

Out-of-District Manual

**Resources and Information for
Approved Facility Schools
and School Districts**

2013



Colorado Department of Education
1560 Broadway, Suite 1175
Denver, CO 80202

Out-of-District Manual

Extended School Year Services

Extended School Year (ESY) services must be provided to a student only if the child's IEP team determines that the services are necessary for the student to receive a Free Appropriate Public Education (FAPE) *IDEA regulations 300.106*. The purpose of ESY is to help students maintain learned skills which would otherwise be lost over a school break and which would take a significant amount of time to relearn.

The legal definitions and requirements to provide ESY are quite narrow. Eligibility must be determined on an individual basis. The decision is based on the student's ability to maintain learned skills identified on the IEP during the traditional school year. There is no specific amount of time or type of service required. If the student is eligible for services, the amount of service must be determined on an individual basis, by the student's IEP team. Full time services are not typically required to meet a student's ESY entitlement.

ESY must be considered at every annual review. If the student experiences a significant regression and requires an unreasonably long period of time to relearn previously learned skills, evidence of that information must be documented in or attached to the IEP. If there is insufficient information to determine eligibility at the time, the "to be determined by" box should be marked and a date provided when ESY eligibility will be determined *IEP Manual p. 65*.

ESY is not a traditional summer school program. It is not intended to make up for absences due to truancy, illness, suspension, or expulsion. It is not intended to help a student learn new skills or "catch up." While these may be valid issues, ESY is not the appropriate mechanism to address them and the district/AU of residence is not responsible for paying excess costs for such programs.

During the 2008 legislative session, amendments to the School Finance Act have allowed approved Facility Schools to bill PPR for educational services provided during the summer. A corresponding amendment states that "...a school district of residence shall not be required to pay costs incurred by an approved facility school in providing educational services at the approved facility school during the months of June, July, or August" *22-20-109 C.R.S.* There has been some confusion regarding how to align this statutory language which refers to general education summer school with the federal requirement to provide ESY services if needed to ensure FAPE. Guidance is being sought from the Attorney General's office related to this issue. When an answer is received, the content will be added to this section of the Out of District Manual.

Administrative Unit Information

- The process for determining out-of-district student's eligibility for ESY should be as consistent as possible with the process for students enrolled in the public schools.
- The district should inform the facility of its procedures for ESY documentation, and the required timeline, as well as provide forms or other documents which may be helpful.
- Regression/recoupment may be very difficult to document for students who have been in multiple short-term placements or for students who have been out of school for some period of time. It is even more important to consider predictive factors in these circumstances in order to make appropriate determinations.
- If a district has placed a student into a facility program for "school only" services and wants the student to receive summer services as well, the district will still need to pay for the entire cost of the placement during the summer. The facility is not allowed to bill CDE for PPR for students in "school only" placements during the regular school year or the summer.

Facility Information

- Students most likely to qualify for extended school year services are those with significant support needs, but in all cases the ESY determination must be made by the full IEP staffing team on an individual basis.
- The facility should follow as closely as possible the guidelines and documentation requirements of the student's administrative unit of residence in order to provide appropriate information at the time of the IEP meeting.

Resources

ESY Guidance Manual:

http://www.cde.state.co.us/cdesped/download/pdf/ESY_GuidanceManual.pdf

For more information contact:

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1560 Broadway, Suite 1175
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Introduction

This manual is intended to be a practical guide to the process and procedures for out-of-district placements in approved facility schools. It combines the collective expertise of numerous individuals who have worked in this area for many years – both from the perspective of an administrative unit and from that of a facility.

The goal is to help provide consistency and clarity for facilities and school districts in order to provide the best possible services for students in out-of-district placement. Cooperation between facilities, school districts, parents, advocates and other agencies involved with the child is encouraged. Sharing information and using a common language can facilitate that process and this manual is intended to inform and support that work.

As much as possible, the information provided is based on legal requirements found in the state and federal regulations. Citations are given for legal references and links to relevant web sites are contained in each section. However, there are often issues for which there are no direct legal references. For this reason, the manual also contains information which has been developed over time as reasonable solutions or common practices for situations not addressed in statute or rule. This information is provided as a means to facilitate consistency and to support those individuals who may be new in their work with students placed out-of district.

The terms Eligible Facility and Facility School are both used in Colorado Statute. The term Eligible Facility means a day treatment center, residential child care facility or a hospital licensed by either the Department of Human Services or the Department of Public Health and Environment. The term Approved Facility School refers to an educational program that is operated by a licensed agency and that has been approved to receive reimbursement for education services for students placed in the program. In the spring of 2008, legislation was passed that addressed approved facility schools in a number of ways. Commonly referred to as H.B. 1204 (22-2-401 C.R.S.), it established a board with rule making authority to set graduation requirements and the approval process for facility schools. It also charged the Facility Schools Board with adopting curriculum and establishing an accountability process. It established a unit within CDE with specific responsibilities related to the board and to approved facility schools and it specified the purchase of a data system to maintain the educational records of students in placement. This legislation specifically uses the term approved facility school and the language in other statutes is gradually being updated to be consistent with this terminology.

Often, there is confusion about the different types of agencies and programs in which students may be placed other than a school district. Eligible Facilities and Facility Schools are distinguished from private schools, district or BOCES programs, State Operated Programs and detention centers through the administrative structure and funding streams applicable to each.

Private schools are generally not licensed by a state agency and placements are generally a matter of parent choice. Private schools are not eligible to be approved or to receive public education funding.

Eligible Facilities may be private agencies, but they are not private schools. The facility must be licensed by the appropriate state agency prior to receiving approval for the school program and funding is only available for placements made by a public agency rather than by parent choice. In the case of hospitals, the student must be a patient of the hospital. The school approval process allows the facility to be reimbursed for education costs.

School districts or administrative units may develop programs for their own students and those of neighboring districts which may be similar to those of a Facility School. If the education staff of the program is employed by the district or BOCES, the mechanism for receipt of public education funds is already in place and there is no need for approval.

State Operated Programs are public agencies defined in statute. They are, the Colorado School for the Deaf and the Blind, the Division of Youth Corrections, the Department of Adult Corrections and the Colorado Mental Health Institute at Pueblo.

