

The Texas Education Agency (TEA) proposes an amendment to §150.1012, concerning local optional teacher designation systems. The proposed amendment would update procedures and terminology and provide TEA additional discretion to allow system changes outside the existing approval timeline in certain situations.

**BACKGROUND INFORMATION AND JUSTIFICATION:** Section 150.1012 implements Texas Education Code (TEC), §21.3521 and §48.112, by establishing the requirements for school districts and charter schools to implement local teacher designation systems.

Following is a description of the proposed amendment to §150.1012.

The proposed amendment to §150.1012(a)(1)(D) would update the definition of the term "data capture year" to align with current program terminology.

The proposed amendment to §150.1012(c)(1)(A) would clarify existing procedure to include resubmissions of applications for review.

Proposed new §150.1012(d)(2) would allow flexibility for school districts by expanding TEA's authority to accept a modification of a district's local optional designation system outside of the existing timeline in cases where the timeline is unfeasible based on circumstances outside of a district's control.

The proposed amendment to §150.1012(f)(1) would update language to align with current program terminology. The amended language would specify that a renewal application is required in a district's fourth year after the system application is accepted.

**FISCAL IMPACT:** Andrew Hodge, associate commissioner for system innovation, has determined that for the first five years 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 by providing TEA the authority to accept a modification of a district's local optional designation system outside of the existing timeline in cases where the timeline is unfeasible based on circumstances outside of a district's control. The proposed amendment would also allow provisions related to incomplete applications to apply to resubmissions.

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; 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. Hodge 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 providing school districts and open-enrollment charter schools with clear processes and requirements to implement a local optional teacher designation system. Additionally, it would allow flexibility to modify systems when there is a clear need. 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:** 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 June 7, 2024, and ends July 8, 2024. 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 June 7, 2024. 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/).

**STATUTORY AUTHORITY.** The amendment is proposed under Texas Education Code (TEC), §21.3521, which establishes a local optional teacher designation system; and TEC, §48.112, which establishes a teacher incentive allotment.

**CROSS REFERENCE TO STATUTE.** The amendment implements Texas Education Code, §21.3521 and §48.112.

<rule>

### **§150.1012. Local Optional Teacher Designation System.**

(a) General provisions.

- (1) Definitions. The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise.
  - (A) Beginning of course--The first nine weeks of a year-long course or the first six weeks of a semester course.
  - (B) Charter school--A Texas public school that meets one of the following criteria:
    - (i) is operated by a charter holder under an open-enrollment charter granted either by the State Board of Education or commissioner of education pursuant to Texas Education Code (TEC), §12.101, identified with its own county district number;
    - (ii) has a charter granted under TEC, Chapter 12, Subchapter C, and is eligible for benefits under TEC, §11.174 and §48.252;
    - (iii) has a charter granted under TEC, §29.259, and Human Resources Code, §221.002; or
    - (iv) has a charter granted under TEC, §11.157(b).
  - (C) Classroom teacher--An educator, as defined by TEC, §5.001, who is employed by a school district and who, not less than an average of four hours each day, teaches in an academic instructional setting or a career and technical instructional setting. This term does not include an educational aide or a full-time administrator.
  - (D) Data capture year--The school year in which the teacher observation and student growth measure data is collected based on the accepted ~~proposed~~ local teacher designation system.

