

ATTACHMENT II
Text of Proposed Amendment to 19 TAC

Chapter 61. School Districts

Subchapter CC. Commissioner's Rules Concerning School Facilities

§61.1034. New Instructional Facility Allotment.

(a) Definitions. The following definitions apply to the new instructional facility allotment (NIFA) in accordance with the Texas Education Code (TEC), §42.158.

(1) Instructional campus--A campus that:

- (A) has its own unique campus ID number registered with the Texas Education Agency (TEA), an assigned administrator, enrolled students who are counted for average daily attendance, and assigned instructional staff;
- (B) receives federal and/or state and/or local funds as its primary support;
- (C) provides instruction in the Texas Essential Knowledge and Skills (TEKS);
- (D) has one or more grade groups in the range from early education through Grade 12; and
- (E) is not a program for students enrolled in another public school.

(2) Instructional facility--A real property, an improvement to real property, or a necessary fixture of an improvement to real property that is used predominantly for teaching the curriculum required by the TEC, §28.002.

(3) New instructional facility--A facility that includes:

- (A) a newly constructed instructional facility, which is a new instructional campus built from the ground up;
- (B) a repurposed instructional facility, which is a facility that has been renovated to become an instructional facility for the first time; or
- (C) a leased facility operating for the first time as an instructional facility with a minimum lease term of not less than 10 years. The lease must not be a continuation of or renegotiation of an existing lease for an instructional facility.

(b) ~~(a)~~ Eligibility. The following eligibility criteria apply to the NIFA [new instructional facility allotment (NIFA)] in accordance with the TEC [Texas Education Code (TEC)] , §42.158.

- (1) Both school districts and open-enrollment charter schools are eligible to apply for the NIFA for eligible facilities.
- (2) The facility for which NIFA funds are requested must meet the following requirements.
 - (A) The facility must qualify as an instructional campus and a new [be a newly constructed] instructional facility used for teaching the curriculum required by the TEC, Chapter 28.
 - (B) To qualify for first-year funding, a new facility must not have been occupied in the prior school year. To qualify for follow-up funding, the facility must have been occupied for the first time in the prior school year and funded for the NIFA for that first year. If an instructional facility qualifies as a new instructional facility but did not receive the allotment in the first year of eligibility due to a failure to apply, the school district or open-enrollment charter school may still apply for and receive funding for the average daily attendance (ADA) earned only during the second year of occupation in the new instructional facility. [A special case of one year funding pertains to a facility that was occupied for the first time in the prior school year but did not receive NIFA funds

~~because of a failure to apply. Any such eligible facility will receive funds for one year of operation only.~~

~~(B) The facility must have its own assigned instructional staff and instructional program distinct from other facilities, and this program cannot be a program for students enrolled in another public school (summer school, evening school, etc.).~~

(C) With the exception of a covered walkway connecting the new facility to another building, the new facility must be physically separate from other existing school structures.

~~(D) The facility must have its own principal or receive an accountability rating through the standard or the optional alternative rating procedures as described in the most current accountability manuals published by the Texas Education Agency (TEA).~~

~~(E) The facility must have its own unique campus ID number as designated by the TEA, its own record of expenditures that is not a subset of another school budget, and attendance data that can be reported for those students who are assigned to its campus.~~

(D) ~~(E)~~ If the applicant is an open-enrollment charter school, the facility must be a charter school site approved for instructional use ~~either~~ in the original open-enrollment charter as granted by ~~either~~ the State Board of Education or the commissioner of education or in an amendment granted under §100.1033(b)(9)-(11) ~~§100.1033(e)(5)~~ of this title (relating to Charter Amendment), as described in §100.1001(3)(D) ~~§100.1011(3)(D)~~ of this title (relating to Definitions).

(3) Expansion or renovation of existing instructional facilities, as well as portable and temporary structures, are not eligible for the NIFA.

~~(4) A facility leased by the school district or by the open enrollment charter school or open enrollment charter holder is not eligible for the NIFA.~~

(c) ~~(b)~~ Application process. To apply for the NIFA, school districts and open-enrollment charter schools must complete the TEA's online application process requesting funding pursuant to the NIFA.

