

The Texas Education Agency (TEA) proposes an amendment to §101.3022, concerning assessment requirements for graduation. The proposed amendment would modify the rule to reflect changes in statute made by Senate Bill (SB) 213, 86th Texas Legislature, 2019, and update expiration dates.

BACKGROUND INFORMATION AND JUSTIFICATION: Section 101.3022 requires students to achieve satisfactory performance on the end-of-course (EOC) assessments listed in the Texas Education Code (TEC), §39.023(c), to be eligible to receive a high school diploma. The rule also specifies an exception, as authorized by the TEC, §28.0258, that allows a student who has failed to achieve the EOC assessment graduation requirements for no more than two courses to receive a Texas high school diploma if the student has qualified to graduate by means of an individual graduation committee. The rule currently states that the individual graduation committee provision expires on September 1, 2019.

SB 213, 86th Texas Legislature, 2019, amended the TEC, §28.0258, to extend the expiration date of the provision that allows eligible students to qualify to graduate by means of an individual graduation committee to September 1, 2023. To implement SB 213, the proposed amendment would modify the rule by extending the expiration date to September 1, 2023.

FISCAL IMPACT: Lily Laux, deputy commissioner for school programs, 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 an existing regulation due to the extension of the expiration date and increase the number of individuals subject to the rule's applicability by allowing more students to obtain high school diplomas.

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 limit or repeal an existing regulation; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: Ms. Laux 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 ensuring that rule language is based on current law and provides additional options for students to obtain a high school diploma. 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 26, 2019, and ends August 26, 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 26, 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), §28.02541, as amended by SB 213, 86th Texas Legislature, 2019, which extends the expiration date for districts to determine whether certain former students, who have met curriculum requirements for graduation but have not performed satisfactorily on an assessment instrument, may qualify to graduate and receive a high school diploma. The expiration date changed from September 1, 2019, to September 1, 2023. Subsection (f) requires the commissioner to adopt rules to implement the section; and TEC, §39.025, establishes the secondary-level performance required to receive a Texas high school diploma, establishes alternate assessment options for students who entered Grade 9 prior to the 2011-2012 school year or Grade 10 or above in the 2011-2012 school year, and requires the commissioner to establish satisfactory performance levels on the alternate assessments.

CROSS REFERENCE TO STATUTE. Texas Education Code, §28.02541, as amended by SB 213, 86th Texas Legislature, 2019, and §39.025.

<rule>

§101.3022. Assessment Requirements for Graduation.

(a)-(d) (No change.)

(e) Effective beginning with the 2014-2015 school year, a student who has taken but failed to achieve the EOC assessment graduation requirements for no more than two courses may receive a Texas high school diploma if the student has qualified to graduate by means of an individual graduation committee under the TEC, §28.0258.

(1) A student may not graduate under an individual graduation committee if the student did not take each EOC assessment required by this subchapter or an approved substitute assessment in Subchapter DD of this chapter (relating to Commissioner's Rules Concerning Substitute Assessments for Graduation) for each course in which the student was enrolled in a Texas public school for which there is an EOC assessment. A school district or charter school shall determine whether the student took each required EOC assessment or an approved substitute assessment required by Subchapter DD of this chapter. For purposes of this section only, a student who does not make an attempt to take all required EOC assessments may not qualify to graduate by means of an individual graduation committee.

(2) A student who is an English language learner (ELL) and qualifies for the English I special provision in §101.1007 of this title may graduate without an individual graduation committee if the student achieves satisfactory performance on the remaining EOC assessments that the student is required to take.

(A) The qualifying ELL becomes eligible for individual graduation committee review by failing to achieve satisfactory performance on the English I EOC assessment and one other EOC assessment or by failing to achieve satisfactory performance on no more than two of the remaining EOC assessments if the student achieved satisfactory performance on the English I EOC assessment.

(B) If a qualifying ELL does graduate by means of an individual graduation committee, the student is required to complete individual graduation committee requirements for each course in which the student did not achieve satisfactory performance on the EOC assessment for that course.

- (3) Notwithstanding any action taken by a student's individual graduation committee, a school district or charter school must provide a student an opportunity to retake an EOC assessment under the TEC, §39.023(c), if the student has not previously achieved satisfactory performance on an assessment for that course. A student is not required to retake a course in order to be administered a retest of an EOC assessment.
 - (4) Provisions of this subsection expire September 1, 2023 [~~2019~~] . A student may graduate by means of an individual graduation committee if the student has qualified for an individual graduation committee under the TEC, §28.0258, and that individual graduation committee convened prior to September 1, 2023 [~~2019~~] .
- (f) (No change.)