

The Texas Education Agency (TEA) proposes new §§89.1601, 89.1603, 89.1605, 89.1607, 89.1609, 89.1611, 89.1613, 89.1615, and 89.1617, concerning transition assistance for highly mobile students who are homeless or in substitute care. The proposed new rules would assist with the transition of students who are homeless or in substitute care from one school to another and provide local education agencies (LEAs) with guidance on the requirements of Texas Education Code (TEC), §25.007.

**BACKGROUND INFORMATION AND JUSTIFICATION:** Senate Bill (SB) 1220, 85th Texas Legislature, 2017, amended TEC, §25.007, relating to transition assistance for students who are homeless or in substitute care. SB 1220 addressed the continuity of education for this population of students, including placement in comparable courses or education programs and provision of comparable services during the referral process, and authorized the commissioner to establish rules to implement TEC, §25.007.

Proposed new 19 TAC Chapter 89, Adaptations for Special Populations, Subchapter FF, Commissioner's Rules Concerning Transition Assistance for Highly Mobile Students Who Are Homeless or in Substitute Care, would address school district and open-enrollment charter school responsibilities, as follows.

Proposed new §89.1601, Definitions, would provide clarity by defining terms having meanings specific to proposed new Chapter 89, Subchapter FF.

Proposed new §89.1603, Transfer of Student Records and Transcripts, would address responsibilities for LEAs to request, send, and receive student records and transcripts as required by TEC, §25.002(a-1), to ensure a seamless enrollment and transition.

Proposed new §89.1605, Development of Systems to Ease Transitions and Establish Procedures to Lessen the Adverse Impact of Movement of a Student, would establish systems that LEAs must develop to ease the transition during the first two weeks of enrollment at a new school. The proposed new rule would address welcome packets, introductions, and a process to ensure that eligible students receive nutrition benefits. It would also address the necessary elements for the required enrollment conference.

Proposed new §89.1607, Award of Credit, would address the creation and examination of existing local policies to assist LEAs with the award of credits, including credit by examination, credit recovery plans, course transition plans, and personal graduation plans.

Proposed new §89.1609, Placement in Educational Programs and Courses, would address LEA responsibilities relating to course and educational program placement in order to ensure continuity for students.

Proposed new §89.1611, Promotion of Access to Educational and Extracurricular Programs for Students Who Are Homeless or in Substitute Care, would set forth LEA responsibilities relating to access and participation in educational and extracurricular programs, including tutoring programs, Communities in Schools or similar programs, and University Interscholastic League (UIL) participation to mitigate transition barriers to participation.

Proposed new §89.1613, Promotion of Postsecondary Information, would address LEA responsibilities to promote postsecondary access and to ensure students are progressing toward graduation and are linked with appropriate higher education financial resources and supports in order to implement TEC, §28.02121 and §54.366, and 42 United States Code, §11432(g)(6)(A)(x).

Proposed new §89.1615, Provision of Special Education Services, would address LEA responsibilities to provide special education services and accept referrals made by previous school districts or open-enrollment charter schools for special education evaluation to ensure the appropriate placement of services for students.

Proposed new §89.1617, Notice to Student's Educational Decision-Maker and Caseworker, would address the requirement in TEC, §25.007, that LEAs provide notice to the student's educational decision-maker or caseworker of information that significantly impacts the education of the student. The proposed new rule would include the requirement passed by House Bill 1709, 86th Texas Legislature, 2019, requiring school districts and open-enrollment charter schools to provide notice to the student's educational decision-maker and caseworker regarding the appointment of a surrogate parent for the child under TEC, §29.0151.

**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 create new regulations to assist with the transition of students who are homeless or in substitute care. The proposal would lay out the expectations for school districts and open-enrollment charter schools on what is needed to fulfill the requirements of TEC, §25.007.

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 expand, limit, or repeal an existing regulation; would not increase or decrease the number of individuals subject to the rule's applicability; 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 mitigation of challenges and integration of solutions at school districts and open-enrollment charter schools for effectively serving mobile students who are homeless or in substitute care. The proposal would require actions to reduce barriers related to school transitions, thus supporting learning and future educational achievement for students as they transition between Texas public schools due to their mobility. 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 require a written report or other paperwork but does not specifically require a principal or classroom teacher to complete the report or paperwork. However, local district decisions may vary. In such an instance, the proposal would impose the least burdensome requirement possible to achieve the objective of the rule. Section 89.1611 would require that appropriate district or charter school staff complete and submit a UIL waiver of residence application form for students who are homeless or in substitute care plan and to participate in varsity athletics or other UIL-sponsored activities.

