

ATTACHMENT II
Text of Proposed Amendment to 19 TAC

Chapter 129. Student Attendance

Subchapter AA. Commissioner's Rules

§129.1029. Optional Flexible Year Program.

- (a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.
- (1) Optional Flexible Year Program (OFYP)--An OFYP is a program authorized under the Texas Education Code (TEC), §29.0821, that is approved by the commissioner of education to provide a flexible year program to meet the educational needs of its students, including providing intensive instructional services. A school district approved by the commissioner of education to implement an OFYP may reduce the number of instructional minutes for certain students.
 - (2) School district--For the purposes of this section, the definition of a school district includes an open-enrollment charter school.
- (b) Eligibility. A student is eligible to participate in the OFYP if the student meets one or more of the following criteria.
- (1) The student did not or is not likely to achieve a passing score on an assessment instrument administered under the TEC, §39.023.
 - (2) The student is not eligible for promotion to the next grade level.
- (c) Program criteria.
- (1) A school district may reduce the number of instructional minutes during the regular school year for students who are not eligible for participation in this program to no fewer than 71,400 minutes.
 - (2) A school district must provide at least 75,600 minutes of instruction to those students who meet the eligibility criteria defined in subsection (b) of this section.
 - (3) A school district that provides transportation services must continue to provide these services during the OFYP.
 - (4) A school district that provides meal services through the National School Lunch Program, School Breakfast Program, or a locally funded program must continue to provide these services during the OFYP.
 - (5) A school district may require educational support personnel to provide service as necessary for an OFYP.
 - (6) A school district may not reduce the number of educators on staff on OFYP instructional days.
~~[Each educator employed under a ten month contract must provide the minimum days of service required under the TEC, §21.401, notwithstanding the reduction in the number of instructional days or in the number of staff development days.]~~
 - (7) A school district must schedule proposed OFYP instructional minutes before the last approved state student assessment testing window of the school year.
- (d) Approval process. To implement an OFYP, a school district must request prior approval from the commissioner of education.
- (1) A school district must submit a letter to the Texas Education Agency (TEA) division responsible for state funding describing the proposed modifications to the instructional calendar, including a description of the OFYP that will be provided under the TEC, §29.0821. The letter must indicate the date on which the board of trustees approved the modified instructional calendar. If the district

is requesting a waiver of staff development days or teacher preparation days, the letter must also indicate that the request to waive staff development days or teacher preparation days has been approved by the campus site-based decision-making committee.

- (2) A school district must submit to the TEA a copy of its modified instructional calendar. The instructional calendar must indicate the days and minutes scheduled as OFYP instructional days. No approval will be granted that reduces the number of instructional minutes to fewer than 71,400 minutes.
 - (3) Approval to modify the number of instructional days is limited to one year. Requests for a school district to operate an OFYP for subsequent years must be approved annually.
 - (4) The commissioner may require a school district to provide an evaluation that demonstrates the success of its approach as a condition of approval.
- (e) Funding. For a school district that operates an OFYP, the calculation of average daily attendance is modified to reflect the approved instructional calendar. For students placed on a reduced instructional calendar, the reported number of days of instruction used as the divisor in calculating average daily attendance must reflect the reduced number of days. For eligible students served through the OFYP, the reported number of days of instruction used as the divisor in calculating average daily attendance must reflect the scheduled number of days in which instruction took place.