

Text of Adopted Amendment to 19 TAC

Chapter 97. Planning and Accountability

Subchapter EE. Accreditation Status, Standards, and Sanctions

Division 1. Status, Standards, and Sanctions

§97.1071. Special Program Performance; Monitoring, Review, and Supports.

- (a) For purposes of this section, school districts include open-enrollment charter schools.
- (b) ~~(a)~~ School districts ~~[and open enrollment charter schools]~~ are subject to general supervision and monitoring activities for compliance with state law and federal regulation, implemented by the Texas Education Agency (TEA) under [including] 34 Code of Federal Regulations (CFR), §§300.600-300.609, and review of program implementation and effectiveness within certain special populations of students. Activities may include:
- (1) random, targeted, or cyclical reviews authorized under Texas Education Code (TEC), §39.056, conducted remotely or on-site to identify problems implementing state and federal requirements and to provide support for development of reasonable and appropriate strategies to address identified problems; and/or
  - (2) intensive or special investigative remote or on-site reviews authorized under TEC, §39.003 and §39.004 ~~§39.057~~.
- (c) ~~(b)~~ Activities described in subsection (b) ~~(a)~~ of this section are applicable for compliance with requirements for reading diagnosis in TEC, §28.006, and dyslexia and related disorders in TEC, §38.003, and §74.28 of this title (relating to Students with Dyslexia and Related Disorders).
- (d) ~~(b)~~ Activities described in subsection (b) of this section are applicable for compliance with requirements for program effectiveness for emergent bilingual students in TEC, §29.062.
- (e) ~~(a)~~ The commissioner of education shall assign school districts ~~[including open enrollment charter schools]~~ an annual determination level based on performance levels of certain special populations student groups under §97.1001 of this title (relating to Accountability Rating System) ~~§97.1005 of this title (relating to Results Driven Accountability)~~ according to the following general criteria:
- (1) the degree to which the district's performance reflects a need for targeted or intensive supports, as indicated by the seriousness, number, extent, and duration of the student performance, program effectiveness, and/or program compliance deficiencies identified by the Texas Education Agency (TEA);
  - (2) a comparison of the district's performance relative to aggregated state performance and state performance standards;
  - (3) a statistical distribution of districts exhibiting a comparable need for targeted support; and
  - (4) the length of time the performance standard has been in place and the length of time the district has exhibited deficiencies under the standard.
- (f) ~~(d)~~ In addition to performance levels determined under §97.1001 ~~§97.1005~~ of this title, the commissioner may consider any other applicable information, such as:
- (1) complaints investigation results;
  - (2) special education due process hearing decisions;
  - (3) data validation activities;
  - (4) integrity of assessment or financial data;
  - (5) longitudinal intervention history; and

- (6) other federally required elements.
- (g) ~~(e)~~ The standards used to assign districts to specific determination levels under this section are established annually by the commissioner and communicated to all school districts. Determination level categories for assignment include:
- (1) meets requirements;
  - (2) needs assistance;
  - (3) needs intervention; and
  - (4) needs substantial intervention.
- (h) ~~(f)~~ In addition to determination levels described in subsections ~~(e) and~~ (e) and (g) of this section, the commissioner shall ~~may~~ develop a system of cyclical monitoring to ensure every district participates in general supervision activities. Based on a district's assigned determination level, as part of its cyclical monitoring process, or as part of compliance monitoring activities, a district may be required to implement and/or participate in:
- (1) focused self-analysis of district data and program effectiveness;
  - (2) focused remote and/or on-site review;
  - (3) required stakeholder engagement;
  - (4) focused compliance reviews;
  - (5) strategic support and continuous improvement planning; and/or
  - (6) corrective action plan development.
- (i) ~~(g)~~ The commissioner shall notify in writing each district identified for review under this section as a result of assigned determination level or cyclical selection prior to requiring a district to implement or participate in any activities included in subsection ~~(h)(1)-(6)~~ ~~(f)(1)-(6)~~ of this section.
- (j) ~~(h)~~ Actions taken under this section are intended to assist the district in raising its performance and/or achieving compliance under §97.1001 ~~§97.1005~~ of this title, statutory requirements in TEC, § 28.006 ~~29.062~~, and § 38.003, and §74.28 of this title and do not preclude or substitute for a sanction under another provision of this subchapter.
- (k) ~~(i)~~ Actions taken under this section do not preclude or substitute for other responses to or consequences of program ineffectiveness or noncompliance identified by ~~the~~ TEA, such as those described in §89.1076 of this title (relating to Interventions and Sanctions) and [ ]
- ~~(1) — required fiscal audit of specific program(s) and/or of the district, paid for by the district;~~
- ~~(2) — required submission of improvement and/or corrective action plan(s), including the provision of compensatory services as appropriate, paid for by the district;~~
- ~~(3)~~ expanded oversight, including, but not limited to, frequent follow-up contacts with the district, submission of documentation verifying implementation of intervention activities and/or an improvement plan, and submission of district/program data  ~~[ ]~~
- ~~(4) — public release of monitoring review findings;~~
- ~~(5) — denial of requests under TEC, §7.056 and/or §12.114;~~
- ~~(6) — reduction, suspension, redirection, or withholding of program funds;~~
- ~~(7) — lowering of the special education determination level of the district; and/or~~
- ~~(8) — lowering of the district's accreditation status, academic accountability rating, and/or financial accountability rating.]~~
- (l) In exercising its general supervision authority under 34 CFR, §300.149 and §300.600, TEA has established a process that provides for the investigation and issuance of findings regarding credible allegations of

