

The Texas Education Agency (TEA) proposes an amendment to §61.1051, concerning reporting child abuse and neglect. The proposed amendment would incorporate definitions; require additional reporting under certain circumstances; detail what must be included in the policy addressing sexual abuse, trafficking, and other maltreatment of children; and describe training requirements for new employees and employees not previously trained.

BACKGROUND INFORMATION AND JUSTIFICATION: Section 61.1051 relates to the reporting of child abuse and neglect and related training requirements for school districts and open-enrollment charter schools as required by TEC, §38.004 and §38.0041.

The proposed amendment would add new subsection (a) to incorporate definitions for *child abuse or neglect*, *other maltreatment*, and *trafficking of a child* to align with statute.

Language would be added in subsection (b)(1) to align with Texas Family Code requirements regarding mandatory reporting notification.

Language would be added in subsection (b)(2) to require school district and open-enrollment charter school policy to require a report to the Texas Department of Family and Protective Services if the alleged abuse or neglect involves a person responsible for the care, custody, or welfare of the child.

New subsections (b)(3), (7), and (8) would be added to describe the school district's or open-enrollment charter school's policy addressing sexual abuse, trafficking, and other maltreatment of children.

Subsection (c), which contains outdated training dates, would be removed.

Language would be added to subsection (d) to specify that training must be provided to all new school district and open-enrollment charter school employees and to existing school district and open-enrollment charter school employees not previously trained. This requirement would implement TEC, §38.0041. The new language in subsection (d) would also address what must be included in the training, require records of each staff member who participated in the training to be maintained locally, and describe the resources that may be used to provide the training.

In addition, the section and subchapter titles would be changed to reflect reporting child abuse or neglect, including trafficking of a child.

FISCAL IMPACT: Matt Montano, deputy commissioner for special populations, 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 expand the existing regulation by adding a one-time training for existing staff members and expanding the definitions of child abuse and neglect to include the trafficking of a child. The proposed rule would also require school districts and open enrollment charter schools to include the trafficking of a child in their child abuse and neglect policies. The policy must address: increasing awareness, including prevention techniques and knowledge of likely warning signs, actions a child who is a victim should take to obtain assistance and intervention, and available counseling options for students affected by sexual abuse, trafficking, or other maltreatment. The proposed rule would also increase the number of individuals subject to the rule's applicability. All existing district and open enrollment charter school staff will need to take a one-time training in order to meet the requirements of the rule.

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 in fees paid to the agency; would not create a new regulation; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: Mr. Montano 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 addressing trafficking as a form of abuse and require public schools to adopt and implement policies, as well as provide training to existing employees, addressing sexual abuse, trafficking, and other forms of maltreatment of children, including the sexual abuse, trafficking, and other maltreatment of children with significant cognitive disabilities. 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: The 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 23, 2019, and ends September 23, 2019. 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 23, 2019. 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/). Comments on the proposal may also be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701.

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), §38.004, which requires Texas Education Agency (TEA) to develop a policy governing the reports of child abuse or neglect, including reports related to the trafficking of a child under Texas Penal Code, §20A.02(a)(5), (6), (7), or (8), as required by Texas Family Code, Chapter 261; TEC, §38.0041, as amended by HB 111, 86th Texas Legislature, 2019, which requires each school district and open-enrollment charter school to adopt and implement a policy addressing sexual abuse and other maltreatment of children, including the sexual abuse, trafficking, and other maltreatment of children with significant cognitive disabilities; Texas Family Code, §261.001, which defines child abuse and neglect, which includes knowingly causing, permitting, encouraging, engaging in, or allowing a child to be trafficked in a manner punishable as an offense under Texas Penal Code, §20A.02(a)(5)-(8); and Texas Penal Code, §20A.02(a)(5)-(8), which provides a person commits an offense if the person knowingly: traffics a child with the intent that the trafficked child engage in forced labor or services; receives a benefit from participating in such a venture; traffics a child and by any means causes the trafficked child to engage in, or become of a victim of, conduct prohibited by §20A.02(a)(7)(A)-(K); or receives a benefit from participating in such a venture or engages in sexual conduct with a child trafficked in this manner.

