

10.3 School Calendar Requirements and Waivers of These Requirements

A district or charter school's AEP's are eligible to earn full ADA if the district or charter school provides at least 43,200 minutes of instruction.²¹⁶

The commissioner of education may waive requirements established by the TEC, State Board of Education rule, or commissioner rule to the extent allowed under the TEC, [§7.056](#).²¹⁷ All rules and regulations of student eligibility and attendance reporting are applicable unless specifically waived.

Many times, waiving certain laws or rules associated with education indirectly affects other areas of education. Before applying for a waiver, your district or charter school should evaluate how the reporting of attendance and the funding of students will be affected if the waiver is granted.

10.3.1 Requirements Specific to JJAEPs

A JJAEP must operate at least 7 hours per day (420 minutes) and at least 180 days per year unless the JJAEP has applied to the Texas Juvenile Justice Department for a waiver of the 180-day requirement. Any waiver granted under this provision must not exceed the highest number of school days waived by the commissioner during the same school year for a regular school district program.²¹⁸

10.4 Attendance Accounting Documentation

Basic attendance accounting records for students served in an AEP must meet the same standards established in this handbook for the regular school program (see Sections 2 and 3).

10.5 AEPs for Students in Residential Facilities

The programs covered under this category include, but are not limited to, programs for students in juvenile detention centers; detention centers and correctional facilities that are registered with the Texas Juvenile Justice Department (TJJD); residential care and treatment facilities operated under contract to a public agency, such as the TJJD; residential treatment facilities operated for purposes such as treatment of substance and alcohol abuse; private residential treatment centers (PRTCs); and residential care and treatment facilities operated by a state supported living center, a state agency, or the federal government.

Students residing in the kinds of facilities listed in the previous paragraph or in any other residential facility²¹⁹ are eligible for and are entitled to enroll in and receive the education services available from the school district in which the facility is located.²²⁰ While some residential facilities provide an education program for their residents, most of these facilities call on the district of residence (district in

²¹⁶ [TEC § 42.005](#)

²¹⁷ TEC, [§7.056](#)

²¹⁸ TEC, [§37.011](#)(f)

²¹⁹ Per the TEC, [§5.001](#), "residential facility" means (A) a facility operated by a state agency or political subdivision, including a child placement agency, that provides 24-hour custody or care of a person 22 years of age or younger, if the person resides in the facility for detention, treatment, foster care, or any noneducational purpose; and (B) any person or entity that contracts with or is funded, licensed, certified, or regulated by a state agency or political subdivision to provide custody or care for a person under Paragraph (A).

²²⁰ TEC, [§25.001](#)(b)(7)

which the residential facility is located) to provide instructional services to students residing in the facility. When a student aged 3 to 22 years is placed in a residential facility, the facility must notify the district in which the facility is located by the third day after the date of placement, unless the student has been placed in the facility by an agency or political subdivision that funds, licenses, certifies, contracts with, or regulates the facility.²²¹ A district should contact residential facilities in the district to coordinate implementation of this notice provision.

AEPs for students in residential facilities are subject to the FSP rules and regulations documented in this handbook, which apply regardless of the nontraditional education program that is implemented.

See [3.3.6.2 Students from Outside Your District Who Will Be in Your District for 10 Days or Fewer](#) for information on attendance accounting and students from outside your district who will be residing in a detention facility or other facility in your district for 10 days or fewer.

10.6 Disciplinary Removals and Programs

This subsection provides information on attendance accounting as it relates to specific kinds of disciplinary removals and programs. Refer to the TEC, Chapter 37, for statutory requirements related to discipline. Refer to *TSDS PEIMS Data Standards* for information on how your district should handle disciplinary removals and report disciplinary-removal information. The *Data Standards* can be accessed at http://www.texasstudentdatasystem.org/TSDS/TEDS/TEDS_Latest_Release/.

10.6.1 Students Required to Attend a JJAEP

A JJAEP is not eligible to receive FSP funding and does not report student attendance to the TEA. The school district in which the student is enrolled immediately preceding the student’s JJAEP placement determines ADA eligibility coding for JJAEP students by using the following chart and referring to [3.2.1 ADA Eligibility Coding](#).