PUBLIC COMMENTS: The public comment period on the proposal begins November 22, 2019, and ends December 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 November 22, 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), §25.002(a-1), which requires school districts and open-enrollment charter schools to transfer student records to the district to which the request is made not later than the 10th working day after the date a request for the information is received by the district; and TEC, §25.007(c), which authorizes the commissioner to establish rules to facilitate the transition between schools of children who are homeless or in substitute care.

CROSS REFERENCE TO STATUTE. Texas Education Code, §25.002(a-1) and §25.007(c).

<rule>

### **§89.1601. Definitions.**

The following words and terms, when used in this subchapter, have the following meaning, unless the context clearly indicates otherwise.

- (1) Homeless--This term has the meaning assigned to the term "homeless children and youths" under 42 United States Code (USC), §11434a.
- (2) Homeless liaison--A person designated by a school district or an open-enrollment charter school pursuant to the McKinney-Vento Homeless Assistance Act (42 USC, §11432(g)(1)(J)(ii)), to ensure homeless children and youth are identified and enrolled, with a full and equal opportunity to succeed, in schools.
- (3) Substitute care--The placement of a child who is in the conservatorship of the Texas Department of Family and Protective Services (DFPS) in care outside the child's home. The term includes foster care, institutional care, pre-adoptive homes, placement with a relative of the child, or commitment to the Texas Juvenile Justice Department under Texas Family Code, §263.001(a)(4).
- (4) Foster care liaison--The individual each local educational agency appoints to act as a liaison to facilitate enrollment or transfer of a child who is in conservatorship of the state, pursuant to Texas Education Code, §33.904.
- (5) Foster care--Twenty-four-hour substitute care for children placed away from their parents or guardians and for whom DFPS has placement and care responsibility. This includes, but is not limited to, placements in foster family homes, foster homes of relatives, group homes, emergency shelters, residential facilities, childcare institutions, and pre-adoptive homes.
- (6) Educational decision-maker--A person designated by DFPS to make education decisions on behalf of youth in substitute care.
- (7) Enrollment conference--A student-centered meeting for a newly enrolled student to identify academic and extracurricular interests; introduce school processes and opportunities for engagement; develop course and instructional strategies; review credits and assessment information; determine social-emotional support; and communicate confidential information that may impact a student's success, if needed.
- (8) Records--Documents in printed or electronic form that include, but are not limited to, student transcripts; individual course grades; academic achievement records; course credits, whether full or partial; individualized education program referrals; intervention data; immunizations; state assessment scores; student attendance data; disciplinary reports; graduation endorsements; special

education/Section 504 committee records; performance acknowledgements; and personal graduation plans.

**§89.1603. Transfer of Student Records and Transcripts.**

- (a) Each school district and open-enrollment charter school must ensure that copies of student records are made available to schools to which students who are homeless or in substitute care transfer.
- (b) Each school district and open-enrollment charter school is required to transfer student records within 10 working days of receipt of a request from a district or charter school to which a student who is homeless or in substitute care enrolls, as required by Texas Education Code (TEC), §25.002(a-1). The discretionary authority under TEC, §31.104(d), to withhold records of a student if the student has not returned or paid for instructional materials or technological equipment does not exempt a district or charter school from the mandatory provision in TEC, §25.002, to send records to another public school in which the student enrolls.
- (c) Proof of enrollment in a different school district or open-enrollment charter school permits retroactive withdrawal to the date a student enrolled in the new school. The date of enrollment in the new district or charter school is considered the date of withdrawal from the previous district or charter school.
- (d) Student records must be requested, sent, and received using the Texas Records Exchange (TREx) system.
- (e) If a school district or an open-enrollment charter school fails to receive the required information within 10 working days, the requesting district or charter school shall report the noncompliant district or charter school to the division responsible for general inquiries at the Texas Education Agency.