(1) The initial (first-year) application, or an application for one-year funding only, must be submitted electronically no later than July 15. The application must include the following:

(A) the electronic submission of the TEA's online application for initial funding; and

(B) the electronic submission of the following materials:

(i) a brief description and photograph of the newly constructed, repurposed, or leased instructional facility [site] ;

(ii) a copy of a legal document that clearly describes the nature and dates of the new or repurposed construction or a copy of the applicable lease ;

(iii) a site plan;

(iv) a floor plan; and

(v) if applicable, a demolition plan.

(2) Second-year applications require only the electronic submission of the TEA's online application for follow-up funding no later than July 15 of the year preceding the applicable school year.

(d) ~~(e)~~ Survey on days of instruction. In the fall of the school year after a school year for which an applicant received NIFA funds, the school district or open-enrollment charter school that received the funds must complete an online survey on the number of instructional days held in the new facility and submit the completed survey electronically. The TEA will use submitted survey information in determining the final (settle-up) amount earned by each eligible school district and open-enrollment charter school, as described in subsection (e)(6) ~~(d)(6)~~ of this section.

(e) ~~(d)~~ Costs and payments. The costs and payments for the NIFA are determined by the commissioner ~~of education~~ .

- (1) The allotment for the NIFA is a part of the cost of the first tier of the Foundation School Program (FSP). This allotment is not counted in the calculation of weighted average daily attendance for the second tier of the FSP.
 - (2) If, for all eligible applicants combined, the total cost of the NIFA exceeds the amount appropriated, each allotment is reduced so that the total amount to be distributed equals the amount appropriated. Reductions to allotments are made by applying the same percentage adjustment to each school district and charter school.
 - ~~[(A) For eligible school districts, reductions to allotments are made by applying the same number of cents of tax rate in each school district to the school district's taxable value of property so that the reduced total for all school districts equals the amount appropriated. For each school district, the taxable value of property is the property value certified by the Texas Comptroller of Public Accounts for the preceding school year as determined under the Texas Government Code, Chapter 403, Subchapter M, or, if applicable, a reduced property value that reflects a rapid decline pursuant to the TEC, §42.2521.]~~
 - ~~[(B) For eligible open enrollment charter schools, reductions to allotments are made in the same way as for school districts, as described in subparagraph (A) of this paragraph, except that the value used as the taxable value of property for each charter school is calculated by determining the statewide taxable value of property for all school districts in the state, dividing that number by the number of non charter school students in average daily attendance (ADA) in the state, and multiplying the result by the charter school's total number of ADA.]~~
 - (3) If an additional \$1 million is appropriated for the NIFA for a school year under the TEC, §42.158(d-1), and if proration as described in paragraph (2) of this subsection is necessary for the school year, the additional appropriation must first be applied to prevent a reduction in the NIFA for eligible high school facilities. Any funds remaining after preventing all reductions in the NIFA for eligible high school facilities will be prorated as described in paragraph (2) of this subsection.
 - (4) Allocations will be made in conjunction with allotments for the FSP in accordance with the school district's or open-enrollment charter school's payment class. For school districts that are not subject to the requirements of the TEC, Chapter 41, and do not receive payments from the Foundation School Fund, NIFA distributions will correspond to the schedule for payment class 3.
 - (5) For school districts that are required to reduce wealth pursuant to the TEC, Chapter 41, any NIFA funds for which the school district is eligible are applied as credits to the amounts owed to equalize wealth.
 - (6) For all school districts and open-enrollment charter schools receiving the NIFA, a final (settle-up) amount earned is determined by the commissioner when information reported through the survey described in subsection (d) ~~[(e)]~~ of this section is available in the fall of the school year after the school year for which NIFA funds were received. The final amount earned is determined using the submitted survey information and final counts of ADA for the school year for which NIFA funds were received, as reported through the Texas Student Data System Public Education Information Management System.
 - (7) The amount of funds to be distributed for the NIFA to a school district or open-enrollment charter school is in addition to any other state aid entitlements.
- ~~(f) [(e)]~~ Ownership of property purchased with NIFA funds. Property purchased with NIFA funds by an open-enrollment charter school is presumed to be public property under the TEC, §12.128, and remains public property in accordance with that section.