Detention Centers are also specified in statute. Students are most generally placed in a detention center when they have been arrested and are awaiting trial. The school district where the detention center is located is responsible for providing education services to detained students and districts in the surrounding catchment area contribute to the costs on a prorated basis. While some students may move between State Operated Programs, Detention Centers and Facility Schools, the authority, responsibilities and funding streams for each type of agency are distinct.

The primary focus of this manual is on placements in Eligible Facilities or Facility Schools. References to the other types of agencies will be made as needed for clarification.

The following people have contributed their expertise and time in the development of this manual.

Steering Committee:

Jane Bouman – Englewood, Littleton and Sheridan Public Schools
Florie Fisch – Mountain Star program (retired)
Brigitte Gustafson – Ft. Lupton and Keenesburg school districts
Christine (Crittty) McClendon – Denver Public Schools
Haley Moran – Academy District #20 and Children’s Ark
Kelly O’Shea – Tennyson Center
Ann Schick – Adams #12 school district
Robin Singer – Mt. St. Vincent Home
Linda Williams-Blackwell – El Pueblo Boys and Girls Ranch
Jason Gruhl – The Joshua School

Review Committee:

Maria Black – Colorado Springs District #11
Martha Holloway – JADe Training
Bonnie Randall – Cherry Creek school district

We would also like to thank Lynne Tucker whose considerable work on revising the original Out of District Manual served as the basis for the current version.

We hope you will find this manual useful and welcome your comments and suggestions. The manual has been revised several times over the years and will continue to be updated as needed. If you have questions about facility schools, the approval process or other matters related to students in placement, the Facility Schools Unit at CDE is available for assistance.

For more information contact:

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Excess Costs

Tuition Costs or Excess Costs are defined as “the amount of expenditures for special education services over and above applicable revenues...for a child with a disability who receives his or her special education services in an eligible facility...” *ECEA Rules 9.01(8)*.

Approved Facility Schools that wish to establish an excess cost rate, submit an application each fall to CDE. CDE sets an individual rate for each approved facility school program based on expected revenues and expenditures for special education services. Rates are set once each school year and apply to that particular year only. CDE does not set excess cost rates for summer school programs or ESY services.

Expenditures related to costs of special education personnel are only included for positions that are filled by appropriately qualified staff. This means, for example, that if a facility does not employ or contract with a speech/language specialist at the time excess cost applications are submitted, the costs of a speech language specialist are not included in that facility’s excess cost rate. If a child who needs speech language services is placed in that particular facility, the administrative unit of residence (AUR) is responsible to send a speech/language specialist or make arrangements to contract with a qualified person in the area.

The excess cost rate setting process results in two daily rates – a Daily Rate (or excess cost rate) and an “Other Education Costs” rate (sometimes referred to as “indirect” rate). The Daily Rate is the tuition or excess cost rate that administrative units of residence are required to pay for special education students who are placed into a facility by a public agency. The indirect rate represents legitimate education costs, but not special ed costs. Colorado school districts or AURs are not required to pay the indirect or Other Education Costs rate.

A contract needs to be established between the approved facility school and the administrative unit of residence for each child with a disability that is placed by a public agency into the approved program. The specific wording of the contract is up to the agencies involved, but both facility schools and districts are strongly encouraged to be very clear in the wording of the contract so that everyone involved is in agreement with the services to be provided and the costs to be paid. The contract should always address the CDE approved excess cost rate and specific dates of service that the contract is in effect. If relevant to the specific student in question, any costs or agreements related to additional services such as speech/language services, OT, or 1 to 1 paraprofessionals should be specified in the contract. In addition, if the district is placing the student for day treatment services, then the costs for the treatment services should be included. If the district is placing the student for “school only” services, the payment of PPR by the district must be addressed.

If needed, separate contracts can be established, but every payment that is expected from a district or administrative unit and each service for which payment is made, must be addressed in a contract agreed to by both agencies and specific to the student in question.

It is critical to be specific in the terms used. For example, the term “educational services” is not specific as to whether the district is paying PPR as for a “school-only” placement or if this only includes excess costs and may lead to misunderstandings. It is important that the terms of the contract be clearly defined and understood by those involved not only for purposes of PPR billing but also for the October count.

The excess cost rates for approved facility schools are often not approved by the State Board of Education until late in the fall or after the first of the year. Once approved however, the rate is applicable to that entire school year. For students placed early in the school year, prior to the approval of the rates, contracts should be established but instead of the dollar amount of the approved rate, the term “CDE approved rate” can be used. For established facilities, the administrative unit may agree to pay at last year’s rate until the new rates are approved. In either case, once the current school year rates are approved, adjustments will need to be made.

Administrative Unit Information

- Approved excess cost rates for facilities are posted on the CDE web site each year to be used as a reference.
- While most facilities apply for and establish an excess cost rate, some do not. If a facility in question does not appear on the list of approved rates, contact the Facility Schools Unit to verify whether or not the particular facility is approved.
- For approved facilities schools that do not have an established excess cost rate, the administrative unit of residence is still responsible for special education assessments, the IEP process, transportation (if applicable), etc.

Facility Information

- It is critical that excess cost applications be turned in on time, be completed accurately and that staff licensure issues be resolved prior to the beginning of the school year. Recently excess cost rates have not been approved until late in the fall or after the first of the year due to the time it takes to resolve problems and issues. If applications are submitted in better form, then rates can be approved earlier.
- Be sure to establish contracts right away. Do not wait until the rates are approved.
 - Although a new facility, location or program may be opened and approved at any time of year, since excess cost rates are only set once a year, if the program is not approved by the excess cost application deadline, it will not have an approved rate until the following school year. This should be taken into consideration in planning new programs.

Resources

Excess cost application forms and list of approved rates:
http://www.cde.state.co.us/cdespedfin/EXCO_Rates.htm

For questions regarding the excess cost application forms or process contact Lauren Rossini at
rossini_l@cde.state.co.us

For more information contact:

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Facility Schools Board

22-2-401 C.R.S. known as House Bill 08-1204, the Facility Schools Bill, established a seven member board appointed by the Colorado State Board of Education. The Facility Schools Board consists of 2 members who represent school districts, 2 members who represent approved facility schools, one who represents county placing agencies, one who represents state placing agencies and one who represents consumers – either a person who as a child was placed in an approved facility school or the parent of a child who is or was previously placed in a facility school.

