended to serve:

- (1) students whose needs are appropriately addressed in a home or hospital setting or in a residential treatment facility; or
 - (2) students whose primary, ongoing needs are related to a severe or profound emotional, behavioral, or cognitive deficit.
- (b) The school district in which a student resides is responsible for assuring that a free appropriate public education is provided to each district student placed in the regular school year program of the school and that all legally required meetings for the purpose of developing and reviewing the student's individualized educational program are conducted. If the school disagrees with a district's individualized education program committee recommendation that a student be evaluated for placement, initially placed, or continued to be placed at the school, the district or the school may seek resolution according to a procedure established by the commissioner or through any due process hearing to which the district or school is entitled under the Individuals with Disabilities Education Act (20 U.S.C. Section 1400 et seq.).

C. Texas School for the Deaf (TSD)

TEC §30.051. Purpose of Texas School For the Deaf (TSD)

- (a) The Texas School for the Deaf is a state agency established to provide educational services to persons who are 21 years of age or younger on September 1 of any school year and who are deaf or hard of hearing. The school shall provide:
- (1) comprehensive educational services, on a day or residential basis;
 - (2) short-term services to allow a student to better achieve educational results from services available in the community; and
 - (3) services for any student who is deaf or hard of hearing and also has an additional disability and who requires a specialized support program but does not require a residential treatment facility.

TEC §30.057. Admission to Texas School for the Deaf (TSD)

- (a) The Texas School for the Deaf shall provide services in accordance with Section 30.051 to any eligible student with a disability for whom the school is an appropriate placement if the student has been referred for admission:
- (1) by the school district in which the student resides under the student's individualized education program;
 - (2) by the student's parent or legal guardian, or 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 school as the appropriate placement for the student rather than the placement in the student's local or regional program recommended under the student's individualized education program; or
 - (3) by the student's parent or legal guardian through the student's admission, review, and dismissal or individualized family service plan committee, as an initial referral to special education for students who are three years of age or younger.
- (b) The commissioner, with the advice of the school's governing board, shall adopt rules to implement this section. The rules adopted by the commissioner may address the respective responsibilities of a student's parent or legal guardian or a person with legal authority to act in place of the parent or legal guardian, or the student, if age 18 or older, the school district in which the student resides, and the school.

D. Regional Day School Program for the Deaf (RDSPD)

TEC §30.083. Statewide Plan.

- (a) The director of services shall develop and administer a comprehensive statewide plan for educational services for students who are deaf or hard of hearing, including continuing diagnosis and evaluation, counseling, and teaching. The plan shall be designed to accomplish the following objectives:
- (1) providing assistance and counseling to parents of students who are deaf or hard of hearing in regional day school programs for the deaf and admitting to the programs students who have a hearing loss that interferes with the processing of linguistic information;
 - (2) enabling students who are deaf or hard of hearing to reside with their parents or guardians and be provided an appropriate education in their home school districts or in regional day school programs for the deaf;
 - (3) enabling students who are deaf or hard of hearing who are unable to attend schools at their place of residence and whose parents or guardians live too far from facilities of regional day school programs for the deaf for daily commuting to be accommodated in foster homes or other residential school facilities provided for by the agency so that those children may attend a regional day school program for the deaf;
 - (4) enrolling in the Texas School for the Deaf those students who are deaf or hard of hearing whose needs can best be met in that school and designating the Texas School for the Deaf as the statewide educational resource for students who are deaf or hard of hearing;
 - (5) encouraging students in regional day school programs for the deaf to attend general education classes on a part-time, full-time, or trial basis; and
 - (6) recognizing the need for development of language and communications abilities in students who are deaf or hard of hearing, but also calling for the use of methods of communication that will meet the needs of each individual student, with each student assessed thoroughly so as to ascertain the student's potential for communications through a variety of means, including through oral or aural means, fingerspelling, or sign language.
- (b) The director of services may establish separate programs to accommodate diverse communication methodologies. Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.

TEC §30.081 - TEC §30.086. [See Section 8 for Funding](#)

VI. INSTRUCTIONAL PROGRAMS / SERVICE DELIVERY

§300.110 Program options.

The State must ensure that each public agency takes steps to ensure that its children with disabilities have available to them the variety of educational programs and services available to nondisabled children in the area served by the agency, including art, music, industrial arts, consumer and homemaking education, and vocational education.

(Authority: 20 U.S.C. 1412(a)(2), 1413(a)(1))

A. Adapted Physical Education

§300.108 Physical education.

