

The Texas Education Agency (TEA) proposes an amendment to §102.1401, concerning mandatory compliance investigation. The proposed amendment to §102.1401 would update statutory references to align with changes made by Senate Bill (SB) 1365, 87th Texas Legislature, Regular Session, 2021, and update the title of 19 TAC Chapter 157, Subchapter EE.

BACKGROUND INFORMATION AND JUSTIFICATION: The framework for compliance investigations, corrective actions, and sanctions the TEA may initiate for recipients of state education program grant funds to ensure taxpayer dollars are being spent appropriately and prevent fraud, waste, and abuse is outlined by 19 TAC §102.1401. The rule requires cooperation by state grant recipients, including the submission of required documentation and information, with ongoing compliance investigations. It also indirectly requires, via compliance investigations, that school districts and charter schools maintain documentation of compliance with existing state grant requirements as prescribed by TEA through requests for application for state grants.

The proposed amendment to §102.1401 would update statutory references to align with changes made by SB 1365, 87th Texas Legislature, Regular Session, 2021. In addition, the proposed amendment would update the title of 19 TAC Chapter 157, Subchapter EE.

FISCAL IMPACT: Ashley Jernigan, associate commissioner for compliance and investigations, 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 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 expand, 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. Jernigan 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 updated statutory references that would clarify the definition of compliance investigation and ensure the reference to TEA administrative rules is accurate. 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 August 19, 2022, and ends September 19, 2022. 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 August 19, 2022. 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), §7.028(a)(2), which authorizes the Texas Education Agency (TEA) to monitor compliance with state grant requirements, and TEC, §39.056(a), which authorizes the commissioner of education to direct the agency to conduct monitoring reviews and random on-site visits of a school district or charter school as authorized by TEC, §7.028.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code (TEC), §7.028(a)(2) and §39.056(a).

<rule>

§102.1401. Compliance Investigations.

- (a) The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.
- (1) **Compliance investigation**--An investigation by the Texas Education Agency (TEA) of a state education grant recipient to determine compliance with the statutory or rule requirements of a state education program. A compliance investigation is not a special accreditation investigation subject to the provisions of Texas Education Code (TEC), §39.003 [~~§39.057~~] and §39.004 [~~§39.058~~].
 - (2) **Corrective action**--An action required by the TEA, after issuance of a final compliance investigation report, of a state education grant recipient to remove an Out-of-Compliance Status, which may include, but is not limited to, the following:
 - (A) refunding of a portion of grant funds by the state education grant recipient to the TEA in an amount determined by the TEA to the extent the state education grant recipient failed to meet the requirements of a state education grant provision; and
 - (B) addressing the state education grant recipient's failure to meet the requirements of a state education grant provision.
 - (3) **Out-of-Compliance Status**--A status determined by the TEA in a final compliance investigation as described in subsection (g) of this section that a state education grant recipient has not met the requirements of an applicable state education grant provision or as provided in subsection (e) of this section.
 - (4) **State education grant**--A grant of funds authorized by the State of Texas to implement a state education program.
 - (5) **State education grant recipient**--An entity that receives state education grant funds to implement a state education program.
 - (6) **State education program**--A program authorized and funded by the State of Texas to facilitate the education of children.
- (b) The TEA may initiate a compliance investigation at its discretion or upon receipt of a complaint from a person or entity other than the TEA.
- (c) The TEA may undertake a compliance investigation on site, as a desk review, or as a combination of both.
- (d) The TEA shall provide written notice to a state education grant recipient of an impending compliance investigation.
- (e) The refusal of a state education grant recipient to cooperate with a compliance investigation may result in the assignment of an Out-of-Compliance Status by the TEA to the state education grant recipient. An Out-

of-Compliance Status assigned due to lack of cooperation with a compliance investigation may be removed at the TEA's discretion upon its determination that a state education grant recipient has provided the information the TEA requested.

- (f) Pursuant to §157.1121(6) of this title (relating to Applicability), a compliance investigation is subject to the procedures set out in Chapter 157, Subchapter EE, of this title (relating to Informal Review, Hearing Following Investigation, and Review by State Office of Administrative Hearings [~~Informal Review, Formal Review, and Review by State Office of Administrative Hearings~~]). A final compliance investigation report and/or corrective action is not subject to further appeal, including any appeal otherwise available under TEC, §7.057.
- (g) The TEA will provide any final compliance investigation report and/or corrective action plan to the superintendent/chief executive officer and the governing board of the state education grant recipient that is the subject of such final compliance investigation report, along with any recommendations of the TEA regarding any necessary improvements or sources of aid.
- (h) Upon receipt of additional information from the state education grant recipient regarding completion of its corrective action plan, the TEA will review the information. If the information demonstrates completion or substantial completion of the corrective action plan, the TEA will remove the Out-of-Compliance Status and notify the state education grant recipient of the removal of the Out-of-Compliance Status.
- (i) An Out-of-Compliance Status may bar the receipt of future discretionary state education grant funds and may disqualify future discretionary state education grant applications.
- (j) The commissioner may, at the commissioner's discretion, waive the effects of an Out-of-Compliance Status.