**§89.1605. Development of Systems to Ease Transitions and Establish Procedures to Lessen the Adverse Impact of Movement of a Student.**

- (a) Each school district and open-enrollment charter school shall develop systems to ease transition of a student who is homeless or in substitute care during the first two weeks of enrollment at a new school. These systems shall include the following:
  - (1) welcome packets containing information regarding enrollment in extracurricular activities, club activities, information on fee waivers, tutoring opportunities, the student code of conduct, and contact information for pertinent school staff such as counselors, nurses, social workers, the foster care liaison, the homeless liaison, the principal and any assistant principals, and related contacts;
  - (2) introductions for new students that maintain student privacy and confidentiality to the school environment and school processes by school district or charter school faculty, campus-based student leaders, or ambassadors; and
  - (3) mechanisms to ensure that a process is in place for all students who qualify to receive nutrition benefits upon enrollment, as all students who are homeless or in substitute care are eligible for United States Department of Agriculture Child Nutrition Programs. The process must expedite communication with the district or charter school nutrition coordinator to ensure that eligible students are not charged in error or experience delays in receiving these benefits.
- (b) A school district or an open-enrollment charter school shall convene an enrollment conference with the student within the first two weeks of enrollment or within the first two weeks after the student is identified as homeless or in substitute care.
  - (1) The convening of the enrollment conference shall not delay or impede the enrollment of the student.
  - (2) The enrollment conference shall address the student's credit recovery, credit completion, attendance plans and interventions, interests and strengths, discipline or behavior concerns, previous successes, college readiness, and social and emotional supports as well as district policies relating to transfers and withdrawals and communication preferences with parents or guardians. The enrollment conference may be comprised of:
    - (A) school administrators;

- (B) homeless or foster care liaisons;
  - (C) a social worker;
  - (D) teachers;
  - (E) counselors;
  - (F) dropout prevention specialists;
  - (G) attendance/truancy officers;
  - (H) the foster placement caregiver or case manager;
  - (I) the Texas Department of Family and Protective Services (DFPS) designated educational decision-maker;
  - (J) the DFPS caseworker, Court Appointed Special Advocates (CASA) volunteer, or other volunteer, as applicable; and
  - (K) a parent and/or guardian.
- (3) The enrollment conference must continue to convene on a regular schedule (at least every semester or, if a school operates under a quarterly or trimester system, every quarter or trimester) to assess and evaluate the needs, academic progress, interventions, and support services of students who are homeless or in substitute care.
- (c) A district or charter school must provide professional development and training for pertinent staff members (such as principals, registrars, counselors, designated liaisons, nutrition coordinators, transportation specialists, etc.) concerning communication, processes, and procedures for facilitating successful school transitions for students who are homeless or in substitute care.
- (d) For each district or charter school, the Texas Records Exchange (TREx), the Personal Identification Database (PID), or the Person Enrollment Tracking (PET) application must be used to expedite coordination and communication between the sending and receiving schools.

**§89.1607. Award of Credit.**

- (a) Each school district and open-enrollment charter school must adopt a local policy to assist with awarding to a student who is homeless or in substitute care credit for a course that was earned prior to the student enrolling in or transferring to the district or charter school, as required by §74.26 of this title (relating to Award of Credit).
- (b) Each school district and open-enrollment charter school must examine how credit is awarded based on satisfactorily meeting all state and local requirements for a course upon enrollment, as required by §74.26 of this title.
- (c) Each school district and open-enrollment charter school must provide opportunities for a student who is homeless or in substitute care who enrolls in the district or charter school after the start of the school year to be administered credit by examination at any point during the school year, as required by §74.24 of this title (relating to Credit by Examination).
- (d) Each school district and open-enrollment charter school must award credit proportionately to a student who is homeless or in substitute care who successfully completes only half of a course, as required by §74.26(e) of this title.
- (e) Each school district and open-enrollment charter school must:
  - (1) develop a credit recovery plan for students who were denied credits outside the district or charter school;
  - (2) create a course transition plan for students who have been denied credit;
  - (3) develop and administer a personal graduation plan for each student in junior high or middle school, as required by Texas Education Code (TEC), §28.0212;

- (4) ensure that school staff engage with the student, parent, or guardian, as applicable, to develop a credit recovery plan upon enrollment if the student has a credit deficit that would impede on-time promotion or graduation; and
- (5) comply with TEC, §28.025(i), concerning the award of diplomas for students who are homeless or in substitute care who are in Grade 11 or 12.