The State must ensure that public agencies in the State comply with the following:

- (a) **General.** Physical education services, specially designed if necessary, must be made available to every child with a disability receiving FAPE.
- (b) **Regular physical education.** Each child with a disability must be afforded the opportunity to participate in the regular physical education program available to nondisabled children unless--

- (1) **The child is enrolled full time in a separate facility; or**
- (2) **The child needs specially designed physical education, as prescribed in the child's IEP.**
- (c) **Special physical education. If specially designed physical education is prescribed in a child's IEP, the public agency responsible for the education of that child must provide the services directly or make arrangements for those services to be provided through other public or private programs.**
- (d) **Education in separate facilities. The public agency responsible for the education of a child with a disability who is enrolled in a separate facility must ensure that the child receives appropriate physical education services in compliance with paragraphs (a) and (c) of this section.**
(Authority: 20 U.S.C. 1412(a)(5)(A))

Physical Education services, specially designed where necessary, will be provided as an integral part of the educational program of each student with disabilities. The ARD/IEP committee should consider three options when making decisions about the physical education needs of students with disabilities. These decisions must be based on an adapted physical education evaluation.

1. *The APE evaluation will provide the ARD/IEP committee with the following information:*
 - a. *identification of student's problems,*
 - b. *identification of areas of competencies,*
 - c. *documentation of the student's need for adapted physical education.*
2. *Regular Physical Education with No Modifications or Accommodations*
NOTE: An adapted physical education evaluation is not necessary when the student with disabilities can participate in regular physical education with no modifications.
3. *Regular Education With Modifications or Accommodations*
Regular PE should be considered when modifications would make it possible for the student with disabilities to be successful in a regular physical education program. The specific modifications must be described in the student's IEP. It would be the responsibility of the special education teacher to assist the regular physical education teacher with modifications for the student and to monitor the progress of the student.
4. *Adapted Physical Education*
 - a. *An adapted physical education program with IEP objectives should be provided when the adapted physical education evaluation determines that the student cannot be successful in a regular physical education class with modifications. When the ARD/IEP committee has made the recommendation and the arrangements are specified in the student's IEP, physical education for the students with disabilities may be provided by the following personnel:*
 1. *special education instructional or related service personnel who have the necessary skills and knowledge;*
 2. *physical education teachers;*
 3. *occupational therapist;*
 4. *physical therapist;*
 5. *occupational therapy assistant or physical therapy assistant working under supervision in accordance with the standards of their profession.*
 - b. *When these services are provided by special education personnel, DISD must document that they have the necessary skills and knowledge. Documentation may include, but not be limited to, in-service records, evidence of attendance at seminars or workshops, and/or transcripts of college courses.*
 - c. *If specially designed physical education is prescribed in a student's IEP, DISD will provide the services directly or make arrangements for those services to be provided through other public or private programs.*
 - d. *If DISD enrolls a student with a disability into a facility, DISD ensures that the student receives appropriate physical education services.*

B. Behavior Improvement Classes

DISD will provide specialized instructional strategies and incorporate a behavioral level system for those students whose ARD/IEP Committee determine a more restrictive placement is appropriate due to behavioral needs.

C. Content Mastery Program Overview

The Content Mastery Center is designed to assist students to achieve to their maximum potential in the mainstream. The Content Mastery model is a problem solving model, constantly analyzing student performance in the mainstream. The Content Mastery teacher works with the general education teacher to match the demands of the class with the skills of the student.

The Content Mastery will be more than “a little extra help”. The Content Mastery Teacher will be proactive - obtaining lesson plans, materials, etc., ahead of time to plan a quality support system for both the general education teacher and the student. Increased stimulus variation is offered to students by utilizing as many different strategies as necessary to teach an objective.

1. *There are two underlying principles of the program that are essential to its success:*
 - a. *Students with disabilities can learn and succeed in the mainstream with appropriate accommodations and support.*
 - b. *To be successful in the mainstream, the special student may need special help in several subject areas - not just reading and/or math.*
2. *Services include but are not restricted to the following:*
 - a. *taped textbooks;*
 - b. *hi-lighted materials (textbooks, worksheets, etc.);*
 - c. *reading test to students and/or assisting teachers with test adaptation;*
 - d. *help with a packet, worksheet, written assignment, or anything involving textbooks;*
 - e. *study group for exams;*
 - f. *discussing individual student’s strengths and weaknesses with regular teachers;*
 - g. *monitoring student progress and placement;*
 - h. *aiding in student organizational skills;*
 - i. *vocabulary files for mainstreamed courses;*
 - j. *supplementary materials for courses;*
 - k. *modified materials; and*
 - l. *problem solving between regular and special education teachers.*
3. *The student may leave his/her general classroom and go to the Content Mastery Center when independent student work is being done. The student may not use the Content Mastery Center during the teacher’s direct instruction, class discussion, group work, lab, or a film. Examples of when a student might use the Content Mastery Center:*
 - a. *when working independently on a packet, written assignment, worksheet, or questions from the textbook;*
 - b. *when the student is assigned to read a chapter in class; or*
 - c. *when students are studying for a test or a test is being given.*
4. *The time spent in the Content Mastery Center may vary from ten minutes to the entire class period, depending on what the student needs to accomplish. Recommended guidelines for general education teachers utilizing the Content Mastery Center for students placed into this setting:*
 - a. Consistently Low Grades
If a student’s grades are consistently low in a subject (70’s or below), then the student needs to use the Content Mastery Center on a regular basis.