The Facility Schools Board is charged with setting graduation requirements, adopting curriculum, adopting accountability measures and establishing the process by which facility schools can become approved. It is given rule making authority related to these topics. It is also given the authority to award high school diplomas to students in approved facility schools who meet the established graduation requirements.

The board may also make recommendations to the State Board of Education or the Department of Human Services regarding other issues related to approved facility schools, such as:

- placement procedures;
- methods and strategies for improving the quality of educational services provided by approved facility schools;
- recruitment and retention of highly qualified teachers in approved facility schools;
- the provision of appropriate services for student with disabilities, including the process for developing and reviewing individualized education program;
- methods of reimbursing approved facility schools for educational costs;
- the oversight and monitoring of approved facility schools;
- and any other issues that the facility schools board determines are within its purview and which are intended to improve educational outcomes for students in facility schools or which would promote the efficient delivery of educational services to students in placement.

While the Facility Schools Board functions in some ways as a school board of a district, the facilities are not a school district, BOCES or Local Education Agency (LEA). Facilities remain separate, independent private or public agencies as they have always been.

Information about the Facility Schools Board, the schedule of meetings and meeting minutes can be found on the CDE web site, Facility Schools page at:

<http://www.cde.state.co.us/facilityschools/index.asp>

Meetings of the Facility Schools Board are public meetings and any interested parties are invited to attend.

In addition, the legislation requires the implementation of a statewide student data system to maintain attendance, grades, transcripts and other relevant education information for students in facilities. The Facility Schools Student Data System (FSSDS) was launched in the fall of 2009 and aspects of the system are being phased in.

A new office, the Office of Facility Schools was created within CDE to perform administrative responsibilities related to facility schools. Any questions related to facility schools may be sent to the Office of Facility Schools.

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October 1 Count

All students in Colorado who are receiving a public education on October 1, or other determined date if October 1 falls on a Saturday or Sunday (22-54-3.01 C.R.S.) are counted in order to calculate school finance funding. Students publicly placed in approved facility schools are reported to CDE for purposes of the October count.

For students who are placed in a facility by a public agency, information regarding these students is entered into the Facility Schools Student Data System by the facility education staff. The Facility Schools Unit develops reports from the information in the system and notifies each district of the students reported by facilities as residents of that district. Corrections and revisions are made based on district responses and facility input. The finalized count reflects the number of students in facility placement for whom PPR funds need to be set aside. Facilities with approved school programs then bill CDE directly on a monthly basis for students placed by a public agency and receive PPR payments from these set aside funds.

If an administrative unit of residence places a student into an eligible facility for its day treatment or residential program, including education, the student will be included in the facility's October count and the facility will be eligible to bill PPR for that student. The administrative unit of residence will count the student on its December 1 Special Education Count, either for funding or for reporting purposes only *ECEA Rules, 9.03(2)(a)(i)*. A chart identifying the different types of placements and the proper coding for the December count can be found at: [url to be added when chart is posted](#)

If an administrative unit of residence places a student into an eligible facility for the educational program only (referred to as "school only") and not for mental health treatment, the district of residence will count the student on the October 1 Count and code the student as a 31 – "contractual agreement". The district will receive the PPR for the student and the facility will not be allowed to include the student in its October count or PPR billing. The administrative unit of residence will count the student on its December 1 Special Education Count as being in a private school placement, *ECEA Rules 9.03(2)(a)(ii)(B)*.

When the administrative unit or district of residence is making the placement, it is critical that the wording of the contract be clear and mutually understood by both the facility and the district/AU. Costs for general education (PPR), excess costs (for special education or general education students), treatment costs, indirect costs, additional services (i.e. related services), transportation or any other type of services must be listed separately with specific daily rates for each.

Administrative Unit Information

- Through October 2007, students placed in facilities were included in the home district's October count, but the funding was withheld at the state level. Beginning in October 2008, facility students are reported directly to CDE and are not included in the district's October count. However, districts still need to keep these students in their data systems. The administrative unit of residence still has certain responsibilities for these students and facility students who are indentified for purposes of special education are included in the AU's December count.
- Districts or administrative units may also place students in private school programs or the programs of other districts or AUs. Procedures, counts and funding for these types of placements may be handled differently. If there are questions about private school placements or placements in other districts, contact the Special Education Finance and Data Team at CDE.

Facility Information

- It is critical that the data reported on students for the October 1 count is accurate.
- Use the parents' address for determining district of residence even if a Dependency and Neglect petition (D&N) has been filed. For purposes of the October 1 count, the status of parental rights changes only when the termination is final.
- Refer to the Residency section for information on determining the district of residence in specific circumstances, or contact the Facility Schools Unit for assistance.
- Don't rely on information from the student. Verify information with the parent, caseworker, client manager and/or school district.
- 22-54-16.02 C.R.S. states that no later than October 5, an eligible facility shall report to CDE the full name (first, middle, last), gender, date of birth, parent/guardian resident address, - state assigned student identification number (SASID) and whether or not each student was placed by a public agency.
- It is critical that timelines be met. The process for notification to districts and resolution of discrepancies has tight timelines set in statute. The student information in the FSSDS system is the starting point and if that information is not entered on time and entered accurately, it becomes very difficult to meet the other required timelines.
- Specific instructions and more detailed information will be posted on the Facility Schools web page each year prior to the count.

Resources

The Rules for the Administration of the Public School Finance Act of 1994 can be found on the Secretary of State's web page:

<http://www.sos.state.co.us/CCR/Welcome.do>

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Parents and Educational Surrogate Parents

Definition of Parent

IDEA 2004 defines the term parent as:

- A biological or adoptive parent of a student;
- A foster parent (if there is a long-term foster care relationship);
- A guardian generally authorized to act as the child's parents, or authorized to make educational decisions for the child (but not the State if the child is a ward of the State);
- An individual acting in the place of a biological or adoptive parent (including a grandparent, step-parent or other relative) with whom the child lives or an individual who is legally responsible for the child's welfare; or
- An educational surrogate parent appointed by the administrative unit of residence *ECEA rules 2.33(1)*.

When more than one person is qualified to act as a parent, the biological or adoptive parent must be presumed to be the parent unless he or she does not have legal authority to make educational decisions for the child. If a judicial decree or order identifies a specific person(s) to act as the "parent" of a child or to make educational decisions on behalf of a child, then he or she shall be determined to be the parent *ECEA rules 2.33(2)*.

