

The Texas Education Agency (TEA) proposes the repeal of §74.1021 and §74.1022 and amendments to §74.1025 and §74.1027, concerning high school graduation. The proposed repeals are necessary due to the expiration of the authorizing statute. The proposed amendments would extend the expiration provisions as required by Senate Bill (SB) 213, 86th Texas Legislature, 2019, and clarify language.

BACKGROUND INFORMATION AND JUSTIFICATION: The 83rd Texas Legislature, Regular Session, 2013, amended Texas Education Code (TEC), §28.025, to establish a new high school graduation program, known as the Foundation High School Program, to replace the previous three graduation programs available to students. The Foundation High School Program was effective for all students entering high school beginning in the 2014-2015 school year, however, statute permitted students who entered high school prior to the 2014-2015 school year the choice to graduate under either the new Foundation High School Program or one of the existing high school programs in accordance with rules adopted by the commissioner of education. The authorizing statute also required the commissioner of education to by rule permit a student completing the fourth year of high school during the 2013-2014 school year who was participating in one of the existing high school programs and who did not satisfy the curriculum requirements of the existing high school program in which the student was participating to graduate if the student satisfied the curriculum requirements established by the commissioner for the Foundation High School Program. In 2013, the commissioner adopted 19 TAC §74.1021, Transition to the Foundation High School Program, and §74.1022, Foundation High School Program for Students Who Graduate in the 2013-2014 School Year, to establish graduation requirements that aligned with these requirements. The authorizing statute expired September 1, 2018, and, as a result, the corresponding rules in 19 TAC §74.1021 and §74.1022 are no longer necessary and should be repealed.

TEC, §39.025(a), prohibits a student from receiving a high school diploma until the student has performed satisfactorily on state end-of-course (EOC) assessments. Students who first entered high school beginning with the 2011-2012 school year must perform satisfactorily on EOC assessments in Algebra I, Biology, English I, English II, and U.S. History. Prior to 2017, the TEC prohibited a student who entered ninth grade before the 2011-2012 school year from receiving a high school diploma unless the student performed satisfactorily on each subject of the exit-level Texas Assessment of Knowledge and Skills (TAKS). Students subject to this requirement were required to perform satisfactorily on exit-level subject-area tests in English language arts, mathematics, science, and social studies. Prior to 2002, students were required to meet performance standards on older exit-level assessments: the Texas Assessment of Academic Skills (TAAS) and the Texas Educational Assessment of Minimum Skills (TEAMS).

TEC, §28.0258, requires each school district and open-enrollment charter school to establish an individual graduation committee for each 11th or 12th grade student who fails to perform satisfactorily on not more than two EOC assessments. The committee must be established at the end of or after the student's 11th grade year to determine whether a student may qualify to graduate. A student may not graduate under this provision before the student's 12th grade year. Statute requires the commissioner to adopt rules to establish alternative individual graduation committee members and a timeline for decisions by individual graduation committees. TEC, §28.0259, requires each school district and open-enrollment charter school to report through TSDS PEIMS the number of students for which an individual graduation committee was convened and the number of students who are awarded a diploma by means of an individual graduation committee determination each year. The commissioner's rule in 19 TAC §74.1025, Individual Graduation Committee Review, addresses the make up of the individual graduation committee, identifies alternative committee members, and establishes a timeline for individual graduation committee decisions.

TEC, §28.02541, establishes provisions to allow former students who entered Grade 9 before the 2011-2012 school year and who have completed the curriculum requirements for graduation but who have not yet performed satisfactorily on the required assessments to qualify for a high school diploma. The commissioner's rule in 19 TAC §74.1027, Diplomas for Certain Individuals Who Entered Grade 9 Before 2011-2012 School Year, establishes certain alternative requirements for high school graduation that eligible individuals may meet in order to qualify to receive a high school diploma under the TEC, §28.02541.

The proposed amendments would update the expiration provisions of 19 TAC §74.1025 and §74.1027 to September 1, 2023, in accordance with recent amendments to the authorizing statutes. The proposed amendments would also incorporate minor technical edits to clarify language.

FISCAL IMPACT: Monica Martinez, associate commissioner for standards and support services, 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, but would, in part, repeal existing regulations due to the expiration of authorizing statute, and expand existing regulations due to the extension of expiration provisions in statute; 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. Martinez 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 provide individuals who entered the ninth grade prior to the 2011-2012 school year and those who are attempting to graduate additional flexibility in completing assessment requirements for graduation and earning a high school diploma. 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 or 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 October 4, 2019, and ends November 4, 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 October 4, 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 repeals are proposed under Texas Education Code (TEC), §28.02541, which requires the commissioner of education to by rule establish a procedure to determine whether certain students who entered ninth grade before the 2011-2012 school year may qualify to graduate and receive a high school diploma; TEC §28.0258(c), which requires the commissioner of education to establish by rule a procedure for the appointment of alternative individual graduation committee members in the event that a required member is unable to serve; TEC, §28.0258(i), which requires the commissioner to establish by rule a timeline for an individual graduation committee to make a determination regarding whether a student is qualified to graduate; and TEC,

§28.0259, which requires the commissioner to adopt rules regarding the requirement that school districts report through the Texas Student Data System Public Education Information Management System (TSDS PEIMS) information regarding the number of students for whom an individual graduation committee was established and the number of students who were awarded a diploma based on the decision of an individual graduation committee. SB 213, 86th Texas Legislature, 2019, amended TEC, §§28.02541, 28.0258, and 28.0259, to extend expiration provisions from September 1, 2019, to September 1, 2023.

