

The Texas Education Agency (TEA) proposes an amendment to §129.1025, concerning student attendance. The amendment would adopt by reference the *2019-2020 Student Attendance Accounting Handbook*.

BACKGROUND INFORMATION AND JUSTIFICATION: The TEA has adopted its student attendance accounting handbook in rule since 2000. Attendance accounting evolves from year to year, so the intention is to annually update 19 TAC §129.1025 to refer to the most recently published student attendance accounting handbook.

Each annual student attendance accounting handbook provides school districts and charter schools with the foundation school program (FSP) eligibility requirements of all students, prescribes the minimum requirements of all student attendance accounting systems, lists the documentation requirements for attendance audit purposes, and details the responsibilities of all district personnel involved in student attendance accounting. The TEA distributes FSP resources under the procedures specified in each current student attendance accounting handbook. The final version of the student attendance accounting handbook is published on the TEA website. A supplement, if necessary, is also published on the TEA website.

The proposed amendment to 19 TAC §129.1025 would adopt by reference the student attendance accounting handbook for the 2019-2020 school year. The proposed version of the handbook does not reflect legislation from the 86th Texas Legislature, 2019, that may impact student attendance accounting. An updated version of the *2019-2020 Student Attendance Accounting Handbook* may be proposed at a later date to provide additional guidance.

Significant changes to the *2019-2020 Student Attendance Accounting Handbook* from the *2018-2019 Student Attendance Accounting Handbook* include the following.

Section 3, General Attendance Requirements

Texas Education Code (TEC), §25.081, and Chapter 42, specifically §42.005, establish the general parameters for attendance and school operation. The following changes would implement reporting requirements for attendance and funding.

Language would be added to include recess, breakfast, and lunch as instructional time for purposes of funding and the two-through-four-hour rule for prekindergarten-only programs.

Language would be added to clarify the definition of *overage* to include students who are 26 years old on September 1 of the current school year and are not enrolled in an adult high school diploma and industry certification charter school pilot program.

Language would be added to define the official attendance taking time as any time selected during the instructional day instead of a time selected during the second or fifth instructional hour.

Language would be added to include students enrolled in a TEA-designated Pathways in Technology Early College High School (P-TECH) as a funding eligibility exception.

Language would be added to clarify the definition of *academic year* for determining whether a student should have an immigrant indicator code when establishing a student's residency.

Language would be added to change general education diploma (GED) to Texas Certificate of High School Equivalency (TxCHSE).

Language would be added to clarify the requirements for paraprofessionals who take attendance during the official attendance taking time.

Language would be revised to clarify that funding may be received for a student who is temporarily absent because of a documented medical appointment for the student or the student's child with a health care professional licensed, certified, or registered to practice in the United States.

Section 4, Special Education

TEC, Chapter 42, specifically §42.151, authorizes funding for special education in certain circumstances. TEC, §42.004, authorizes the commissioner to require reports that may be necessary to implement and administer the FSP. The following changes would implement reporting for special education to account for attendance and funding.

Language would be added to change preschool program for children with disabilities (PPCD) to early childhood special education (ECSE) service program to clarify and promote understanding that any child age three through five years who is eligible for and receiving special education and related services through a school district must be served in the least restrictive environment specified in the child's individualized education program (IEP). References to PPCD are being phased out of the student attendance accounting handbook, and students will instead be considered to be receiving ECSE services.

Language would be added to clarify that if a student's admission, review, and dismissal (ARD) committee determines that instruction through remote conferencing is appropriate for a student, that determination does not mean that the student's instructional setting code will change.

Section 5, Career and Technical Education (CTE)

TEC, Chapter 42, including §42.154, authorizes funding for career and technical education (CTE) in certain circumstances. TEC, Chapter 29, Subchapter F, establishes general parameters for CTE programs. TEC, §42.004, authorizes the commissioner to require reports as may be necessary to implement and administer the FSP. The following change would implement reporting for CTE to account for attendance and funding.

Language would be added to include state-approved technology applications courses in a cybersecurity pathway for the science, technology, engineering, and mathematics (STEM) endorsement in the 2019-2020 school year as eligible for funding.

Section 6, Bilingual/English as a Second Language (ESL)

TEC, Chapter 42, specifically §42.153, authorizes funding for bilingual or special language programs in certain circumstances. TEC, Chapter 29, Subchapter B, establishes general parameters for bilingual and special language programs. TEC, §42.004, authorizes the commissioner to require reports as may be necessary to implement and administer the FSP. The following changes would implement reporting for bilingual and special language programs to account for attendance and funding.