Neither IDEA nor Colorado defines "long term foster care relationship", so there may be some variance in how individual administrative units interpret that provision. Even if the foster care relationship is deemed to be long-term, the foster parent can only act as the parent while the student is in placement in the foster home. If a student who has been in foster care placement and is then moved to a residential facility, the foster parent can no longer be seen as the parent while the student is in the residential facility even if the plan is for the student to return to the foster home. The administrative unit of residence could however, appoint the former foster parent as the Educational Surrogate Parent provided the person has appropriate training and otherwise meets the qualifications of an ESP.

Educational Surrogate Parent (ESP)

Special education law provides that students, from birth to age 21, whose parents' rights have been terminated by the courts or whose parents have relinquished rights, or cannot be located, are entitled to be represented by an ESP. An ESP is assigned to represent the child in all educational decision-making processes pertaining to the identification, evaluation, educational placement of the child and the provision of a free, appropriate public education to the child whenever the parent of a child with a disability is unknown, cannot be located, is unavailable or the child is a ward of the state, *ECEA Rules 2.13*.

It is not appropriate to appoint an educational surrogate parent based solely on the fact that:

- the parent is incarcerated;
- the parent resides outside of Colorado;
- the student is legally emancipated; or
- the parent is homeless.

If the parent is incarcerated, but parental rights have not been terminated, the parent should be included in special education procedures by the means that are available in the given situation. Written correspondence should be sent to the parent and if it is permissible, provisions should be made to include the parent by phone.

If the parent lives outside of Colorado, but parental rights are still intact and the student has been placed by a Colorado public agency, parents should be included in person when feasible, or else by phone or through written input.

An ESP can be assigned if the court has ordered that the parents cannot make decisions regarding the student's education, or the parents are deceased and no guardian has been appointed. For these students, sometimes referred to as "educational orphans", the school district or administrative unit where the student lives becomes the school district of residence and would be responsible for the assignment of the ESP.

If there is a "no-contact" order from the court, the student may or may not be entitled to an ESP depending on the specifics of the court order. If the court order specifies that the parent is not to know the location of the child, then the student may be entitled to an ESP even if rights have not yet been terminated. An individual decision must be made in each situation. In all cases, the safety of the child must be of primary importance.

An ESP must be selected and appointed to represent the student by the administrative unit of residence. CDE is then notified of the appointment *ECEA rules 6.02(8)(f)*.

Qualifications of an ESP:

- An ESP is an adult who has no interest that conflicts with the interests of the student.
- An ESP cannot be an employee of any agency involved in the education, care or treatment of the student.
- An ESP needs to be assigned by the administrative unit of residence *ECEA rules 6.02(8)(f)*. The administrative unit making the appointment determines the level training needed and provides or arranges for such training.

Social Services Caseworker or Division of Youth Corrections Client Manager

At no time may a caseworker or client manager serve as the parent or ESP in special education procedures for a student with a disability. IDEA specifically states that a parent cannot be a person who is an employee of an agency that is involved in the education or care of the child *IDEA regulations 300.519(d)(2)*. This means that it is never appropriate for a case worker or client manager to sign as the parent of a child for purposes of special education. Even if the case worker/client manager can sign as the parent for other purposes, for special education procedures the parent must meet the definition of a parent listed above.

Case workers and client managers can certainly be invited to IEP meetings, but they would sign as a participant, not the parent. And any procedural safeguards awarded to the parent (i.e. giving permission for assessment, permission for placement in special education, etc.) must be signed by a parent who meets the IDEA definition, not by the case worker or client manager.

Guardian Ad Litem (GAL)

Because a person has been appointed a GAL, he/she is not automatically given the authority to be an ESP. However, if a student is entitled to an ESP, a GAL may be appointed in that capacity if the courts have specifically given him/her authority to make decisions regarding the education of the child and such authority is established in a written order of the court. If the GAL has not been given such authority, but is willing to serve in that capacity, the GAL may request the court action or the special education director of the Administrative Unit of residence may appoint the GAL as the ESP, provided the person has appropriate training and otherwise meets the qualifications of an ESP.

Court Appointed Special Advocate (CASA)

A CASA volunteer most often functions to advise the court on matters pertaining to the child, but is not given specific authority to make decisions on behalf of the child and should not be treated as the parent of the child. An Administrative Unit could appoint the CASA volunteer as the ESP if the person has appropriate training and is otherwise qualified.

Administrative Unit Information

- Obtain a copy of the pertinent court order(s) from the facility, county social/human services caseworker or NYC client manager to verify the status of parental rights.
- Each administrative unit is responsible to have a pool of trained Educational Surrogate Parents (ESPs) available. The administrative unit is responsible to arrange for or provide training for ESPs and determine if each person has appropriate qualifications.
- If it is determined that a student is entitled to have an ESP, contact CDE to inquire whether the student already has someone assigned. If not, contact qualified individuals and select one to serve as the ESP for the student.
- After the ESP agrees to represent the student and the appointment has been made, the administrative unit submits the appropriate form and copy of the appointment letter to the Colorado Department of Education (CDE). The form is sent to the Special Ed Directors annually, or the director may contact CDE for a copy.
- If there is a delay in the appointment of an ESP, it is inappropriate for the administrative unit to refuse to pay excess costs due to the IEP being out of compliance.
- While an ESP cannot be an employee, it is permissible to offer some compensation for services provided, *ECEA Rules 6.02(8)(g)*. The most common practice is to reimburse mileage.

Facility Information

- Obtain a copy of the pertinent court order(s) from the county social/human services caseworker or DYC client manager to verify the status of parental rights.
- It is the facility's responsibility to work with the administrative unit of residence to identify students who may be entitled to have an ESP appointed.
- Requests for the appointment of an ESP should be directed to the administrative unit of residence. The administrative unit must complete the appropriate procedures for an appointment of an ESP. An approved facility does not have the authority to appoint an ESP.
- If the facility has contacted the administrative unit of residence requesting that an ESP be appointed and provided appropriate information to document the need, but there is a delay in the appointment, the facility should contact the special education director of the administrative unit. If the special education director has been notified and there is still a delay, the facility should contact the Facility Schools Unit for assistance in resolving the issue.