CROSS REFERENCE TO STATUTE. Texas Education Code, §38.004 and §38.0041, as amended by House Bill (HB) 111, 86th Texas Legislature, 2019; Texas Family Code, §261.001; and Texas Penal Code, §20A.02(a)(5)-(8).

<rule>

§61.1051. Reporting Child Abuse or ~~and~~ Neglect , Including Trafficking of a Child .

(a) The following words and terms, when used in this subchapter, have the following meanings.

- (1) Child abuse or neglect--The definition of child abuse or neglect includes the trafficking of a child in accordance with Texas Education Code (TEC), §38.004.
- (2) Other maltreatment--This term has the meaning assigned by Human Resources Code, §42.002.
- (3) Trafficking of a child--This term has the meaning assigned by Texas Penal Code, §20A.02(a)(5), (6), (7), or (8).

(b) ~~(a)~~ The board of trustees of a school district or governing body of an open-enrollment charter school shall adopt and annually review policies for reporting child abuse and neglect. The policies shall follow the requirements outlined in Texas ~~the~~ Family Code, Chapter 261.

- (1) The policies must require that every school employee, agent, or contractor ~~having cause to believe a child's physical or mental health or welfare has been adversely affected by [who suspects child]~~ abuse or neglect submit a written or oral report to at least one of the following authorities within 48 hours or less, as determined by the board of trustees, after learning of facts giving rise to the cause to believe ~~[suspicion]~~ :
 - (A) a local or state law enforcement agency;
 - (B) the Texas Department of Family and Protective Services, Child Protective Services Division;
 - (C) a local office of Child Protective Services, where available; or
 - (D) the state agency that operates, licenses, certifies, or registers the facility in which the alleged child abuse or neglect occurred.
- (2) The policies must ~~require a report to the Texas Department of Family and Protective Services if the alleged abuse or neglect involves a person responsible for the care, custody, or welfare of the child and~~ must notify school personnel of the following:
 - (A) penalties under Texas ~~the~~ Penal Code, §39.06 ; Texas [i] Family Code, §261.109 ; [i] and Chapter 249 of this title (relating to Disciplinary Proceedings, Sanctions, and Contested Cases) for failure to submit a required report of child abuse or neglect;
 - (B) applicable prohibitions against interference with an investigation of a report of child abuse or neglect, including the following:
 - (i) Texas Family Code, §261.302 and §261.303, prohibiting school officials from denying an investigator's request to interview a student at school; and
 - (ii) Texas Family Code, §261.302, prohibiting school officials from requiring the presence of a parent or school administrator during an interview by an investigator;
 - (C) immunity provisions applicable to a person who reports child abuse or neglect or otherwise assists an investigation in good faith;
 - (D) confidentiality provisions relating to reports of suspected child abuse or neglect;
 - (E) any disciplinary action that may result from noncompliance with the district's reporting policy; and
 - (F) the prohibition under TEC ~~the Texas Education Code (TEC)~~ , §26.0091, against using or threatening to use the refusal to consent to administration of a psychotropic drug to a child or to any other psychiatric or psychological testing or treatment of a child as the sole basis for making a report of neglect, except as authorized by ~~the~~ TEC, §26.0091.