**§89.1609. Placement in Educational Programs and Courses.**

- (a) When a student who is homeless or in substitute care transfers before or during the school year, the receiving school district or open-enrollment charter school shall initially place the student in educational programs and courses based on the student's prior enrollment in and current educational assessments from the sending school.
  - (1) Educational programs include, but are not limited to, gifted and talented program services, bilingual or special language services for English learners, career and technical education, and early college high school.
  - (2) Course placement includes, but is not limited to, honors, International Baccalaureate, Advanced Placement, vocational, technical, and career pathway courses.
- (b) Each school district and open-enrollment charter school must ensure that a student who is homeless or in substitute care has the ability to earn the same endorsement categories, if applicable. If only one endorsement is offered, it must be multidisciplinary studies.
- (c) To the extent possible, each school district and open-enrollment charter school shall ensure the continuation of a student's educational and course programs from the previous district or charter school and promote placement in academically challenging and career preparation courses.

**§89.1611. Promotion of Access to Educational and Extracurricular Programs for Students Who Are Homeless or in Substitute Care.**

- (a) Each school district and open-enrollment charter school must provide opportunities for students who are homeless or in substitute care to participate in summer programs, electronic courses provided through the Texas Virtual School Network, and after-school tutoring programs at nominal or no cost.
- (b) Each school district and open-enrollment charter school must encourage participation in tutoring programs and Communities in Schools or similar programs, when available, that provide tutoring, mentoring, after-school, and summer programs.
- (c) Appropriate school district or open-enrollment charter school staff must complete and submit a University Interscholastic League (UIL) waiver of residence application form for a student who is homeless or in substitute care and plans to participate in varsity athletics or other UIL-sponsored activities.
  - (1) Districts and charter schools must comply with Texas Education Code, §25.001(f), and not prohibit a student in substitute care from fully participating in any activity sponsored by the school district.
  - (2) Students in foster care remaining in their school of origin but residing outside of the school district of attendance shall be afforded a waiver, as allowed under UIL Constitution and Contest Rules Section 442: Residence in School District and Attendance Zone.

**§89.1613. Promotion of Postsecondary Information.**

- (a) School district and open-enrollment charter school counselors or other designated staff shall work with district homeless and foster care liaisons to ensure that all students who are identified as homeless or in substitute care are on track to graduate with endorsements, if applicable, and have postsecondary plans identified in their personal graduation plans, pursuant to Texas Education Code (TEC), §28.02121.
- (b) School district and open-enrollment charter school counselors or other designated staff must inform unaccompanied homeless youths of their rights and status as independent students for the purpose of

applying for financial aid for higher education and provide verification of such status for the Free Application for Federal Student Aid (FASFA), pursuant to 42 United States Code, §11432(g)(6)(A)(x).

- (c) Each school district and open-enrollment charter school shall ensure that a student in substitute care who is enrolled in Grade 11 or 12 in that district or charter school is provided information regarding tuition and fee exemptions under TEC, §54.366, for dual-credit or other courses provided by a public institution of higher education for which a high school student may earn joint high school and college credit.

**§89.1615. Provision of Special Education Services.**

- (a) When a student who is homeless or in substitute care transfers into a school district or an open-enrollment charter school after being referred by a previous district or charter school for a special education evaluation, the receiving district or charter school must accept the referral and ensure that it meets timelines established in §89.1011 of this title (relating to Full Individual and Initial Evaluation).
- (b) When a student who is already eligible for special education and is homeless or in substitute care transfers into a school district or an open-enrollment charter school during the school year, the receiving district or charter school must ensure that it meets the student transfer requirements of §89.1050(j) of this title (relating to The Admission, Review, and Dismissal Committee).

**§89.1617. Notice to Student's Educational Decision-Maker and Caseworker.**

Each school district and open-enrollment charter school must comply with Texas Education Code (TEC), §25.007(b)(10), and provide notice in writing to the educational decision-maker and caseworker of a student who is homeless or in substitute care regarding events that may significantly impact the education of the student.