Resources

ECEA Rules 6.02(8)

<http://www.cde.state.co.us/spedlaw/download/ECEARules-March2013.pdf>

IDEA regulations 34 CFR 300.519

<http://idea.ed.gov/download/finalregulations.pdf>

For more information contact:

Colorado Department of Education
Office of Facility Schools
1560 Broadway, Suite 1175
Denver, CO 80202
Fax: (303) 866-6767
facility_schools@cde.state.co.us

Facility Schools Web page:

<http://www.cde.state.co.us/facilityschools/index.asp>

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Out-of-District Manual

Residency

When a child with a disability is placed by a public agency into an eligible facility, the child's administrative unit of residence is responsible for IEP review meetings, re-evaluation, re-determination of eligibility and for the payment of special education tuition or excess costs, *ECEA Rules 8.03(1), 8.04(1)(c), 8.05(1)(c), 8.06(1)(c)*.

- Special education students who are placed in group homes, residential child care facilities, hospitals, day treatment programs, Colorado Mental Health Institutes or Colorado School for the Deaf and the Blind are considered residents of the school district where their parents (or guardians) live, *ECEA Rules 2.02(1)(a)*.
- Students who are placed in foster homes (regardless of special education status) are considered residents of the administrative unit where the foster home is located, *ECEA Rules 2.02(1)(c)*.

A publicly placed special education student is considered a resident of the administrative unit where the student lives/sleeps at night (where the facility is located for residential placements) in the following circumstances: *ECEA Rules 2.02(1)(b)*

- parental rights are terminated by a court or relinquished by the parent(s);
- parents are incarcerated;
- parents cannot be located;
- student is legally emancipated;
- parents have moved out-of-state since the child was placed and a Colorado county department of social services maintains custody
- parents are deceased

Students in circumstances described above are often referred to as "educational orphans."

The "Residency and Responsibility chart that is part of this manual addresses the most common residency situations and can be used as a reference for determining residency status.

Other factors for consideration:

- If a student has an Educational Surrogate Parent (ESP), the administrative unit of residence is where the student lives, not that of the ESP.
- If parents are divorced, have joint or shared custody and live in different administrative units, residency, and therefore responsibility, may need to be shared. The two districts must agree who will count the student and who will pay. If districts agree to split the responsibility and/or funding, the facility must have separate contracts with each district.
- The fact that a student has a Guardian Ad Litem (GAL) appointed by the court does not necessarily have an effect on residency. GALs can be appointed for many reasons that do not affect the status of parental rights. It cannot be assumed that just because a student has a GAL, he/she is an educational orphan.

- The legal status of parental rights is the key factor in determining residency status. The fact that parents are not involved or that there has been an informal living arrangement (not approved by the court) with a relative or friend does not necessarily affect residency status.
- If placement with a relative is approved by the court, (often referred to as Kinship care), the Kinship placement should be treated as a foster home placement. The district of residence for that child becomes the responsibility of the district in which the kinship home is located.
- If a student has been attending a district through schools of choice, prior to placement in the facility, responsibility for the student must be consistent with district policies regarding all choice students. In many cases, the district who accepted, counted and had been serving the student will maintain responsibility through the end of the school year. If responsibility is to transfer back to the district where the parents live, the two districts or administrative units need to communicate and ensure a smooth transition so there is not gap in the acceptance of responsibility for the student.

Administrative Unit Information

- The administrative unit of attendance is responsible for the initial evaluation when a child is placed into the facility as a non-special education student and then referred for initial evaluation. Responsibility for initial assessment, eligibility, and disability determination is with the administrative unit of attendance, which shall invite the special education director or designee of the administrative unit of residence, *ECEA Rules 8.02(1)*.
- If there are court orders describing parents' rights, the school district should obtain a copy of such order to verify who has educational decision making authority for the youth. This may also help to clarify residency issues.
- The child's administrative unit of residence is responsible for reevaluation and special evaluations for triennials, change of placement reviews or if there is a need for a change in the student's identified disability *ECEA Rules 8.04(1)(c)*.
- It is the responsibility of the administrative unit of residence to determine whether the eligible facility where the child has been placed has the available special education services and related services specified by the child's IEP, *ECEA Rules 9.03(2)(a)(ii)*.
- If a student's IEP requires services that are not included in the facility's excess cost rate, the AU of residence is responsible to pay for or provide the services (i.e. speech language services, OT, PT, etc.) *9.03(2)(a)(i)*.
- A student who had been home schooled prior to placement is still entitled to a public education. The district of residence would become responsible at the time of placement.
- An administrative unit has the right to verify residency through reasonable means prior to signing excess cost contracts or making payments. Information from caseworkers or client managers should be sufficient. Lack of parent action does not absolve the district of its responsibility if appropriate verification of parent address has been provided by a case worker. For example, a district may ask a parent to come to the school or central office to register the child, but the district is still obligated to fulfill its responsibilities (i.e. assessments, IEP, excess costs, etc.) even if the parent does not comply.
- If a student is placed by a county department of social services or by the Division of Youth Corrections, the placing agency is responsible to notify the administrative unit of residence of the placement.

Facility Information

- If there are court orders describing parents' rights, the facility should obtain a copy of such order to verify who has educational decision making authority for the child. This may also help to clarify residency issues.
- It is the responsibility of the placing agency to notify administrative units of any changes in the status of parental rights or residence of the parent. However, as best practice, the facility should coordinate with the placing agency in any way possible to ensure notification is made because any change in parental rights or residency will have a significant impact on billing and reimbursement.
- Notify the administrative unit of residence immediately of any change in parental status or any new parental address, even if it's believed to be within the same district's boundaries.
- If the change in parental status or address results in a change in the district of residence, notify the new district immediately and request records if applicable.
- Under the interagency agreement, the placing agency is required to notify the administrative unit of residence of the placement. Facilities are strongly encouraged to work with their intake staff to require verification of notice of placement from the placing agency prior to accepting the student to avoid delays or discrepancies in payment of excess costs.
- A school district's transportation unit, boundary office, or admissions office can verify whether a specific address falls within the district's boundaries.

Residency issues are difficult and there are often unique circumstances that complicate the matter. If in need of further clarification, contact the Office of Facility Schools.

