

The Texas Education Agency (TEA) adopts new §103.1209, concerning mandatory school drills. The new section is adopted with changes to the proposed text as published in the May 29, 2020 issue of the *Texas Register* (45 TexReg 3562) and will be republished. The adopted new section implements Senate Bill (SB) 11, 86th Texas Legislature, 2019, which mandated the adoption of procedures for evacuating school property and designation of the number and type of school drills.

REASONED JUSTIFICATION: Texas Education Code (TEC), Chapter 37, Subchapter D, addresses the protection of school buildings and grounds. To this subchapter, SB 11, 86th Texas Legislature, 2019, added TEC, §37.114, which mandates emergency evacuations and school drills. Adopted new §103.1209 implements the new statute by establishing requirements and definitions and by designating the frequency of mandatory school drills.

New subsection (a) requires school districts and open-enrollment charter schools to conduct emergency safety drills. This requirement helps school districts and open-enrollment charter schools practice critical drills to keep students, staff, and visitors safe during an actual emergency.

Adopted new subsection (b) defines the drills that school districts and open-enrollment charter schools are required to conduct every school year. Due to nuanced differences between the drills, it is important to define the different types of drills and the situations that trigger the drills.

In response to public comment, subsection (b) was modified at adoption. The definitions for "secure (lockout)" and "lockdown" were clarified to specify that secure (lockout) is intended to secure the perimeter of school buildings and grounds to deny entry, and lockdown is intended to secure interior portions of school buildings and grounds.

Also in response to public comment, references to the "hold" drill requirement were removed from subsections (b) and (c) at adoption.

Adopted new subsection (c) identifies the minimum frequency with which each drill must be conducted during the academic school year. This provides school districts and open-enrollment charter schools with the guidance needed on the number of drills to be conducted in one school year.

In response to public comment, subsection (c) was modified at adoption to refer to the maximum number of drills specified in TEC, §37.114(2).

Also in response to public comment, subsection (c)(6) was modified at adoption to increase the frequency of fire evacuation drills to four per school year or two per semester, and additional language was added to specify that school districts and open-enrollment charter schools should consult their local fire marshal and comply with any requirements and recommendations.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began May 29, 2020, and ended July 13, 2020. Following is a summary of public comments received and corresponding agency responses.

Comment: A school district employee questioned how the rule has no data or reporting impact and asked if the required drills would need to be reported in the state safety and security audits required under TEC, §37.108.

Response: The agency provides the following clarification. Section 103.1209 does not require any reporting or data collection. However, TEC, §37.108, requires multiple emergency management items to be reported to the Texas School Safety Center (TxSSC) as part of the school safety audit process, including the number of drills conducted.

Comment: A school district employee expressed concerns with how the terms "lockout" and "lockdown" are defined. The commenter stated that both definitions reference securing the "grounds," but that, in practice and for reasons of safety, these actions should not indicate that the grounds need to be secured.

Response: The agency disagrees with removing reference to school grounds because any students and staff out of doors on school grounds would also need to be secured, depending on the context and location of the threat.

However, language has been added at adoption to the definitions of "secure (lockout)" and "lockdown" to differentiate between perimeter security and interior security.

Comment: A school district employee commented that the rule should not list a bomb threat as an example of when an evacuation should always be used.

Response: The agency disagrees with removing bomb threat as an example of when an evacuation may need to occur. Any threat, including a bomb threat, would need to be evaluated prior to making a decision to evacuate the school facility.

Comment: Two local fire marshals, the State of Texas Fire Marshal, and two school district employees commented that limiting the maximum number of total drills per year to eight and only having one fire drill per year is too infrequent. The State of Texas Fire Marshal additionally commented that the number of fire drills should be two per semester for a total of four per year.

Response: The agency agrees. Subsection (c) was modified at adoption to specify that the number of general drills listed in the rule is a minimum requirement rather than a maximum. In addition, the number of fire drills was increased at adoption to two per semester for a total of four fire drills per school year.

Comment: One school district emergency manager stated that the reduction of fire drills to one time per year will eliminate drill fatigue and encourage drill participation in other remaining emergency drills.

Response: The agency agrees that a reduction of fire drills could relieve drill fatigue. However, in response to other comments, the number of fire drills was increased at adoption to two per semester for a total of four fire drills per school year.

Comment: Texas State Teachers Association commented that the recommended frequency and type of mandatory school drills exceeds the legislative intent and makes recommendations that are unnecessary and not in the best interest of students.

