

The Texas Education Agency (TEA) adopts an amendment to §61.1034, concerning the new instructional facility allotment (NIFA). The amendment is adopted without changes to the proposed text as published in the January 3, 2025 issue of the *Texas Register* (50 TexReg 17) and will not be republished. The adopted amendment clarifies existing statutory provisions and administrative procedures to calculate the allotment.

REASONED JUSTIFICATION: Texas Education Code, §42.158, enacted by Senate Bill 4, 76th Texas Legislature, 1999, created the NIFA for public school districts. The NIFA is provided for operational expenses associated with the opening of a new instructional facility and is available to all public school districts and open-enrollment charter schools that meet the requirements of the statute and rule. The adopted amendment to §61.1034 clarifies the criteria a school district or charter district must meet to be eligible for the NIFA.

New subsection (b)(2)(E) was added to clarify the current TEA practice of requiring average daily attendance (ADA) for students attending a career and technical education campus to be reported when the ADA for those students is reported at their respective home campuses for purposes of calculating the NIFA.

New subsection (b)(4) clarifies that retaining an existing gymnasium on an instructional campus does not affect the eligibility of a new instructional facility for the NIFA.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began January 3, 2025, and ended February 3, 2025. No public comments were received.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §48.004, which authorizes the commissioner of education to adopt rules as necessary to implement and administer the Foundation School Program; and TEC, §48.152, which entitles school districts to an allotment of \$1,000 for each student in average daily attendance in a manner prescribed by TEC, §48.152(d), for operational expenses associated with opening a new instructional facility as defined by TEC, §48.152(a), and requires the commissioner to reduce each district's allotment under this section in the manner provided by TEC, §48.266(f), if the total amount of allotments to which districts are entitled under this section for a school year exceeds the amount appropriated under §48.152(f).

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §48.004 and §48.152.

<rule>

§61.1034. New Instructional Facility Allotment.

- (a) Definitions. The following definitions apply to the new instructional facility allotment (NIFA) in accordance with Texas Education Code (TEC), §48.152.
 - (1) Instructional campus--A campus that:
 - (A) has its own unique campus ID number registered with the Texas Education Agency (TEA), an assigned administrator, enrolled students who are counted for average daily attendance, and assigned instructional staff;
 - (B) receives federal and/or state and/or local funds as its primary support;
 - (C) provides instruction in the Texas Essential Knowledge and Skills (TEKS);
 - (D) has one or more grade groups in the range from early education through Grade 12; and
 - (E) is not a program for students enrolled in another public school.
 - (2) Instructional facility--A real property, an improvement to real property, or a necessary fixture of an improvement to real property that is used predominantly for teaching the curriculum required by TEC, §28.002.
 - (3) New instructional facility--A facility that includes:

- (A) a newly constructed instructional facility, which is a new instructional campus built from the ground up;
 - (B) a repurposed instructional facility, which is a facility that has been renovated to become an instructional facility for the first time for the applying school district or charter school; or
 - (C) a leased facility operating for the first time as an instructional facility for the applying school district or charter school with a minimum lease term of not less than 10 years. The lease must not be a continuation of or renegotiation of an existing lease for an instructional facility.
- (b) Eligibility. The following eligibility criteria apply to the NIFA in accordance with TEC, §48.152.
 - (1) Both school districts and open-enrollment charter schools are eligible to apply for the NIFA for eligible facilities.
 - (2) The facility for which NIFA funds are requested must meet the following requirements.
 - (A) The facility must qualify as an instructional campus and a new instructional facility used for teaching the curriculum required by TEC, Chapter 28.
 - (B) To qualify for first-year funding, a new facility must not have been occupied in the prior school year. To qualify for follow-up funding, the facility must have been occupied for the first time in the prior school year and funded for the NIFA for that first year. If an instructional facility qualifies as a new instructional facility but did not receive the allotment in the first year of eligibility due to a failure to apply, the school district or open-enrollment charter school may still apply for and receive funding for the average daily attendance (ADA) earned only during the second year of occupation in the new instructional facility.
 - (C) With the exception of a covered walkway connecting the new facility to another building, the new facility must be physically separate from other existing school structures.
 - (D) If the applicant is an open-enrollment charter school, the facility must be a charter school site approved for instructional use in the original open-enrollment charter as granted by either the State Board of Education or the commissioner of education or in an amendment granted under §100.1033(b)(9)-(11) of this title (relating to Charter Amendment), as described in §100.1001(3)(D) of this title (relating to Definitions).
 - (E) Career and technical education (CTE) campuses must report each CTE campus student's ADA when the ADA for that student is reported at the student's home campus.
 - (3) Expansion or renovation of existing instructional facilities, as well as portable and temporary structures, are not eligible for the NIFA.
 - (4) All instructional buildings on the campus must be newly constructed as new instructional facilities, except for an existing gymnasium that remains on the campus and will be utilized on the instructional campus.
- (c) Application process. To apply for the NIFA, school districts and open-enrollment charter schools must complete TEA's online application process requesting funding pursuant to the NIFA.
 - (1) The initial (first-year) application, or an application for one-year funding only, must be submitted electronically no later than July 15. The application must include the following:
 - (A) the electronic submission of TEA's online application for initial funding; and
 - (B) the electronic submission of the following materials:
 - (i) a brief description and photograph of the newly constructed, repurposed, or leased instructional facility;

- (ii) a copy of a legal document that clearly describes the nature and dates of the new or repurposed construction or a copy of the applicable lease;
 - (iii) a site plan;
 - (iv) a floor plan; and
 - (v) if applicable, a demolition plan.
- (2) Second-year applications require only the electronic submission of TEA's online application for follow-up funding no later than July 15 of the year preceding the applicable school year.
- (d) Survey on days of instruction. In the fall of the school year after a school year for which an applicant received NIFA funds, the school district or open-enrollment charter school that received the funds must complete an online survey on the number of instructional days held in the new facility and submit the completed survey electronically. TEA will use submitted survey information in determining the final (settle-up) amount earned by each eligible school district and open-enrollment charter school, as described in subsection (e)(6) of this section.
- (e) Costs and payments. The costs and payments for the NIFA are determined by the commissioner.
 - (1) The allotment for the NIFA is a part of the cost of the first tier of the Foundation School Program (FSP). This allotment is not counted in the calculation of weighted average daily attendance for the second tier of the FSP.
 - (2) If, for all eligible applicants combined, the total cost of the NIFA exceeds the amount appropriated, each allotment is reduced so that the total amount to be distributed equals the amount appropriated. Reductions to allotments are made by applying the same percentage adjustment to each school district and charter school.
 - (3) Allocations will be made in conjunction with allotments for the FSP in accordance with the school district's or open-enrollment charter school's payment class. For school districts that are subject to the excess local revenue provisions under TEC, §48.257, and do not receive payments from the Foundation School Fund, NIFA distributions will be reflected as reduced recapture payments.
 - (4) For school districts that are subject to the excess local revenue provisions under TEC, §48.257, NIFA distributions increase the amount of the FSP entitlement and so will automatically reduce any excess local revenue and reduce the requirement to send recapture to the state in the amount of the NIFA allocation.
 - (5) For all school districts and open-enrollment charter schools receiving the NIFA, a final (settle-up) amount earned is determined by the commissioner when information reported through the survey described in subsection (d) of this section is available in the fall of the school year after the school year for which NIFA funds were received. The final amount earned is determined using the submitted survey information and final counts of ADA for the school year for which NIFA funds were received, as reported through the Texas Student Data System Public Education Information Management System.
 - (6) The amount of funds to be distributed for the NIFA to a school district or open-enrollment charter school is in addition to any other state aid entitlements.
- (f) Ownership of property purchased with NIFA funds. Property purchased with NIFA funds by an open-enrollment charter school is presumed to be public property under TEC, §12.128, and remains public property in accordance with that section.