- b. Poor Student Performance
The student's performance during the lesson cycle provides the most accurate assessment of appropriate use of Content Mastery. There are two critical checkpoints in the lesson cycle: (a) check for understanding, and (b) guided practice. If a student is experiencing academic difficulty at either of these two checks, then he/she should go to Content Mastery for a reteach.
- c. Gaps in Student Skills
If the general education teacher and the content mastery teacher determine that a student is missing vital prerequisite skills for a lesson, then the student may need a "preteach" at some point in the lesson cycle for tomorrow's lesson. The most appropriate step for this to occur is during independent practice, which would need to be reduced in order for there to be adequate time for a "preteach".
- d. Behavior. *It is inappropriate to send a student to content mastery because of behavior problems unless so determined by ARD.*

D. Homebound Program

DISD provides homebound instruction for students who are unable to attend school because of medical reasons.

1. *It is the responsibility of the ARD/IEP committee to determine:*
 - a. *the curriculum that is appropriate for homebound instruction;*
 - b. *modifications of the student's schedule.*
The general classroom teacher on the student's home campus determines academic course work for the homebound program.
2. *The ARD/IEP committee must receive the following documentation:*
 - a. *student will be unable to attend the regular school program for a minimum of four weeks;*
 - b. *a written medical report from the physician stating the length of homebound service.*
Duration of service can only be extended as indicated by physician.
3. *It is important for the ARD/IEP committee to stress to the parents that an adult must be present in the home when a homebound teacher is providing instruction.*
4. *Dismissal procedures for homebound students are outlined in the ARD/IEP committee meeting that initiates homebound instruction. A homebound student will return to school:*
 - a. *when the medical release from the physician indicates*
 - b. *when the medical report from the physician expires.*

E. Learning in Functional Environments (L.I.F.E.)

The Learning in Functional Environments (L.I.F.E.) program is the name given to describe a service delivery option, which may be considered by the ARD/IEP committee. The LIFE curriculum focuses on training and instruction in functional daily living skills with a strong vocational emphasis at the secondary level to prepare students for work in a supported employment environment when they leave school. The academic areas of reading, writing, and mathematics are included with an emphasis on functional skills to become as independent as possible. The term Community-based Instruction (CBI) is a term used to describe teaching and learning the functional skills in the actual real environment of the community versus inside the classroom. Community-based Instruction is not a field trip; rather it is an instructional trip specifically to teach the goals and objectives of the IEP on a consistent basis in the real environments.

F. Preschool Program for Children with Disabilities (PPCD)

The Preschool Program for Children with Disabilities ages three through five is offered on select elementary school campuses. Parents are encouraged to be active participants in all phases of the educational process. Instruction is based on an individual education plan that is determined after evaluation has been completed. There may be several instructional personnel working together for the benefit of the student. These staff members may include, but are not limited to, an educational diagnostician, speech pathologist, nurse, special education teacher, special education, instructional aide, occupational and/or physical therapist. PPCD placement is based on evaluation, eligibility and the student's IEP.

G. Speech Therapy

The speech/language pathologist utilizes a service delivery system that has a range of services from least to most restrictive. An important component of this model is the option of providing service in general classroom through collaboration with the general education teacher. (Speech/language pathologist should be strongly encouraged to continue to implement this when appropriate for students.)

*The amount of therapy time set out in the IEP establishes that these services will be provided. Therefore, it is essential that therapy **not** be canceled. Careful planning is required to allow for ARD/IEP meetings and testing time. Whenever possible, missed therapy sessions should be made up on another day.*

- 1. Relative to ARD/IEP committee meetings, the speech pathologist:*
 - a. should send home a DRAFT IEP at least one week prior to the ARD. A cover letter with name, conference time and phone number should accompany the IEP.*
 - b. must attend ARDs for students with a "speech impairment only";*
 - (1. copy and distribute the modification checklist to all the student's teachers that are SI only.*
 - (2. collaborate with special education teachers on the best means for distribution of students who are SI as a secondary disability.*
 - c. may attend ARDs for students that have the SI label in addition to another disability.*
- 2. Other responsibilities:*
 - a. Full-time pathologists traditionally schedule a set time per week to use for testing, ARD/IEP committee meetings and paperwork.*
 - b. Our goal is for full-time therapists serve approximately 60 to 65 students per week. There may be circumstances in which this caseload is not possible.*
 - c. Lesson plans should be used as a guide for the implementation of the IEP.*

H. Vocational Adjustment Class/Program

The Vocational Adjustment Class (VAC) is a special education vocational program that is offered on the high school campus. This instructional arrangement is designed for students with disabilities who desire vocational training and are unable to make progress in regular vocational programs. The curriculum of the VAC program includes on-the-job training and frequent supervision at work sites in the community.

Employment opportunities and training are based on vocational evaluation, student needs and abilities, teacher recommendations and parental preference.

Admission to the Vocational Adjustment Program is made by the Admission, Review and Dismissal (ARD/IEP) committee.