Response: The agency agrees in part and disagrees in part. TEC, §37.114, states that the number of drills the agency lists in its rule cannot exceed eight per semester, which amounts to sixteen per school year. The new rule has been modified at adoption to remove the "hold" drill requirement, but the remaining drills listed in the rule fall within the parameters set forth in TEC, §37.114.

Comment: The Texas-American Federation of Teachers commented that the rule needs to take into consideration the psychological toll on students during and after the drills, particularly the lockdown and lockout drills, and recommended related best practices and supports. Additionally, the commenter stated that several charter schools, with appointed boards, do not have these mandatory safety plans and recommended that TEA staff audit or require charters to submit their actual plans to TEA.

Response: The agency disagrees. TEC, §37.114, does not authorize the agency to require schools to provide additional education for staff, students, and parents prior to and after the drills. In addition, the statute does not authorize the agency to mandate that schools provide counselors during drills, nor does the statute authorize the agency to audit schools' safety plans or require schools to submit their plans to TEA. However, TEC, §37.108, does require schools to conduct audits and submit their emergency operations plans to the TxSSC. Finally, although the best practices and supports referenced by the commenter fall outside the scope of this rule, the agency may issue guidance on this topic in the future.

**STATUTORY AUTHORITY.** The new section is adopted under Texas Education Code, §37.114, as added by Senate Bill 11, 86th Texas Legislature, 2019, which requires the commissioner to adopt rules regarding emergency evacuations and drills, in consultation with the state fire marshal and Texas School Safety Center.

**CROSS REFERENCE TO STATUTE.** The new section implements Texas Education Code, §37.114, as added by Senate Bill 11, 86th Texas Legislature, 2019.

<rule>

**§103.1209. Mandatory School Drills.**

- (a) Requirement. Each school district and open-enrollment charter school shall conduct emergency safety drills in accordance with Texas Education Code (TEC), §37.114.
- (b) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.
  - (1) Drill--A set of procedures that test a single, specific operation or function. Drill examples include evacuating for a fire or locking down from an internal threat.
  - (2) Secure (Lockout)--A response action schools take to secure the perimeter of school buildings and grounds during incidents that pose a threat or hazard outside of the school building. Secure (Lockout) uses the security of the physical facility to act as protection to deny entry.
  - (3) Lockdown--A response action schools take to secure interior portions of school buildings and grounds during incidents that pose an immediate threat of violence inside the school. The primary objective is to quickly ensure all school students, staff, and visitors are secured away from immediate danger.
  - (4) Evacuate--A response action schools take to quickly move students and staff from one place to another. The primary objective of an evacuation is to ensure that all staff, students, and visitors can quickly move away from the threat. Evacuation examples include a bomb threat or internal gas leak.
  - (5) Shelter-in-place for hazmat--A response action schools take to quickly move students, staff, and visitors indoors, perhaps for an extended period of time, because it is safer inside the building than outside. Affected individuals may be required to move to rooms without windows or to rooms that can be sealed. Shelter-in-place for hazmat examples include train derailment with chemical release or smoke from a nearby fire.
  - (6) Shelter for severe weather--A response action schools take to quickly move students, staff, and visitors indoors, perhaps for an extended period of time, because it is safer inside the building than outside. For severe weather, depending on the type and/or threat level (watch versus warning), affected individuals may be required to move to rooms without windows on the lowest floor possible or to a weather shelter.
  - (7) Fire evacuation drill--A method of practicing how a building would be vacated in the event of a fire. The purpose of fire drills in buildings is to ensure that everyone knows how to exit safely as quickly as possible.
- (c) Frequency. TEC, §37.114(2), requires the commissioner of education to designate the number of mandatory school drills to be conducted each semester of the school year, not to exceed eight drills each semester and sixteen drills for the entire school year. Neither this rule, nor the law, precludes a school district or an open-enrollment charter school from conducting more drills as deemed necessary and appropriate by the district or charter school. Following is the required minimum frequency of drills by type.
  - (1) Secure (Lockout)--One per school year.
  - (2) Lockdown--Two per school year (once per semester).\*
  - (3) Evacuate--One per school year.
  - (4) Shelter-in-place for hazmat--One per school year.
  - (5) Shelter for severe weather--One per school year.
  - (6) Fire evacuation drill-- Four per school year (two per semester).\* In addition, school districts and open-enrollment charter schools should consult with their local fire marshal and comply with their local fire marshal's requirements and recommendations.

\*The rule text in subsection (c)(2) and (6) reflects a correction of error filed with the Texas Register on August 26, 2020, for publication in the September 4, 2020 issue. The corrected language encloses the minimum frequency per semester in parentheses rather than using the word "or" to provide clarity.