

The State Board of Education (SBOE) proposes an amendment to §89.1, concerning gifted and talented education. The proposed amendment would ensure that a district's identification of gifted and talented students complies with all legal requirements and federal and state executive orders.

**BACKGROUND INFORMATION AND JUSTIFICATION:** Section 89.1 establishes requirements for the identification of gifted and talented students. The proposed amendment would add new paragraph (4) to align identification criteria with all legal requirements and federal and state executive orders and amend paragraph (5) to require that the selection committee be trained in the identification of gifted students.

The SBOE approved the proposed amendment for first reading and filing authorization at its September 12, 2025 meeting.

**FISCAL IMPACT:** Kristin McGuire, interim deputy commissioner for special populations and student supports, 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 to ensure that identification for students in the gifted and talented program is made in compliance with all legal requirements and federal and state executive orders.

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:** Ms. McGuire 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 to ensure that identification for students in the gifted and talented program is made in compliance with all legal requirements and federal and state executive orders. 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 new data or 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 SBOE requests public comments on the proposal, including, per Texas Government Code, §2001.024(a)(8), information related to the cost, benefit, or effect of the proposed rule and any applicable data, research, or analysis, from any person required to comply with the proposed rule or any other interested

person. The public comment period on the proposal begins October 10, 2025, and ends at 5:00 p.m. on November 10, 2025. A form for submitting public comments is available on the TEA website at <https://tea.texas.gov/about-tea/laws-and-rules/sboe-rules-tac/proposed-state-board-of-education-rules>. The SBOE will take registered oral and written comments on the proposal at the appropriate committee meeting in November 2025 in accordance with the SBOE board operating policies and procedures. 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 October 10, 2025.

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), §29.121, which establishes the definition of a gifted and talented student; TEC, §29.122, which establishes that each school district shall adopt a process for identifying and serving gifted and talented students; TEC, §29.123, which establishes that the State Board of Education shall develop and update a state plan for the education of gifted and talented students to guide school districts; TEC, §39.236, which establishes criteria for the commissioner to adopt standards to evaluate school district programs for gifted and talented students; and TEC, §48.109, which establishes criteria for utilizing the gifted and talented student allotment funds.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §§29.121, 29.122, 29.123, 39.236, and 48.109.

<rule>

#### **§89.1. Student Identification.**

School districts shall develop written policies on student identification that are approved by the local board of trustees and disseminated to parents. The policies must:

- (1) include provisions for ongoing screening and selection of students who perform or show potential for performing at remarkably high levels of accomplishment in the areas defined in the Texas Education Code, §29.121;
- (2) include assessment measures collected from multiple sources according to each area defined in the Texas State Plan for the Education of Gifted/Talented Students;
- (3) include data and procedures designed to ensure that students from all populations in the district have access to assessment and, if identified, services for the gifted/talented program;
- (4) prohibit a scoring value based on race, ethnicity, sex, socioeconomic status, or disability if the selection process utilizes a matrix or threshold system;
- (5) [(4)] provide for final selection of students to be made by a committee composed of at least three local district educators who have received training in the nature and needs and identification of gifted students;
- (6) [(5)] include provisions regarding furloughs, reassessment, exiting of students from program services, transfer students, and appeals of district decisions regarding program placement; and
- (7) [(6)] not limit the number of students the district may identify as gifted/talented or served under the district's program for gifted/talented students.