ADA Eligibility of Students Served by a JJAEP

The student is being served by a JJAEP on the basis of:	Population of County in Which District Is Located	Is the student eligible for ADA?
a mandatory expulsion under the TEC, §37.007 (a), (d), or (e).	Greater than 125,000	No, unless specifically authorized in writing by TEA (ADA code 0, 4, or 5 unless otherwise authorized) ²²²
a mandatory expulsion under the TEC, §37.007 (a), (d), or (e).	At least 72,000 but less than 125,001	Yes (ADA code 0, 1, or 2), unless the county has created a JJAEP approved by TJJD ²²³ , then use ADA code 0, 4, or 5
a mandatory expulsion under the TEC, §37.007 (a), (d), or (e).	Less than 72,000	Yes (ADA code 0, 1, or 2)

²²¹ TEC, [§29.012](#). The TEC, §29.012, does not apply to a residential treatment facility for juveniles established under the Texas Human Resources Code, [§221.056](#).

²²² Funding is provided to the JJAEP by the TJJD. TEC, [§37.011](#)(h)

²²³ If the JJAEP is approved by the TJJD, funding is provided by the TJJD. General Appropriations Act, Article V, Texas Juvenile Justice Department Rider 13

The student is being served by a JJAEP on the basis of:	Population of County in Which District Is Located	Is the student eligible for ADA?
an expulsion other than a mandatory expulsion under the TEC, §37.007(b) , (c), or (f).	Population of any size	Yes (ADA code 0, 1, or 2)
being assigned to attend the JJAEP by a court (student was not expelled).	Population of any size	Yes (ADA code 0, 1, or 2)
being placed in the JJAEP under the TEC, §37.309(b) .	Population of any size	Yes (ADA code 0, 1, or 2)

If a student who is required to attend a JJAEP does not appear, the student should be reported as absent at the campus at which he or she was enrolled before assignment to the JJAEP. On the date that the student does appear to attend the JJAEP, your district reports the student as present at the JJAEP campus. Your district **must not** withdraw a student required to attend a JJAEP.

10.6.2 Disciplinary Removals of Students with Disabilities

The education services provided to a special education student removed to a disciplinary placement are to be provided following the requirements of the 2-through-4-hour rule (see [3.2 Membership and Eligibility for Attendance and Foundation School Program \(FSP\) Funding](#) and [3.2.1 ADA Eligibility Coding](#)). Where services provided do not meet the requirements of the 2-through-4-hour rule, the student’s ADA eligibility code is 0 Enrolled, Not in Membership.

A student must not be removed to a homebound setting (instructional setting code 01). Your district must determine the student’s instructional setting code based on the percentage of time the student is removed from the general education setting. Note that a special education student’s instructional setting will not change as a result of his or her placement in a DAEP.

(For information regarding funding and expulsion to a JJAEP, see the chart in the preceding subsection.)

10.6.3 Out-of-School Suspension (OSS)

A principal or other appropriate administrator may suspend a student who engages in conduct identified in the student code of conduct adopted under the TEC, [§37.001](#), as conduct for which a student may be suspended.²²⁴

An OSS must not exceed 3 school days. Your district **must count a suspended student absent** if the student does not meet ADA requirements for attendance accounting purposes.

²²⁴ TEC, [§37.005\(a\)](#)

10.7 Examples

10.7.1 Example 1

Your district operates a DAEP for behavior management on a separate campus. Your district has moved a student to this alternative campus because of severe discipline problems. The student attends the alternative campus from 8:15 a.m. to 3:30 p.m.

*Your district would code this student with an ADA eligibility code of **1 - Eligible for Full-Day Attendance**.*

10.7.2 Example 2

A student commits an expellable offense while on school property. Your district calls the police, and the student is arrested. The juvenile court finds that the student engaged in delinquent conduct and places the student in the county JJAEP for the remainder of the school year.

Your district should contact the TEA to establish a separate campus for the district's JJAEP students and enroll students at this JJAEP campus as the students are placed at the JJAEP facility.

After a student fulfills the JJAEP placement requirements, your district should withdraw the student from the JJAEP campus and enroll the student at an appropriate campus in accordance with local policy.

10.7.3 Example 3

A student is suspended for 3 days because the student violated your district's student code of conduct.

Your district should code the student as absent while he or she is suspended for 3 days.