TEXAS ADMINISTRATIVE CODE 89.1096

(a) Except as specifically provided in this section, in accordance with 34 Code of Federal Regulations (CFR), §300.137, no eligible student who has been placed by his or her parent(s) in a private school or facility has an individual right to receive some or all of the special education and related services that the student would receive if he or she were enrolled in a public school district. Except as specifically set forth in this section, a school district's obligations with respect to students placed by their parents in private schools are governed by 34 CFR, §§300.130-300.144.

(1) For purposes of subsections (a) and (d) of this section only, private school is defined as a private elementary or secondary school, including any pre-school, religious school, and institutional day or residential school, that:

(A) as required by 34 CFR, §300.13 and §300.130, is a nonprofit entity that meets the definition of nonprofit in 34 CFR, §77.1; and

(B) provides elementary or secondary education that incorporates an adopted curriculum designed to meet basic educational goals, including scope and sequence of courses, and formal review and documentation of student progress.

(2) A home school must meet the requirements of paragraph (1)(B) of this subsection, but not paragraph (1)(A) of this subsection, to be considered a private school for purposes of subsections (a) and (d) of this section.

(b) When a student with a disability who has been placed by his or her parents directly in a private school or facility is referred to the local school district, the local district shall convene an admission, review, and dismissal (ARD) committee meeting to determine whether the district can offer the student a free appropriate public education (FAPE). If the district determines that it can offer a FAPE to the student, the district is not responsible for providing educational services to the student, except as provided in 34 CFR, §§300.130-300.144, or subsection (e) of this section, until such time as the parents choose to enroll the student in public school full time.

(c) Parents of an eligible student ages 3 or 4 shall have the right to "dual enroll" their student in both the public school and the 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 a district's public school kindergarten program, whichever comes first, subject to paragraphs (1)-(3) of this subsection. The public school district where a student resides is responsible for providing special education and related services to a student whose parents choose dual enrollment.

(1) The student's ARD committee shall develop an individualized education program (IEP) designed to provide the student with a FAPE in the least restrictive environment appropriate for the student.
(2) From the IEP, 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 set forth in 34 CFR, §§300.114-300.120, and the policies and procedures of the district.

(3) For students served under the provisions of this subsection, the school district shall be responsible for the employment and supervision of 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 school district.

(d) Parents of an eligible student ages 3 or 4 who decline dual enrollment for their student may request a services plan as described in 34 CFR, §§300.130-300.144. The public school district where the private school is located is responsible for the development of a services plan, if the student is designated to receive services under 34 CFR, §300.132.

(e) The school 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.

(f) Complaints regarding the implementation of the components of the student's IEP that have been selected by the parent and the district under subsection (c) of this section may be filed with the Texas Education Agency under the procedures in 34 CFR, §§300.151-300.153. Additionally, parents may request mediation as outlined in 34 CFR, §300.506. The procedures in 34 CFR, §§300.300, 300.504, 300.507, 300.508, and 300.510-300.518 (relating to due process hearings) do not apply to complaints regarding the implementation of the components of the student's IEP that have been selected by the parent and the district under subsection (c).

Source Note: The provisions of this §89.1096 adopted to be effective March 6, 2001, 26 TexReg 1837; amended to be effective June 7, 2004, 29 TexReg 5608; amended to be effective November 11, 2007, 32 TexReg 8129