Language would be added to clarify the difference between the use of the terms "reclassification" and "exit" in alignment with 19 TAC Chapter 89, Subchapter BB, Commissioner's Rules Concerning State Plan for Educating English Learners. "Reclassification" is the process for English learners (ELs) who have met criteria to be identified as non-limited English proficient/English proficient, and "exit" describes the process for reclassified students to no longer participate in a bilingual or ESL program.

Language would be added to clarify the procedures for identifying a student as an EL and enrolling the EL in the bilingual or ESL education program for the first time in a Texas public school.

Language would be added to include Vietnamese as one of the languages in the home language survey for prekindergarten eligibility if the student is eligible for prekindergarten because the student does not speak and comprehend the English language.

Section 7, Prekindergarten (PK)

TEC, Chapter 29, Subchapter E, establishes special general parameters for prekindergarten programs. TEC, Chapter 42, including §42.005, establishes average daily attendance (ADA) requirements and authorizes funding for certain circumstances. TEC, §42.004, authorizes the commissioner to require reports that may be necessary to implement and administer the FSP. The following changes would implement reporting for prekindergarten to account for attendance and funding:

Language would be revised and added to include recess, breakfast, and lunch as instructional time for purposes of funding and the two-through-four-hour rule for prekindergarten-only programs.

Language would be added to clarify documentation requirements for districts preregistering prekindergarten students to determine and plan for the size of the next school year's prekindergarten program.

Section 11, Nontraditional Programs

TEC, Chapter 29, Subchapter A, establishes special general parameters for nontraditional programs. TEC, Chapter 42, including §42.005, establishes ADA requirements and authorizes funding for certain circumstances. TEC, §42.004, authorizes the commissioner to require reports that may be necessary to implement and administer the FSP. The following changes would implement reporting for nontraditional programs to account for attendance and funding.

Terminology would be added to permit a student enrolled in a TEA-designated P-TECH, Industry Cluster Innovative Academy, or Texas Science, Technology, Engineering and Mathematics Academy to enroll in dual credit courses if the student demonstrates college readiness by achieving the minimum passing standard(s) on a qualifying assessment instrument.

A chart would be added to specify the minimum passing standards to demonstrate college readiness for students' eligibility in dual credit courses.

ADA eligibility would increase from 55 to 60 minutes each day for each virtual course taken through the Texas Virtual School Network (TXVSN).

Language would be added to define successful completion of the TXVSN education program for Grades 3-8 as completion of the TXVSN education program and demonstrated academic proficiency with passing grades sufficient for promotion to the next grade level.

Section 13, Appendix: Average Daily Attendance (ADA) and Funding

Glossary

The definition of *two-through-four-hour-rule* would be revised for prekindergarten-only programs.

The definition of *age* would be revised.

A definition for *early childhood special education services (ECSE)* would be added.

A definition for *English learner (EL)* would be added.

A definition for *English proficient (EP)* would be added.

The definition of *expulsion* would be revised.

The definition of *homeless student* would be revised.

The definition of *juvenile justice alternative education program (JJAEP)* would be revised.

The definition for *preschool program for children with disabilities (PPCD)* would be deleted.

A definition for *reclassification* would be added.

FISCAL IMPACT: Leo Lopez, associate commissioner for school finance, has determined that for the first five-year period the proposal is in effect there are no additional costs to state or local government, including school districts and open-enrollment charter schools, 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, or 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. During the first five years the proposed rulemaking would be in effect, it would expand and limit an existing regulation. The proposed changes to the *2019-2020 Student Attendance Accounting Handbook* would amend requirements and provide clarity regarding student attendance accounting procedures. In some instances the proposed changes would add information, and in some instances information would be removed.

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 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. Lopez 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 existence of annual publications specifying attendance accounting procedures for school districts and charter schools. 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 data and reporting impact.

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

PUBLIC COMMENTS: The public comment period on the proposal begins July 5, 2019, and ends August 5, 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 July 5, 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), which §7.055(b)(35), states that the commissioner shall perform duties in connection with the Foundation School Program (FSP) as prescribed by the TEC, Chapter 42; TEC, §25.081, which states that for each school year, each school district must operate so that the district provides for at least 75,600 minutes, including time allocated for instruction, intermissions, and recesses, for students. TEC, §25.081(d), authorizes the commissioner to adopt rules to implement the section. TEC, §25.081(f), states that a school district may not provide student instruction on Memorial Day but that if a school district would be required to provide student instruction on Memorial Day to compensate for minutes