- (E) Designated teacher--An exemplary, master, or recognized teacher.
  - (F) Eligible teaching assignment--An assignment based on campus, subject taught, or grade taught.
  - (G) End of course--The last twelve weeks of a year-long course or the last six weeks of a semester course.
  - (H) National Board certification--Certification issued by the National Board for Professional Teaching Standards.
  - (I) Provisional approval--Conditional approval of a school district local optional teacher designation system that would require resubmission of system review, data validation, additional required documentation, video submission, and/or other technical assistance for further data submission.
  - (J) Reliability--The degree to which an instrument used to measure teacher performance and student growth produces stable and consistent results.
  - (K) Rural--A campus within a school district with fewer than 5,000 enrolled students that is categorized as a rural, non-metropolitan: stable, or non-metropolitan: fast growing district type by the Texas Education Agency (TEA); a campus within a school district with fewer than 5,000 enrolled students categorized as rural by the National Center for Education Statistics; or a campus defined in TEC, §48.112(a)(1).
  - (L) School district--The definition of a school district includes charter schools as defined in subparagraph (B) of this paragraph.
  - (M) Student growth--Student academic progress achieved in response to the pedagogical practices of teachers, as measured at the individual teacher level by one or more measures of student growth aligned to the standards of the course.
  - (N) Teacher category--One or more eligible teaching assignments evaluated with the same teacher observation rubric, student growth measure, and optional components and weighting as defined in a district's local designation system.
  - (O) Teacher observation--One or more observations of a teacher instructing students for a minimum of 45 minutes or multiple observations that aggregate to at least 45 minutes.
  - (P) Texas Student Data System (TSDS)--Data collected annually during the Class Roster Winter Submission.
  - (Q) Validity--The degree to which an instrument used to measure teacher performance and student growth measures what it is intended to measure.
- (2) Fees for teacher incentive allotment teacher designation and system renewal. A school district requesting approval of a teacher designation system or renewal of such a system shall pay the applicable fees listed in subparagraphs (A) and (B) of this paragraph. The following fees must be paid by the district and cannot be paid by the teachers submitted for designation:
- (A) a \$500 fee for each teacher submitted for designation to TEA; and
  - (B) a \$2,500 system renewal fee for districts where all campuses meet the definition of rural pursuant to paragraph (1)(K) of this subsection the year prior to renewal application submission or a \$10,000 system renewal fee for districts where not all campuses meet the definition of rural pursuant to paragraph (1)(K) of this subsection.
- (b) Teacher eligibility.
- (1) Teachers eligible to earn or receive designations under an approved local optional teacher designation system must meet the following requirements:
    - (A) the teacher is employed by the recommending school district or charter partner pursuant to subsection (a)(1)(B)(ii) or (iv) of this section in a role ID coded as 087 (Teacher) and

corresponding class roles of 01, 02, or 03, if applicable, in TSDS for 90 days at 100% of the day (equivalent to four and one-half months or a full semester) or 180 days at 50-99% of the day and compensated for that employment. A charter partner operating under subsection (a)(1)(B)(ii) or (iv) of this section is required to report teacher-level data in TSDS or provide teacher-level data to its partner school district for reporting by the district in TSDS;

- (B) the teacher was employed by the recommending school district or charter partner pursuant to subsection (a)(1)(B)(ii) or (iv) of this section during the year the teacher's effectiveness was collected in alignment with the recommended designation;
  - (C) the teacher is not currently designated under a local optional teacher designation system, unless the teacher is being recommended for a higher designation; and
  - (D) the teacher does not have a suspension, revocation, permanent surrender, or surrender of a certificate issued by the State Board for Educator Certification and is not found on the registry of persons not eligible for employment in public schools under TEC, §22.092, and Chapter 153, Subchapter EE, of this title (relating to Commissioner's Rules Concerning Registry of Persons Not Eligible for Employment in Public Schools).
- (2) School districts are eligible to receive funding for each designated teacher if the teacher meets the requirements in paragraph (1)(A) of this subsection for each district. TEA may exercise administrative discretion to determine the eligibility of a teacher if a district disputes TSDS data. Disputes must be received by TEA by the second Friday in May each year; however, TEA may exercise administrative discretion to allow disputes to be considered outside of this timeline.
- (c) Application procedures and approval process.
- (1) The following provisions apply to applications submitted under this section.
    - (A) If TEA determines that an application or resubmission is incomplete, TEA may provide the applicant with notice of the deficiency and an opportunity to submit missing required information. If the missing required information is not submitted within seven business days after the original submission deadline, the application will be denied.
    - (B) If TEA determines that a system application does not meet the standards established under TEC, §21.3521, and this section, TEA shall permit the applicant to resubmit the application by June 30. If no resubmission is made by the deadline, the application will be denied.
    - (C) Applicants that are determined to meet the standards established under TEC, §21.3521 and §48.112, and the requirements of the statutorily based framework provided in the figure in this subparagraph shall be approved.  
  
Figure: 19 TAC §150.1012(c)(1)(C)
    - (D) Applications that are determined to meet the standards established under TEC, §21.3521 and §48.112, and this section shall be approved for an initial term of five years. Applications that are determined to need ongoing support may result in provisional approval.
  - (2) The application shall include the following for each eligible teaching assignment:
    - (A) components of a local system for issuing designations, including:
      - (i) a teacher observation component that contains:
        - (I) a plan for calibration, using the rubric approved under subclause (II) of this clause, that includes congruence among appraisers, a review of teacher observation data and the correlation between teacher observation and student growth data, and implementation of next steps; and