CROSS REFERENCE TO STATUTE. The repeals implement Texas Education Code, §§28.02541, 28.0258, and 28.0259, as amended by SB 213, 86th Texas Legislature, 2019.

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§74.1021. Transition to the Foundation High School Program.

§74.1022. Foundation High School Program for Students Who Graduate in the 2013-2014 School Year.

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STATUTORY AUTHORITY. The amendments are proposed under Texas Education Code (TEC), §28.02541, which requires the commissioner of education to by rule establish a procedure to determine whether certain students who entered ninth grade before the 2011-2012 school year may qualify to graduate and receive a high school diploma; TEC §28.0258(c), which requires the commissioner of education to establish by rule a procedure for the appointment of alternative individual graduation committee members in the event that a required member is unable to serve; TEC, §28.0258(i), which requires the commissioner to establish by rule a timeline for an individual graduation committee to make a determination regarding whether a student is qualified to graduate; and TEC, §28.0259, which requires the commissioner to adopt rules regarding the requirement that school districts report through the Texas Student Data System Public Education Information Management System (TSDS PEIMS) information regarding the number of students for whom an individual graduation committee was established and the number of students who were awarded a diploma based on the decision of an individual graduation committee. SB 213, 86th Texas Legislature, 2019, amended TEC, §§28.02541, 28.0258, and 28.0259, to extend expiration provisions from September 1, 2019, to September 1, 2023.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code, §§28.02541, 28.0258, and 28.0259, as amended by SB 213, 86th Texas Legislature, 2019.

§74.1025. Individual Graduation Committee Review.

(a)-(e) (No change.)

(f) The individual graduation committee shall consist of the following:

- (1) the principal or principal's designee;
- (2) for each EOC assessment instrument on which the student failed to perform satisfactorily, the teacher of the course;
- (3) the department chair or lead teacher supervising the teacher described by paragraph (2) of this subsection; and
- (4) as applicable:
 - (A) the student's parent or person standing in parental relation to the student;
 - (B) a designated advocate if the person described by subparagraph (A) of this paragraph is unable to serve; or
 - (C) the student, at the student's option, if the student is at least 18 years of age or is an emancipated minor.

(g) In the event that the teacher identified in subsection (f)(2) of this section is unavailable, the principal shall designate as an alternate member of the committee a teacher certified in the subject of the EOC assessment on which the student failed to perform satisfactorily and who is most familiar with the student's performance in that subject area [as an alternate member of the committee] .

(h) In the event that the individual identified in subsection (f)(3) of this section is unavailable, the principal shall designate as an alternate member of the committee an experienced teacher certified in the subject of the EOC assessment on which the student failed to perform satisfactorily and who is familiar with the content of and instructional practices for the applicable course.

(i)-(k) (No change.)

(l) This section only applies to a student classified by the school district or open-enrollment charter school as an 11th or 12th grade student in the 2014-2015 [, 2015-2016, 2016-2017, 2017-2018, or 2018-2019] school year or thereafter .

(m) Provisions of this section expire September 1, 2023 [September 1, 2019] . A student may graduate by means of an individual graduation committee if the student has qualified for an individual graduation committee under the TEC, §28.0258, and the individual graduation committee convened prior to September 1, 2023 [September 1, 2019] .

(n) (No change.)

§74.1027. Diplomas for Certain Individuals Who Entered Grade 9 Before 2011-2012 School Year.

- (a) Effective beginning with the 2017-2018 school year, in accordance with the Texas Education Code (TEC), §28.02541, a school district or an open-enrollment charter school may award a high school diploma to an individual who:
- (1) entered Grade 9 before the 2011-2012 school year;
 - (2) successfully completed the curriculum requirements for high school graduation applicable to the individual when the individual entered Grade 9;
 - (3) has not performed satisfactorily on an assessment instrument or a part of an assessment instrument required for high school graduation, including an alternate assessment instrument offered under TEC, §39.025(c-2) [~~§39.025(c-1)~~];
 - (4) has been administered at least three times the required subject-areas test(s) for which the individual has not performed satisfactorily on the exit-level assessment instrument applicable to the individual when the individual entered Grade 9; and
 - (5) meets the alternative requirements for graduation in accordance with subsection (c) of this section or the local alternative requirements approved by the board of trustees in accordance with subsection (d) of this section.
- (b) (No change.)
- (c) The alternative requirements for graduation shall permit an individual to qualify to graduate and receive a high school diploma if the individual:
- (1) has met the performance standard on an alternate assessment as specified in §101.4003 of this title (relating to Texas Assessment of Knowledge and Skills Exit-Level Alternate Assessments);
 - (2) has performed satisfactorily on the applicable subject-area test of a state-approved high school equivalency examination in accordance with §89.43(a)(4) of this title (relating to Eligibility for a Texas Certificate of High School Equivalency);
 - (3) provides evidence of attainment of an industry-recognized postsecondary license or certification in accordance with §74.1003 of this title (relating to Industry-Based Certifications for Public School Accountability);
 - (4) provides evidence of current active duty service in the armed forces or a DD Form 214 indicating honorable or general discharge from the armed forces; or
 - (5) has successfully completed college-level coursework and earned college credit.
- (d)-(f) (No change.)
- (g) Provisions of this section expire September 1, 2023 [~~September 1, 2019~~].