of instruction lost because of school closures caused by disaster, flood, extreme weather conditions, fuel curtailment, or another calamity, the commissioner shall approve the instruction of students for fewer than the number of minutes required under TEC, §25.081(a); TEC, §25.0812, which states that school districts may not schedule the last day of school for students before May 15; TEC, §25.087, which requires that a school district excuse a student who is 17 years of age or older from attending school to pursue enlistment in a branch of the armed services of the United States or the Texas National Guard, provided that (1) the district may not excuse for this purpose more than four days of school during the period the student is enrolled in high school; and (2) the district verifies the student's activities related to pursuing enlistment in a branch of the armed services or the Texas National Guard. The statute requires each school district to adopt procedures to verify a student's activities as described by TEC, §25.087(b-5); TEC, §29.0822, which enables a school district to provide a program under this section that meets the needs of students described by TEC, §29.0822(a), for a school district that meets application requirements, including allowing a student to enroll in a dropout recovery program in which courses are conducted online; TEC, §30A.153, which states that, subject to the limitation imposed under the TEC, §30A.153(a-1), a school district or open-enrollment charter school in which a student is enrolled is entitled to funding under the TEC, Chapter 42, or in accordance with the terms of a charter granted under the TEC, §12.101, for the student's enrollment in an electronic course offered through the state virtual school network in the same manner that the district or school is entitled to funding for the student's enrollment in courses provided in a traditional classroom setting, provided that the student successfully completes the electronic course; TEC, §42.004, which states that the commissioner, in accordance with the rules of the State Board of Education, shall take such action and require such reports consistent with the TEC, Chapter 42, as may be necessary to implement and administer the FSP; TEC, §42.005, which states that average daily attendance is the quotient of the sum of attendance for each day of the minimum number of days of instruction as described under the TEC, §25.081(a), divided by the minimum number of days of instruction; TEC, §42.151, which states that for each student in average daily attendance in a special education program under the TEC, Chapter 29, Subchapter A, in a mainstream instructional arrangement, a school district is entitled to an annual allotment equal to the adjusted basic allotment multiplied by 1.1. For each full-time equivalent student in average daily attendance in a special education program under the TEC, Chapter 29, Subchapter A, in an instructional arrangement other than a mainstream instructional arrangement, a district is entitled to an annual allotment equal to the adjusted basic allotment multiplied by a weight determined according to its instructional arrangement; TEC, §42.152, which states that for each student who is educationally disadvantaged or who is a student who does not have a disability and resides in a residential placement facility in a district in which the student's parent or legal guardian does not reside, a district is entitled to an annual allotment equal to the adjusted basic allotment multiplied by 0.2, and by 2.41 for each full-time equivalent student who is in a remedial and support program under the TEC, §29.081, because the student is pregnant; TEC, §42.153, which states that for each student in average daily attendance in a bilingual education or special language program under the TEC, Chapter 29, Subchapter B, a district is entitled to an annual allotment equal to the adjusted basic allotment multiplied by 0.1; and TEC, §42.154, which states that for each full-time equivalent student in average daily attendance in an approved career and technology education program in Grades 9-12 or in career and technology education programs for students with disabilities in Grades 7-12, a district is entitled to weighted funding.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §§7.055(b)(35), 25.081, 25.0812, 25.087, 29.0822, 30A.153, 42.004, 42.005, 42.151-42.153, and 42.154.

<rule>

§129.1025. Adoption by Reference: Student Attendance Accounting Handbook.

- (a) The student attendance accounting guidelines and procedures established by the commissioner of education under §129.21 of this title (relating to Requirements for Student Attendance Accounting for State Funding Purposes) and the Texas Education Code, §42.004, to be used by school districts and charter schools to maintain records and make reports on student attendance and student participation in special programs will be published annually.
- (b) The standard procedures that school districts and charter schools must use to maintain records and make reports on student attendance and student participation in special programs for school year 2019-2020 [~~2018-2019~~] are described in the official Texas Education Agency (TEA) publication 2019-2020 [~~2018-2019~~] *Student Attendance Accounting Handbook*, dated September 2019 [~~March 2018~~], which is adopted

by this reference as the agency's official rule. A copy of the 2019-2020 [~~2018-2019~~] *Student Attendance Accounting Handbook*, dated September 2019 [~~March 2018~~], is available for examination during regular office hours, 8:00 a.m. to 5:00 p.m., except holidays, Saturdays, and Sundays, at the Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701. In addition, the publication can be accessed from the TEA official website. The commissioner will amend the 2019-2020 [~~2018-2019~~] *Student Attendance Accounting Handbook*, dated September 2019 [~~March 2018~~], and this subsection adopting it by reference, as needed.

- (c) Data from previous school years will continue to be subject to the student attendance accounting handbook as the handbook existed in those years.