- (II) an approved teacher observation rubric including the Texas Teacher Evaluation and Support System, Marzano's Teacher Evaluation Model and rubric created by the National Institute for Excellence in Teaching and The Danielson Group, or another rubric that is based on observable, job-related behaviors that are described with progressive descriptors for each dimension, including alignment to §149.1001 of this title (relating to Teacher Standards) and a clear proficiency indicator. A school district may be required to provide teacher observation videos if the ratings cannot be verified from the data submitted; and
- (ii) a specified student growth component by measure and/or assessment that:
  - (I) if using a student learning objective, is aligned to the Texas Student Learning Objectives (SLO) process described on the TEA website for SLOs at <https://texasslo.org>;
  - (II) if using a portfolio method, demonstrates that student work is aligned to the standards of the course, demonstrates mastery of standards, utilizes a skills proficiency rubric, and includes criteria for scoring various artifacts;
  - (III) if using school district- or teacher-created assessments, is aligned to the standards of the course and conforms to a district rubric for district- or teacher-created assessments. A school district must approve district- or teacher-created assessments for the purpose of determining student growth by using a district process and rubric for approval of such assessments. Assessments must measure beginning of course to end of course or from end of course from the previous course to end of current course;
  - (IV) if using a school district- or teacher-created assessment in conjunction with a third-party assessment, is aligned to the standards of the course and conforms to a district rubric for district- or teacher-created assessments. A school district must approve district- or teacher-created assessments for the purpose of determining student growth by using a district process and rubric for approval of such assessments. Assessments must measure beginning of course to end of course or from end of course from the previous course to end of current course;
  - (V) if using third-party assessments with third-party accompanying growth targets, is aligned to the standards for the course and contains questions that cover a range of student skill levels. Assessments must measure beginning of course to end of course or from end of course from the previous course to end of current course; or
  - (VI) if using third-party assessments with district-created growth targets, is aligned to the standards of the course and contains questions that cover a range of student skill levels. Assessments must measure beginning of course to end of course or from end of course from the previous course to end of current course. Mid-year data may be used in instances where the student was not present for the beginning of course administration.
- (B) test administration processes for all student growth that will lead to validity and reliability of results, including:
  - (i) test security protocols;
  - (ii) testing windows;
  - (iii) testing accommodations; and

- (iv) annual training for test administrators; and
  - (C) data for all teachers in eligible teaching assignments, including student growth, and observation data for all teachers in eligible teaching assignments for the data capture year in alignment with TEC, §21.351 or §21.352. Multi-year data shall include student growth and observation data from the same year and teacher category. Single-year data shall include student growth and observation data from the same teacher category. TEA may exercise administrative discretion regarding the requirements of this subparagraph in situations in which data is difficult to provide due to circumstances beyond a district's control and the district would otherwise be unable to provide sufficient data for application consideration.
- (d) System expansion, spending modifications, and changes.
- (1) School districts must apply for approval through the system application process the year prior to implementation if:
    - (A) ~~[(1)]~~ adding new eligible teaching assignments or campuses (if started with less than all campuses in the district);
    - (B) ~~[(2)]~~ adding a new teacher observation rubric;
    - (C) ~~[(3)]~~ changing a previously approved teacher observation rubric;
    - (D) ~~[(4)]~~ adding new student growth measures;
    - (E) ~~[(5)]~~ changing the student growth measure used by an eligible teaching assignment;
    - (F) ~~[(6)]~~ adding or changing the third-party assessment used in a student growth measure;
    - (G) ~~[(7)]~~ adding or changing the type of assessment used in a student growth measure;
    - (H) ~~[(8)]~~ removing a student growth measure used by an eligible teaching assignment;
    - (I) ~~[(9)]~~ removing an eligible teaching assignment; or
    - (J) ~~[(10)]~~ modifying a district's spending plan. TEA may exercise administrative discretion to allow spending modifications outside of the approval timeline outlined in this subsection.
  - (2) TEA may exercise administrative discretion to allow system changes outside of the approval timeline outlined in this subsection in situations in which the application timeline is unfeasible due to circumstances beyond a district's control and the district would otherwise be unable to implement its current system.
- (e) Monitoring and annual program submission of approved local designation systems.
- (1) For the program submission, approved school districts shall submit the following information regarding a local teacher designation system and associated spending:
    - (A) the distribution of allotment funds from the previous school year in accordance with the funding provisions of subsection (g) of this section;
    - (B) a response and implementation plan to annual surveys developed by TEA administered to teachers, campus principals, and human resources personnel gauging the perception of a school district's local designation system; and
    - (C) teacher observations and student growth measure data for all teachers in eligible teaching assignments if school districts are submitting new teacher designations collected in alignment with §150.1003(b)(5) and (l)(3) of this title (relating to Appraisals, Data Sources, and Conferences). TEA reserves the right to request data for the purposes of performance evaluation and investigation based on data review outcomes. TEA may exercise administrative discretion in circumstances where data is difficult to provide and a district would otherwise be unable to provide sufficient data for application consideration.