Resources

ECEA Rules 2.02(1)

<http://www.cde.state.co.us/spedlaw/download/ECEARules-March2013.pdf>

For more information contact:

Colorado Department of Education
Office of Facility Schools
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RESIDENCY AND RESPONSIBILITY CHART

Assumptions:

- Student is a special education student
- Student has been placed by a public agency

Notes:

- In the column “Parental Rights Status”, the phrase “Terminated, cannot be located, etc.” includes parental rights relinquished, parents incarcerated, parents deceased, student is legally emancipated, parents live in another state but a Colorado public agency has made the placement.
- Responsibility to pay tuition/excess costs includes the excess cost rate approved by CDE as well as either providing or paying for additional services required on the IEP that are not included in the approved excess cost rate, i.e. Speech/Language services, O.T., P.T., transportation, etc.
- Although the term “excess costs” has traditionally been used in reference to the special education rate set by CDE and paid to facilities by the district of residence, federal legislation defines that term as having a different meaning. Therefore, in this document, the term “tuition” is used to indicate those costs.
- There are often complications that make residency and responsibility decisions difficult, i.e. divorced parents with shared custody living in different districts, etc. This chart represents the most common scenarios, but individual decisions will have to be made when the situation is more complicated.
- Issues related to Schools of choice are addressed in a separate table at the end of this document.
- Names of districts or administrative units have been used only as examples for ease of understanding and to distinguish between situations involving districts and BOCES. Terms such as “District A, District B”, etc. could have been used, but proved to be confusing.

To use this document:

- Gather that information indicated for the first 5 columns.
- Then reading from left to right, find the row that matches the situation in question.
- The information in the remaining columns of that row, address the most common questions that tend to arise.

Child's Place of Residence	Status of Parental Rights	Location of Parent's Residence	Location of Foster Home	School Attended	FAPE Responsibility	Tuition Responsibility (Excess Costs)	IEP Team Meeting Responsibility	IEP Implementation Responsibility	Oct Count/PPR Responsibility	Dec Count Reporting Responsibility and PAI Codes	ECEA Funding Eligible Party	Transportation Responsibility
Foster Home	Irrelevant	Irrelevant	Trinidad	Trinidad program in South Central BOCES	South Central BOCES	Trinidad is the district of residence and does not owe tuition to itself - not applicable	South Central BOCES	South Central BOCES IEP team	Trinidad	SC BOCES (PAI 01, 02, 03 or 08)	SC BOCES	Regular Transp Trinidad/Special transp. SC BOCES

Child's Place of Residence	Status of Parental Rights	Location of Parent's Residence	Location of Foster Home	School Attended	FAPE Responsibility	Tuition Responsibility (Excess Costs)	IEP Team Meeting Responsibility	IEP Implementation Responsibility	Oct Count/PPR Responsibility	Dec Count Reporting Responsibility and PAI Codes	ECEA Funding Eligible Party	Transportation Responsibility
Foster Home	Irrelevant	Irrelevant	Trinidad	La Veta within SC BOCES	South Central BOCES	Dependent on the operating agreement within the BOCES	South Central BOCES IEP team	SC BOCES	La Veta	SC BOCES (PAI 02, 03 or 08)	SC BOCES	Regular Transp Trinidad/Special transp. SC BOCES
	Irrelevant	Irrelevant	Adams 27J	Adams 12 D/HH Program placed by IEP team from Adams 27J	Adams 27J	Adams 27J	Adams 12 with invitation going to Adams 27J special ed director	Adams 12	Adams 12	Adams 12 (PAI 12) Adams 27J (-PAI 31)	Adams 12	Adams 27J
	Irrelevant	Irrelevant	Aurora	Approved Facility School Day Treatment Program – Cherry Creek School District (CCSD)	Aurora – Where foster home is located	Aurora pays Tuition to the Day Treatment Facility	Aurora is responsible for convening IEP meeting with Facility school included	Facility School* if facility is unable to provide a service, AU of Residence is responsible.	Facility School	Aurora (PAI 22)	Aurora	Aurora

Child's Place of Residence	Status of Parental Rights	Location of Parent's Residence	Location of Group Home	School Attended	FAPE Responsibility	Tuition Responsibility (Excess Costs)	IEP Team Meeting Responsibility	IEP Implementation Responsibility	Oct Count/PPR Responsibility	Dec Count Reporting Responsibility and PAI Codes	ECEA Funding Eligible Party	Transportation Responsibility
Group Home	Intact	Platte Canyon School District, Mt. Evans BOCES	Platte Canyon School District, Mt. Evans BOCES	Platte Canyon School District, Mt. Evans	Platte Canyon School District, Mt. Evans BOCES	The student is a resident of Platte Canyon School District. Platte Canyon does not pay tuition to itself.	Platte Canyon School District, Mt. Evans BOCES	Platte Canyon School District, Mt. Evans BOCES	Platte Canyon School District	Mt. Evans BOCES (PAI01)	Mt. Evans BOCES	Regular transportation – Platte Canyon School District; special transportation Mt. Evans BOCES
	Intact	Gilpin Co (Member district within same AU)	Gilpin Co District, Mt. Evans BOCES	Platte Canyon School District, Mt. Evans BOCES (IEP team decision)	Mt. Evans BOCES	Depends on operating agreement within BOCES	Mt. Evans BOCES	Mt. Evans BOCES IEP team	Platte Canyon School District	Mt. Evans BOCES (PAI 08)	Mt. Evans BOCES	Mt. Evans BOCES
	Intact	Grand Junction (AU other than where Group Home is located)	Platte Canyon School District, Mt. Evans BOCES	Platte Canyon School District, Mt. Evans BOCES	Mt. Evans BOCES 8.02(1)	Mesa 51	Mt. Evans BOCES with Mesa 51 Special Education Director invited	Mt. Evans BOCES	Platte Canyon School District	Mt. Evans BOCES (PAI 05) – Mesa 51 does not report student at all	Mt. Evans BOCES	Platte Canyon regular transp./Mesa 51 responsible for payment of special transp.
	Terminated, cannot be located, etc.	Irrelevant	Platte Canyon School District, Mt. Evans BOCES	Platte Canyon School District, Mt. Evans BOCES	Mt. Evans BOCES	N.A. – the student is a resident of Mt. Evans BOCES – there is no billing process	Mt. Evans	Mt. Evans BOCES IEP team	Platte Canyon School District	Mt. Evans BOCES (PAI 01)	Mt. Evans BOCES	Mt. Evans BOCES
	Intact	Mesa 51	Mesa 51 (placed by Social Services)	Delta (IEP team decision)	Mesa 51	Mesa 51 pays tuition to Delta through tuition contract	Delta with invitation to Mesa 51 Sped dir 8.06(1)	Delta	Delta	Delta (PAI 05) – Mesa 51 does not report student at all	Delta	Mesa 51 pays for special education transportation as a related service as determined by the IEP team

