

**PRESENTED AT**

The University of Texas School of Law  
35th Annual School Law Conference

February 20-21, 2020  
Austin, Texas

**Shared Services Arrangements  
After SB 1376: Dead or Alive?**

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## Shared Services Arrangements After SB 1376: Dead or Alive?

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A shared services arrangement (“SSA”) is an interlocal contract between two or more local education agencies (“LEAs”) to jointly operate special education services, and although a central component to Texas’ design for special education, recent legislation calls into question the future of this statewide staple.<sup>1</sup>

### **The Individuals with Disabilities Education Act (“IDEA”)**

As a condition of receiving federal IDEA funds, each State Educational Agency (“SEA”) must ensure that a free appropriate public education (“FAPE”) is available for eligible children between the ages of 3 and 21 within its jurisdiction.<sup>2</sup> The manner chosen to effectuate this obligation is largely a matter of state law. To that end, the Texas Legislature designated the Texas Education Agency (“TEA” or “the Agency”) as the SEA responsible for developing the statewide plan for special education and for monitoring its implementation. TEA’s legislative mandate is set forth in Section 29.001 of the Texas Education Code, which provides:

The agency shall develop, and modify as necessary, a statewide design, consistent with federal law, for the delivery of services to children with disabilities in this state that includes rules for the administration and funding of the special education program so that a free appropriate public education is available to all of those children between the ages of 3 and 21. The statewide design shall include the provision of services primarily through school districts and shared services arrangements, supplemented by regional education service centers.<sup>3</sup>

In accordance with its above-stated obligation, the Agency has created a statewide design for special education services along with accompanying rules for its implementation set forth in

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<sup>1</sup> Texas Education Agency: Division of Federal Fiscal Compliance and Reporting, *Special Education Shared Services Arrangement Procedures*, <https://tea.texas.gov/sites/default/files/SpecialEducationSSAProceduresRevised01162013.pdf> (last revised January 16, 2013).

<sup>2</sup> 20 U.S.C. § 1412(a); 34 C.F.R. § 300.700(a).

<sup>3</sup> Tex. Educ. Code § 29.001.

the Texas Administrative Code.<sup>4</sup> TEA's design relies heavily on school districts and SSAs as the service providers directly responsible for the provision of FAPE with the Agency largely assuming monitoring and administrative functions.<sup>5</sup>

### **Shared Services Arrangements**

As discussed above, the statewide design for special education specifically authorizes an LEA to fulfill its FAPE obligation internally with its own resources or jointly with other LEAs through a shared services arrangement.<sup>6</sup> In Texas, the SSA is most commonly used as a service delivery mechanism for "special education services, adult education services, and activities funded by the Elementary and Secondary Education Act."<sup>7</sup> Although SSAs typically involve the provision of education services, the cooperative mechanism may be utilized for any number of aspects of a special education program's operation such as "data processing, purchasing, [or] accounting."<sup>8</sup>

#### **A. Governing Authority**

As a specialized form of interlocal contract, a shared services arrangement is governed and operated through a supervisory entity, such as a board of managers, in accordance with the specific terms of the SSA contract, which must adhere to the overarching legal authority set forth below.<sup>9</sup>

#### **1. Chapter 791 of the Texas Government Code**

Chapter 791 of the Texas Government Code, the Interlocal Cooperation Act ("the Act"), governs cooperative agreements between local governments, such as LEAs.<sup>10</sup> The Act serves to promote "the efficiency and effectiveness of local governments by authorizing them to contract, to the greatest possible extent, with one another and with agencies of the state" to

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<sup>4</sup> *Tex. Advocates Supporting Kids with Disabilities v. Tex. Educ. Agency*, 112 S.W.3d 234, 236-37 (Tex. App.—Austin, no pet.); *see also* 19 Tex. Admin. Code §§ 89.61—.1191.

<sup>5</sup> *Id.*

<sup>6</sup> *See* Tex. Educ. Code § 29.001.

<sup>7</sup> Texas Education Agency, *Financial Accountability System Resource Guide, Module 1: Financial Accounting and Reporting Update 16* (2019), [https://tea.texas.gov/sites/default/files/Module%201%20new%20Attachment%20II%20Copy\\_accessible\\_PDFversion.pdf](https://tea.texas.gov/sites/default/files/Module%201%20new%20Attachment%20II%20Copy_accessible_PDFversion.pdf).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *See* Tex. Gov't Code Section 791.001 *et seq.*

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First appeared as part of the conference materials for the  
35<sup>th</sup> Annual School Law Conference session

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