- (3) Each school district and open-enrollment charter school shall adopt and implement a policy addressing sexual abuse, trafficking, and other maltreatment of children. The policy must be included in any informational handbook provided to students and parents and must address the following:
- (A) methods for increasing staff, student, and parent awareness of issues regarding sexual abuse, trafficking, and other forms of maltreatment of children, including prevention techniques and knowledge of likely warning signs indicating that a child may be a victim;
 - (B) actions a child who is a victim of sexual abuse, trafficking, or other maltreatment should take to obtain assistance and intervention; and
 - (C) available counseling options for students affected by sexual abuse, trafficking, or other maltreatment.
- (4) ~~(3)~~ The policies must be consistent with Texas ~~the~~ Family Code, Chapter 261, and 40 TAC Chapter 700 (relating to Child Protective Services) regarding investigations by the Texas Department of Family and Protective Services, including regulations governing investigation of abuse by school personnel and volunteers.
- (5) ~~(4)~~ The policies may not require that school personnel report suspicions of child abuse or neglect to a school administrator prior to making a report to one of the agencies identified in paragraph (1) [subsection (a)(1)] of this subsection [section] .
- (6) ~~(5)~~ The policies must include the current toll-free telephone number of the Texas Department of Family and Protective Services.
- (7) The policies must provide for cooperation with law enforcement child abuse investigations without the consent of the child's parent, if necessary, including investigations by the Texas Department of Family and Protective Services.
- (8) The policies must include child abuse anti-victimization programs in elementary and secondary schools consisting of age-appropriate, research-based prevention designed to promote self-protection and prevent sexual abuse and trafficking.
- (c) ~~(b)~~ The policies required by this section and adopted by the board of trustees shall be distributed to all school personnel at the beginning of each school year. The policies shall be addressed in staff development programs at regular intervals determined by the board of trustees.
- ~~(e)~~ For the 2014-2015 school year, school districts and open-enrollment charter schools shall provide training as required by the TEC, §38.0041, to all currently employed school district and open-enrollment charter school employees on or by the following dates:
- (1) September 30, 2014, for all kindergarten-Grade 5 teachers, campus principals, and bus drivers;
 - (2) December 31, 2014, for all remaining teachers, campus principals, and bus drivers; and
 - (3) May 31, 2015, for all remaining school staff.
- (d) Training concerning prevention techniques for, and recognition of, sexual abuse, trafficking, and all other maltreatment of children, including the sexual abuse, trafficking, and other maltreatment of children with significant cognitive disabilities, must be provided [Each subsequent school year,] as a part of new employee orientation [, school districts and open-enrollment charter schools shall provide training as required by the TEC, §38.0041,] to all new school district and open-enrollment charter school employees and to existing school district and open-enrollment charter school employees not previously trained as required by TEC, §38.0041 .
- (1) The training must include:
 - (A) factors indicating a child is at risk for sexual abuse, trafficking, or other maltreatment;
 - (B) warning signs indicating a child may be a victim of sexual abuse, trafficking, or other maltreatment;

- (C) internal procedures for seeking assistance for a child who is at risk for sexual abuse, trafficking, or other maltreatment, including referral to a school counselor, a social worker, or another mental health professional;
 - (D) techniques for reducing a child's risk for sexual abuse, trafficking, or other maltreatment; and
 - (E) information on community organizations that have relevant research-based programs that are able to provide training or other education for school district or open-enrollment charter school staff, students, and parents.
 - (2) Each school district and open-enrollment charter school must maintain records that include the name of each staff member who participated in training.
 - (3) To the extent that resources are not yet available from the Texas Education Agency or commissioner of education, school district and open-enrollment charter schools shall implement the policies and trainings with existing or publicly available resources. The school district or open-enrollment charter school may also work in conjunction with a community organization to provide the training at no cost to the district or charter school.
- (e) Using a format and language that is clear, simple, and understandable to students, each public school and open-enrollment charter school shall post, in English and in Spanish:
 - (1) the current toll-free Texas Department of Family and Protective Services Abuse Hotline telephone number;
 - (2) instructions to call 911 for emergencies; and
 - (3) directions for accessing the Texas Department of Family and Protective Services website (www.txabusehotline.org) for more information on reporting abuse, neglect, and exploitation.
- (f) School districts and open-enrollment charter schools shall post the information specified in subsection (e) of this section at each school campus in at least one high-traffic, highly and clearly visible public area that is readily accessible to and widely used by students. The information must be on a poster (11x17 inches or larger) in large print and placed at eye-level to the student for easy viewing. Additionally, the current toll-free Texas Department of Family and Protective Services Abuse Hotline telephone number should be in bold print.