Child's Place of Residence	Status of Parental Rights	Location of Parent's Residence	Location of Group Home	School Attended	FAPE Responsibility	Tuition Responsibility (Excess Costs)	IEP Team Meeting Responsibility	IEP Implementation Responsibility	Oct Count/PPR Responsibility	Dec Count Reporting Responsibility and PAI Codes	ECEA Funding Eligible Party	Transportation Responsibility
Group Home	Intact	Mesa 51	Adams 1, Mapleton (group home located in Adams 1; placed by Social Services)	Denver (Mapleton IEP team decision)	Mesa 51 (District of Residence)	Mesa 51 pays tuition to Denver (AU of Attendance)	IEP team needs to include Mesa 51, Mapleton and Denver - initial decision (subsequent meetings Mesa 51 - Denver)	Denver	Denver	Denver (PAI 05) Mesa 51 (does not report)	Denver	Denver (paid for by Mesa 51)
	Terminated, cannot be located, etc.	Irrelevant	Montrose (AU of Residence)	Delta	Montrose	Montrose pays tuition to Delta	Delta with inviting Montrose	Delta	Delta	Delta (PAI 05) – Montrose does not report student at all	Delta	Montrose pays for special education transportation as a related service as determined by the IEP team
	Intact	Montrose	Montrose	Approved Facility School in Day Treatment	Montrose	Montrose pays tuition to facility	Montrose	Facility School* if facility is unable to provide a service, AU of Residence is responsible.	Facility School	Montrose (PAI 22)	Montrose	Montrose
	Intact	Delta	Montrose	Approved Facility School in Day Treatment	Delta	Delta pays tuition to facility	Delta with Facility	Facility School* if facility unable to provide a service, AU of Residence is responsible.	Facility School	Delta (PAI 22) Montrose does not report student at all	Delta	Delta
	Terminated, cannot Be located, etc.	Irrelevant	Montrose	Approved Facility School in Day Treatment	Montrose	Montrose pays tuition to facility	Montrose with Facility	Facility School* if facility unable to provide a service, AU of Residence is responsible.	Facility School	Montrose (PAI 22)	Montrose	Montrose

Child's Place of Residence	Status of Parental Rights	Location of Parent's Residence	Location of Group Home	School Attended	FAPE Responsibility	Tuition Responsibility (Excess Costs)	IEP Team Meeting Responsibility	IEP Implementation Responsibility	Oct Count/PPR Responsibility	Dec Count Reporting Responsibility and PAI Codes	ECEA Funding Eligible Party	Transportation Responsibility
Residential Facility	Intact	Cherry Creek	Cherry Creek	Cherry Creek Program	Cherry Creek	N.A. – the student is a resident of Cherry Creek – there is no billing process	Cherry Creek	Cherry Creek	Cherry Creek	Cherry Creek	Cherry Creek	Cherry Creek
	Intact	Jefferson County	Cherry Creek	Cherry Creek	Jefferson County	Jeffco would pay tuition to Cherry Creek	AU of Attendance - Cherry Creek	Cherry Creek	Cherry Creek	Jeffco (PAI 23) Cherry Creek (PAI 05)	Cherry Creek	Jeffco
	Terminated, cannot be located, etc.	Irrelevant	Cherry Creek	Cherry Creek Program	Cherry Creek	N.A. – the student is a resident of Cherry Creek – there is no billing process	Cherry Creek	Cherry Creek	Cherry Creek	Cherry Creek	Cherry Creek	Cherry Creek
	Intact	Cherry Creek	Cherry Creek	Aurora Public Schools Program	Cherry Creek	Cherry Creek pays tuition to Aurora	Cherry Creek	Aurora	Aurora Public Schools	Aurora (PAI 05)	Aurora Public Schools	Cherry Creek
	Terminated, cannot be located, etc.	Irrelevant	Cherry Creek	Denver Public Schools Program	Cherry Creek	Cherry Creek pays DPS for tuition	Cherry Creek	Denver	Denver	Cherry Creek(PAI23) Denver(PAI 05)	Denver	Cherry Creek
	Intact	Cherry Creek	Cherry Creek	Approved Facility School Program	Cherry Creek	Cherry Creek pays tuition to the facility	Cherry Creek	Facility School* if facility is unable to provide a service, AU of Residence is responsible.	Approved Facility School	Cherry Creek(PAI 22)	Cherry Creek	Cherry Creek
	Intact	Jefferson County	Cherry Creek	Approved Facility School Program	Jefferson County	Jeffco pays tuition to the facility	Jefferson County	Facility School* if facility is unable to provide a service, AU of Residence is responsible.	Approved Facility School	Jeffco (PAI 22)	Jeffco	Jeffco

Child's Place of Residence	Status of Parental Rights	Location of Parent's Residence	Location of Group Home	School Attended	FAPE Responsibility	Tuition Responsibility (Excess Costs)	IEP Team Meeting Responsibility	IEP Implementation Responsibility	Oct Count/PPR Responsibility	Dec Count Reporting Responsibility and PAI Codes	ECEA Funding Eligible Party	Transportation Responsibility
Residential Facility	Terminated, cannot be located, etc.	Irrelevant	Cherry Creek	Approved Facility School Program	Cherry Creek	Cherry Creek pays tuition to the facility	Cherry Creek	Facility School* if facility is unable to provide a service, AU of Residence is responsible.	Approved Facility School	Cherry Creek(PAI 22 and Educational Orphan 1 – 6)	Cherry Creek	Cherry Creek
	Intact	Monte Vista (member of San Luis Valley BOCES)	Alamosa (member of San Luis Valley BOCES)	Approved Facility School Program	SLV BOCES	Monte Vista pays tuition to the facility school	SLV BOCES	Facility School* if facility is unable to provide a service, AU of Residence is responsible.	Approved Facility School	San Luis Valley BOCES (PAI 22)	SLV BOCES	SLV BOCES