~~[alleged]~~ violations of the Individuals with Disabilities Education Act (IDEA), Part B, or a state statute or administrative rule created to implement IDEA, that arise from an area of concern. The following guidelines shall apply to this process.

- (1) "Area of concern" means that TEA has been made aware of an allegation regarding a violation of, or noncompliance with, a requirement of IDEA, Part B, or a state special education law or administrative rule.
- (2) "Credible allegation" means that TEA has determined that an allegation arising from an area of concern is credible enough to investigate further to determine if a violation or noncompliance has occurred.
- (3) ~~[(2)]~~ Information and awareness of an area of concern may arise directly from TEA or from external sources.
- (4) ~~[(3)]~~ TEA will engage in a process to determine if an area of concern is determined to be a credible allegation, and, if determined credible, TEA will initiate an investigation to determine if findings of noncompliance will be issued.
- (5) ~~[(4)]~~ TEA will generally not engage in the process described in paragraph (7) of this subsection to determine if an area of concern is a credible allegation if it is a ~~[(A)]~~ media report, ~~[(or)]~~ social media post, or an ~~[(alleging special education noncompliance, as well as an)]~~ anonymous report, ~~[(of alleged noncompliance, will not be treated as an area of concern)]~~ unless TEA ~~[(identifies or)]~~ receives corroborating information and facts that a specific violation of state or federal law or rule has occurred if the allegation were to be confirmed true.
- (6) ~~[(5)]~~ When an individual or organization reports a ~~[(an allegation of)]~~ special education area of concern ~~[(noncompliance)]~~, TEA may direct the individual or organization to the established dispute resolution processes. Depending on the frequency or specificity of the type of allegation made, TEA may engage in the activities described in paragraph (4) ~~[(3)]~~ of this subsection.
- (7) ~~[(6)]~~ The process to determine if an area of concern is a credible allegation, as ~~[(and investigation)]~~ described in paragraph (4) ~~[(3)]~~ of this subsection, may include one or more of the following actions:
  - ~~[(A)]~~ ~~[(contacting the district that is the subject of the allegation to gather more information, which may include staff, parent, or student interviews, and requesting a response to an allegation;)]~~
  - (A) ~~[(B)]~~ reviewing existing citations of noncompliance or any noncompliance identified within the last two school years on the same or similar alleged violation;
  - (B) ~~[(C)]~~ reviewing filed state complaints that are in process of being investigated or that have been substantiated within the last two school years on the same or similar alleged violation;
  - (C) ~~[(D)]~~ reviewing due process hearing decisions issued within the last two years in which the hearing officer's final written decision contains a finding of noncompliance on the same or similar alleged violation;
  - (D) ~~[(E)]~~ gathering evidence from ~~[(contacting)]~~ groups that represent or advocate for families and communities served by the district;
  - (E) ~~[(F)]~~ reviewing and analyzing available student- or district-level data that relate to the alleged violation;
  - (F) ~~[(G)]~~ reviewing and analyzing fiscal and program information, such as grant applications, contracts, self-assessments, and other special education documents submitted to TEA by the district; and
  - (G) ~~[(H)]~~ any other activity or measure used to gather evidence within TEA's general supervision and monitoring authority.

(8) The investigation to determine if a credible allegation will result in the issuance of findings as described under paragraph (4) of this subsection will include contacting the school district that is the subject of the allegation and requesting a response from the school district. Additional investigative actions may include one or more of the following:

(A) conducting interviews with the district, staff, parents, or students;

(B) a referral for review or investigation by any other appropriate unit or division within TEA;

(C) utilizing the review and analysis of the activities conducted during the review under paragraph (7) of this subsection to determine if noncompliance is found; and

(D) any other activity or measure within TEA's general supervision and monitoring authority.

(9) ~~(7)~~ TEA may apply any intervention or sanction within its authority if noncompliance or a violation is substantiated, including those described in subsection (h) of this section and §89.1076 of this title.