- (2) Outcomes of the annual program submission may lead to a review, pursuant to TEC, §48.272(e), and subject to the period of review limitation in TEC, §48.272(f), of the local optional designation system that may be conducted at any time at the discretion of ~~the~~ TEA staff.
- (f) Continuing approval and renewal.
- (1) Approved local optional teacher designation systems are subject to review at least once every five years. However, a review may be conducted at any time at the discretion of TEA. The renewal application is required in a district's fourth year after the system application is accepted ~~[of system approval]~~ and will follow the process and requirements outlined in subsection (c) of this section.
    - (A) Charter management organizations that operate approved systems with multiple campus district numbers shall submit an application for each system at the time of required renewal.
    - (B) Systems with provisional approval in a district's fourth year shall renew in the year after receiving system approval.
  - (2) Approval of local optional designation systems are voidable by TEA for one or more of the following reasons:
    - (A) failure to fulfill all local optional designation system requirements as defined in this section;
    - (B) failure to comply with annual program submission requirements;
    - (C) failure to comply with the provisions of TEC, §21.3521 and §48.112;
    - (D) failure to implement the local optional teacher designation system as approved by TEA;
    - (E) failure to remove district employees from the designation determination process who have a conflict of interest and acted in bad faith to influence designations; or
    - (F) at the discretion of the commissioner.
  - (3) Approval of individual teacher designations are voidable by TEA for one or more of the following reasons:
    - (A) a teacher has not fulfilled all designation requirements;
    - (B) the school district at which the designation was earned has had its local optional designation system voided;
    - (C) the National Board for Professional Teaching Standards revokes a National Board certification that provided the basis for a teacher's designation;
    - (D) the suspension, revocation, permanent surrender, or surrender of a certificate issued by the State Board for Educator Certification to a designated teacher;
    - (E) the addition of the designated teacher to the registry of persons not eligible for employment in public schools under TEC, §22.092, and Chapter 153, Subchapter EE, of this title;
    - (F) the district issued a designation in bad faith by not removing a district employee from the designation determination process who had a conflict of interest; or
    - (G) at the discretion of the commissioner.
- (g) Funding.
- (1) State funding.
    - (A) School districts will receive teacher incentive allotment funds based on prior-year estimates. The final amount will be based on data from the current school year as provided in subparagraph (D) of this paragraph. Any difference from the estimated

amount will be addressed as part of the Foundation School Program settle-up process according to the provisions in TEC, §48.272.

- (B) A school district is eligible to earn the base allotment for each designated teacher assigned to a zero-enrollment campus, a campus with fewer than 20 students, a juvenile justice alternative education program, a disciplinary alternative education program, a residential facility, or central administration if the designated teacher meets the requirements in subsection (b)(2) of this section, plus the multiplier based on the school district's average student point value and rural status, if applicable.
  - (C) Funding for teachers who work at multiple campuses shall be calculated and split equally among the campuses where the employee is working in a role coded as 087 (Teacher) in TSDS at each campus.
  - (D) Designated teacher campus and district of employment shall be determined annually by data collected in TSDS.
  - (E) School districts shall annually verify and confirm teacher designations and corresponding allotments.
  - (F) TEA may exercise administrative discretion to redirect or recalculate funds to the district where the designated teacher works if a district disputes TSDS data. Disputes must be received by the second Friday in May each year; however, TEA may exercise administrative discretion to allow disputes to be considered outside of this timeline.
  - (G) The average point value and rural status for the Texas School for the Deaf and the Texas School for the Blind and Visually Impaired will be calculated by utilizing the home districts of the schools' students.
- (2) Status and use of state funds. A school district that receives teacher incentive allotment funding must comply with the requirements of TEC, §48.112, including the requirement that at least 90% of each allotment must be used for compensation of teachers employed at the campus at which the teacher for whom the district received the allotment is employed. School districts that receive funding for designated teachers employed by the charter partner for charter partnerships pursuant to subsection (a)(1)(B)(ii) or (iv) of this section shall pass along at least 90% of the teacher incentive allotment funding and 100% of fees pursuant to subsection (a)(2) of this section paid by the charter partner to the charter partner. Charter partners and districts shall work together to ensure that the spending requirements of TEC, §48.112, are met.