

The Texas Education Agency (TEA) proposes an amendment to §101.3031, concerning required test administration procedures and training activities to ensure validity, reliability, and security of assessments. The proposed amendment would eliminate the *2018 Test Security Supplement* as a figure and instead include specific language from the supplement regarding test security and confidentiality.

**BACKGROUND INFORMATION AND JUSTIFICATION:** Section 101.3031, Required Test Administration Procedures and Training Activities to Ensure Validity, Reliability, and Security of Assessments, establishes provisions relating to the administration of assessment instruments adopted or developed under TEC, §39.023, including procedures designed to ensure the security of the assessment instruments. The rule addresses security and confidentiality, test administration procedures, training activities, and records retention. The proposed amendment would update the rule by eliminating the *2018 Test Security Supplement* as a figure and instead include specific language from the supplement regarding test security and confidentiality. The specific language from the supplement that is proposed to be included in the rule text describes the enforceable policies and procedures regarding test security and confidentiality. Other information regarding local practices for implementing security policies and procedures has been included in a new online resource for district testing coordinators.

The proposed amendment would delete subsection (a), Purpose, and replace it with a new subsection (a), Security and confidentiality. The proposed new subsection would include language currently contained in the *2018 Test Security Supplement* that would detail the requirements of school districts and charter schools to maintain security and confidentiality of assessment instruments, include a list of violations, and identify actions that may result from a violation.

Subsection (b) would be amended to remove the *2018 Test Security Supplement* as Figure: 19 TAC §101.3031(b)(2) since the essential parts of the supplement are proposed to be included in subsection (a).

Subsections (c), (d), and (e) would be modified to clarify the language based on the new language in subsection (a).

**FISCAL IMPACT:** Jeff Cottrill, deputy commissioner for academics standards and engagement, has determined that for the first five-year period the proposal is in effect there are no additional costs to state or local government required to comply with the proposal.

**LOCAL EMPLOYMENT IMPACT:** The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

**SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT:** The proposal has no direct adverse economic impact for small businesses, microbusinesses, and rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

**COST INCREASE TO REGULATED PERSONS:** The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

**TAKINGS IMPACT ASSESSMENT:** The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

**GOVERNMENT GROWTH IMPACT:** TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not expand, limit, or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

**PUBLIC BENEFIT AND COST TO PERSONS:** Mr. Cottrill has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be informing the

public of the security procedures for all test administrations. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have no additional data and reporting impact.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: The TEA has determined that the proposal would not require additional written reports or other paperwork to be completed by a principal or classroom teacher.

PUBLIC COMMENTS: The public comment period on the proposal begins February 15, 2019, and ends March 18, 2019. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on February 15, 2019. A form for submitting public comments is available on the TEA website at

[https://tea.texas.gov/About\\_TEA/Laws\\_and\\_Rules/Commissioner\\_Rules\\_\(TAC\)/Proposed\\_Commissioner\\_of\\_Education\\_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/). Comments on the proposal may also be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701.

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), §26.010, which prohibits a student from being removed from a class or school by a parent in order to avoid a test and prohibits a student from being exempted from satisfying grade-level or graduation requirements in a manner acceptable to both the school district and the agency; TEC, §39.023(a), which requires school districts to administer the Grades 3-8 state-developed assessments to all eligible students; TEC, §39.025(a), which requires a student to pass each end-of-course assessment listed in TEC, §39.023(c), only for a course in which the student is enrolled and for which an end-of-course assessment is administered in order to receive a Texas diploma; TEC, §39.030(a), which requires school districts to ensure the security of the state's assessment instruments and student answer documents in their preparation and administration; TEC, §39.0301(a)(1), which requires the commissioner to establish procedures for the administration of the state's assessment instruments, including procedures designed to ensure the security of those assessments. Per TEC, §39.0301(a-1), the procedures the commissioner is required to establish must, to the extent possible, minimize disruptions to school operations and classroom environment. Additionally, TEC, §39.0301(a-1), stipulates that school districts must also minimize disruptions to school operations and the classroom environment when implementing the required assessment administration procedures; and TEC, §39.0304, which authorizes the commissioner to adopt rules to require training for school district employees involved in the administration of the state's assessments. This training may include qualifying components to ensure the school district personnel involved in an administration of the state's assessments possess the necessary knowledge and skills required to securely and reliably administer those assessments.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §§26.010, 39.023(a), 39.025(a), 39.030(a), 39.0301(a)(1) and (a-1), and 39.0304.

<rule>

**§101.3031. Required Test Administration Procedures and Training Activities to Ensure Validity, Reliability, and Security of Assessments.**

**(a) Security and confidentiality.**

- (1) All assessment instruments included in the student assessment program are considered secure, and the contents of these tests, including student information used or obtained in their administration, are confidential.**
- (2) School districts and campuses, the superintendent and campus principals in each school district, open-enrollment charter schools and campuses, and the chief administrative officer and campus principals of each charter school shall:**
  - (A) implement and ensure compliance with state test administration procedures and training activities;**