Schools of Choice

Parent's District of Residence	School Child Attends	FAPE Responsibility	Tuition Responsibility (formerly Excess Cost) 9.01(8)	IEP Team Meeting Responsibility	IEP Decision Responsibility	Oct Count Responsibility	Dec Count Reporting Responsibility and PAI Codes	ECEA Funding Eligible Party	Transport Responsibility
Denver Public Schools	Colorado Online Virtual Academy (COVA) – Adams 12 School District	Adams 12	only if student meets criteria for tuition as found in 9.03(1) - DPS pays according to 9.03(2)(b)	Adams 12	Adams 12	Adams 12	Adams 12 (PAI 04) Denver does not report student at all	Adams 12	Parent
Aurora Public Schools	Rocky Mountain Deaf School –Jeffco School District	Jeffco	Aurora Public Schools pays tuition to Rocky Mountain Deaf School	Jeffco	Jeffco with APS invite	Jeffco	Jeffco (PAI 04) Aurora does not report student at all	Jeffco	Parent
Jefferson County	Broomfield High School – Boulder Valley School District	Boulder Valley	Jefferson County *	Boulder Valley	Boulder Valley with Jeffco invite	Boulder Valley	Boulder Valley (PAI code 04)Jeffco does not report student at all	Boulder Valley	Parent
Adams 12 School District	Pinnacle Charter, a charter through the Charter School Institute	CSI	Adams 12 *	CSI	CSI with Adams 12	CSI	CSI (PAI04) Adams 12 does not report student at all	CSI	Parent

* Tuition Costs (formerly known as “excess cost”) apply only if . . . 9.03(1)(a)-(b)

Out-of-District Manual

TCAP/Co-Alt

Students in out-of-district placement are required to participate in the TCAP/Co-Alt. Co-Alt eligibility is determined by the IEP staffing team and must be clearly documented on the student's IEP. CDE works directly with facilities to help them prepare for the administration of TCAP/Co-Alt and is responsible for coordinating TCAP/Co-Alt materials for facilities. Scores for students who take the TCAP/Co-Alt while in placement in a facility are not included with the district of residence scores for that year. The test scores are included with all of the approved facility schools as a group.

The accommodations that a particular student needs should be documented in the student's Individual Education Plan (for special education students) or Personal Learning Plan (for general education students). Generally, accommodations should be in place and have been used in the classroom a minimum of three months prior to the TCAP/Co-Alt administration. Encouraging students to use accommodations during the assessment that they are not familiar with does not help their performance. Exceptions would be situations in which an injury or illness requiring an accommodation occurs less than three months prior to the assessment, or if a student's annual IEP meeting is held within three months of the assessment and additional accommodations are added to the IEP. In these situations, accommodations listed on the current IEP should be provided even if they have been in use less than three months.

When students move between a district and a facility school during the CSAP administration window, communication regarding the situation is vital. If a student has started a content area assessment in one location and moves to another location prior to completing that content area, it is permissible to take the assessment booklet to the new location and have the student complete the assessment there, if this is feasible. In such a situation, the assessment booklet must be hand carried to the new location by a responsible staff member or mailed using a method which requires a signature to ensure confidentiality. In no circumstance should a student or parent be allowed to transport the test booklet.

If a student has completed one subject area in one location and then transitions to another, there is no need to move test booklets. However, information about which content areas have been completed should be given to the receiving placement and those subject areas that have not been completed can be administered in the new location if possible. Student scores are tracked in the electronic system by SASID number, so the fact that a student took different subject area assessments in different locations has no impact on student tracking.

The timing of educational placement decisions and transitions must never be based on the TCAP administration window. Those decisions must always be based on individual student needs. The student will participate in the assessment wherever he/she happens to be at the time of the assessment window.

For students in 11th grade, the ACT and the 11th grade alternate will be addressed in another section. These assessments have different administration protocols.

Administrative Unit Information

- Detention centers are not approved facility schools and the Facility Schools Unit is not involved with the distribution of assessment materials to detention centers. Please refer to the TCAP Procedures Manual for information on the process to be used for detention centers.
- Facilities do not use the pre-coded labels used by districts. If materials are moved with a student from the district to the facility, do not affix the pre-coded label.
- Every student placed in an eligible facility should be entered into the district's student data base with a grade assigned. Such information should be shared at the time of placement. However, if the facility is unclear about which grade the student is enrolled in and which grade level assessment the student should participate in, be prepared to give that information to the facility.
- If you have questions about whether a student is placed in an approved facility school or some other type of program, the current list of approved facility schools can be found on the Facility Schools web page: <http://www.cde.state.co.us/facilityschools/index.asp> or feel free to contact any of the staff listed below for information.

Facility Information

- The Office of Facility Schools will provide training and schedule the pick-up and check-in of TCAP/Co-Alt materials.
- It is important to attend trainings and oversee the administration of the TCAP and Co-Alt assessments to ensure ethical and appropriate practices.
- It is recommended that the facility set a one week time frame to administer each of the content area assessments and complete all of the assessments for that content area during that week with the students who are in placement at the time including make-up opportunities as needed. As new students are placed, do not try to administer subject areas that have been completed in prior weeks.
- All Colorado Students who are placed by a public agency should be included in the TCAP or Co-Alt assessment. If a student in grades 3-10 is included in the PPR billing, then the student must be included in the assessment process. Out of state students should not be included. Privately placed students may be included at the discretion of the placing party.
- Scores are generally received in August after the assessment the previous spring. Two copies of the assessment results are included in the information received. If the student continues to be in placement at the facility, one copy should be placed in the student's educational file and one copy sent home to the parents. If the student is no longer in placement, both copies should be sent to the student's district of residence if that is known. Otherwise the paper copies should be shredded. An electronic version of the student results is maintained at CDE.

Resources

Student Assessment Unit web page:

<http://www.cde.state.co.us/assessment/index.asp>

TCAP Procedures and Accommodations manuals:

<http://www.cde.state.co.us/assessment/CoAssess-AdditionalResources.asp>

Co-Alt information:

<http://www.cde.state.co.us/assessment/CoAltAssess.asp>

For more information contact:

Colorado Department of Education
Office of Facility Schools
1560 Broadway, Suite 1175
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