

## ATTACHMENT I

### **Statutory Citations Relating to Amendment to 19 TAC Chapter 129, Student Attendance, Subchapter AA, Commissioner's Rules, §129.1027, Optional Flexible School Day Program**

#### **Texas Education Code (TEC), §25.081, Operation of Schools:**

- (a) Except as authorized under Subsection (b) of this section, Section 25.084, or Section 29.0821, for each school year each school district must operate for at least 75,600 minutes, including time allocated for instruction, intermissions, and recesses for students.
- (b) The commissioner may approve the operation of schools for fewer than the number of minutes required under Subsection (a) if disaster, flood, extreme weather conditions, fuel curtailment, or another calamity causes the closing of schools.
- (c) If the commissioner does not approve reduced operation time under Subsection (b), a school district may add additional minutes to the end of the district's normal school hours as necessary to compensate for minutes lost due to school closures caused by disaster, flood, extreme weather conditions, fuel curtailment, or another calamity.
- (d) The commissioner may adopt rules to implement this section, including rules:
  - (1) for the application, on the basis of the minimum minutes of operation required by Subsection (a), of any provision of this title that refers to a minimum number of days of instruction under this section;
  - (2) to determine the minutes of operation that are equivalent to a day;
  - (3) defining minutes of operation and instructional time; and
  - (4) establishing the minimum number of minutes of instructional time required for a full-day and a half-day program to meet the time requirements under Subsection (a).
- (e) A school district or education program is exempt from the minimum minutes of operation requirement if the district's or program's average daily attendance is calculated under Section 42.005(j).
- (f) The commissioner may proportionally reduce the amount of funding a district receives under Chapter 41, 42, or 46 and the average daily attendance calculation for the district if the district operates on a calendar that provides fewer minutes of operation than required under Subsection (a).

#### **TEC, §29.081, Compensatory, Intensive, and Accelerated Instruction, as amended by House Bill (HB) 3706, 85th Texas Legislature, Regular Session, 2017:**

- (a) Each school district shall use the student performance data resulting from the basic skills assessment instruments and achievement tests administered under Subchapter B, Chapter 39, to design and implement appropriate compensatory, intensive, or accelerated instructional services for students in the district's schools that enable the students to be performing at grade level at the conclusion of the next regular school term.
- (b) Each district shall provide accelerated instruction to a student enrolled in the district who has taken an end-of-course assessment instrument administered under Section 39.023(c) and has not performed satisfactorily on the assessment instrument or who is at risk of dropping out of school.
- (b-1) Each school district shall offer before the next scheduled administration of the assessment instrument, without cost to the student, additional accelerated instruction to each student in any

subject in which the student failed to perform satisfactorily on an end-of-course assessment instrument required for graduation.

- (b-2) A district that is required to provide accelerated instruction under Subsection (b-1) shall separately budget sufficient funds, including funds under Section 42.152, for that purpose. A district may not budget funds received under Section 42.152 for any other purpose until the district adopts a budget to support additional accelerated instruction under Subsection (b-1).
- (b-3) A district shall evaluate the effectiveness of accelerated instruction programs under Subsection (b-1) and annually hold a public hearing to consider the results.
- (c) Each school district shall evaluate and document the effectiveness of the accelerated instruction in reducing any disparity in performance on assessment instruments administered under Subchapter B, Chapter 39, or disparity in the rates of high school completion between students at risk of dropping out of school and all other district students.
- (d) For purposes of this section, "student at risk of dropping out of school" includes each student who is under 26 years of age and who:
  - (1) was not advanced from one grade level to the next for one or more school years;
  - (2) if the student is in grade 7, 8, 9, 10, 11, or 12, did not maintain an average equivalent to 70 on a scale of 100 in two or more subjects in the foundation curriculum during a semester in the preceding or current school year or is not maintaining such an average in two or more subjects in the foundation curriculum in the current semester;
  - (3) did not perform satisfactorily on an assessment instrument administered to the student under Subchapter B, Chapter 39, and who has not in the previous or current school year subsequently performed on that instrument or another appropriate instrument at a level equal to at least 110 percent of the level of satisfactory performance on that instrument;
  - (4) if the student is in prekindergarten, kindergarten, or grade 1, 2, or 3, did not perform satisfactorily on a readiness test or assessment instrument administered during the current school year;
  - (5) is pregnant or is a parent;
  - (6) has been placed in an alternative education program in accordance with Section 37.006 during the preceding or current school year;
  - (7) has been expelled in accordance with Section 37.007 during the preceding or current school year;
  - (8) is currently on parole, probation, deferred prosecution, or other conditional release;
  - (9) was previously reported through the Public education Information Management System (PEIMS) to have dropped out of school;
  - (10) is a student of limited English proficiency, as defined by Section 29.052;
  - (11) is in the custody or care of the Department of Family and Protective Services or has, during the current school year, been referred to the department by a school official, officer of the juvenile court, or law enforcement official;
  - (12) is homeless, as defined by 42 U.S.C. Section 11302, and its subsequent amendments; or
  - (13) resided in the preceding school year or resides in the current school year in a residential placement facility in the district, including a detention facility, substance abuse treatment facility, emergency shelter, psychiatric hospital, halfway house, cottage home operation, specialized child-care home, or general residential operation.