- (B) notify the Texas Education Agency (TEA) as soon as the school district or charter school becomes aware of any alleged or suspected violation of the security or confidential integrity of a test as listed in paragraph (3) of this subsection;
  - (C) report all confirmed testing violations to TEA within 10 working days of the school district or charter school becoming aware of the violation in accordance with the reporting process stipulated in the test administration materials;
  - (D) ensure that the only individuals with access to secure test materials are school district or charter school employees who have:
    - (i) met the requirements to participate in the student assessment program;
    - (ii) received annual training in test security and test administration procedures; and
    - (iii) signed an oath affirming they understand their obligation to maintain and preserve the security and confidentiality of all state assessments and student information, acknowledge their responsibility to report any suspected testing violation, and are aware of the range of penalties that may result from a violation of test security and confidentiality or a departure from test administration procedures; and
  - (E) ensure the security of the test materials by:
    - (i) verifying that all boxes of testing materials have been accounted for and match the school district or charter school shipping notices upon receipt from the state's testing contractor(s);
    - (ii) requiring campuses to immediately inventory all testing materials received and to notify the school district or charter school testing coordinator of any shortages or discrepancies;
    - (iii) immediately notifying the state's testing contractor(s) of any discrepancies between the materials received and the school district, charter school, and campus shipping notices;
    - (iv) placing test booklets and answer documents in secure, limited-access, locked storage when not in use;
    - (v) collecting and destroying any scratch paper, graph paper, or reference materials that students have written on, as well as any recordings, after the completion of a test administration;
    - (vi) requiring that all secure materials assigned to individual campuses have been accounted for and packaged in accordance with the procedures for returning materials as detailed in the test administration materials;
    - (vii) requiring that all test item image cards and photocopies or reproductions of secure test materials have been collected and returned to the school district or charter school testing coordinator for return to the testing contractor(s); and
    - (viii) maintaining inventory and shipping records for five years.
- (3) Violations of the security and confidential integrity of a test include:
  - (A) directly or indirectly assisting students with responses to test questions;
  - (B) tampering with student responses;
  - (C) falsifying holistic ratings or student responses;
  - (D) viewing secure test content before, during, or after an administration unless specifically authorized by TEA or by the procedures outlined in the test administration materials;
  - (E) discussing or disclosing secure test content or student responses;

- (F) scoring students' tests, either formally or informally;
- (G) duplicating, recording, or electronically capturing confidential test content unless specifically authorized by TEA or by the procedures outlined in the test administration materials;
- (H) responding to secure test questions;
- (I) fraudulently exempting or preventing a student from participating in the administration of a required state assessment;
- (J) receiving or providing unallowable assistance during calibration activities (e.g., taking notes, providing answer sheets, or sharing answers);
- (K) encouraging or assisting an individual to engage in the conduct described in subparagraphs (A)-(J) of this paragraph or in any other serious violation of security and confidentiality;
- (L) failing to report to an appropriate authority that an individual has engaged or is suspected of engaging in conduct described in subparagraphs (A)-(K) of this paragraph or in any other serious violation of security and confidentiality under this section;
- (M) failing to implement sufficient procedures to prevent student cheating; and
- (N) failing to implement sufficient procedures to prevent alteration of test documents by anyone other than the student.

(4) If a school district or charter school determines that a student has cheated or attempted to cheat on a state assessment either by providing or receiving direct assistance, the school district or charter school shall invalidate the student's test results.

(5) Any violation of test security or confidential integrity may result in the TEA:

- (A) invalidating student test results;
- (B) referring certified educators to the State Board for Educator Certification for sanctions in accordance with Chapter 247 of this title (relating to Educators' Code of Ethics) and Chapter 249 of this title (relating to Disciplinary Proceedings, Sanctions, and Contested Cases); and
- (C) lowering the school district's or charter school's accreditation status or a school district's, charter school's, or campus's accountability rating in accordance with Texas Education Code (TEC), §39.057(d), or appointment of a monitor, conservator, or management team to the school district or charter school in accordance with TEC, Chapter 39A.

~~[(a) Purpose. To ensure that each assessment instrument is reliable and valid and meets applicable federal requirements for measurement of student progress, the commissioner of education shall establish test administration procedures and required training activities that support the standardization and security of the test administration process.]~~

(b) Test administration procedures. ~~Test [These test]~~ administration procedures shall be delineated in the test administration materials provided to school districts and charter schools annually. Districts and charter schools must comply with all of the applicable requirements specified in the test administration materials. Test administration materials shall include, but are not limited to, the following:

- (1) general testing program information;
- (2) procedures for maintaining the security and confidentiality of state assessments;

~~[(2) requirements for ensuring test security and confidentiality described in the 2018 Test Security Supplement provided in this paragraph;]~~

~~[Figure: 19 TAC §101.3031(b)(2)]~~

- (3) procedures for test administration;

- (4) responsibilities of personnel involved in test administration; and
  - (5) procedures for materials control.
- (c) Training activities. School districts and charter schools shall ensure that test coordinators and administrators receive training ~~[As part of the test administration procedures, the commissioner shall require training activities]~~ to ensure that testing personnel have the necessary skills and knowledge required to administer assessment instruments in a valid, standardized, and secure manner. ~~[The commissioner may require evidence of successful completion of training activities. Test coordinators and administrators must receive all applicable training as required in the test administration materials.]~~
- (d) Records retention. As part of test administration procedures, the commissioner shall require school districts and charter schools to maintain records related to the security of assessment instruments for five years.
- (e) Applicability. The required test administration procedures and ~~[required]~~ training activities established annually in the test administration manuals and ~~[annual]~~ test security supplements for prior years remain in effect for all purposes with respect to the prior year to which they apply ~~[it applies]~~ .