- (d-1) Notwithstanding Subsection (d)(1), a student is not considered a student at risk of dropping out of school if the student did not advance from prekindergarten or kindergarten to the next grade level only as the result of the request of the student's parent.
- (e) A school district may use a private or public community-based dropout recovery education program to provide alternative education programs for students at risk of dropping out of school. The program may be offered:
- (1) at a campus; or
  - (2) through the use of an Internet online program that leads to a high school diploma and prepares the student to enter the workforce.
- (e-1) A campus-based dropout recovery program must:
- (1) provide not less than four hours of instructional time per day;
  - (2) employ as faculty and administrators persons with baccalaureate or advanced degrees;
  - (3) provide at least one instructor for each 28 students;
  - (4) perform satisfactorily according to performance indicators and accountability standards adopted for alternative education programs by the commissioner; and
  - (5) comply with this title and rules adopted under this title except as otherwise provided by this subsection.
- (e-2) An Internet online dropout recovery education program must:
- (1) include as a part of its curriculum credentials, certifications, or other course offerings that relate directly to employment opportunities in the state;
  - (2) employ as faculty and administrators persons with baccalaureate or advanced degrees;
  - (3) provide an academic coach and local advocate for each student;
  - (4) use an individual learning plan to monitor each student's progress;
  - (5) establish satisfactory requirements for the monthly progress of students according to standards set by the commissioner;
  - (6) provide a monthly report to the student's school district regarding the student's progress;
  - (7) perform satisfactorily according to performance indicators and accountability standards adopted for alternative education programs by the commissioner; and
  - (8) comply with this title and rules adopted under this title except as otherwise provided by this subsection.
- (f) The commissioner shall include students in attendance in a program under Subsection (e) in the computation of the district's average daily attendance for funding purposes.
- (g) In addition to students described by Subsection (d), a student who satisfies local eligibility criteria adopted by the board of trustees of a school district may receive instructional services under this section. The number of students receiving services under this subsection during a school year may not exceed 10 percent of the number of students described by Subsection (d) who received services from the district during the preceding school year.

**TEC, §29.0822, Optional Flexible School Day Program, as amended by HB 3706, 85th Texas Legislature, Regular Session, 2017:**

- (a) Notwithstanding Section 25.081 or 25.082, a school district may apply to the commissioner to provide a flexible school day program for students who:
  - (1) have dropped out of school or are at risk of dropping out of school as defined by Section 29.081;
  - (2) attend a campus that is implementing an innovative redesign of the campus or an early college high school under a plan approved by the commissioner; or
  - (3) as a result of attendance requirements under Section 25.092, will be denied credit for one or more classes in which the students have been enrolled.
- (b) To enable a school district to provide a program under this section that meets the needs of students described by Subsection (a), a school district that meets application requirements may:
  - (1) provide flexibility in the number of hours each day a student attends;
  - (2) provide flexibility in the number of days each week a student attends;
  - (3) allow a student to enroll in less than or more than a full course load; or
  - (4) allow a student to enroll in a dropout recovery program in which courses are conducted online.
- (c) Except in the case of a course designed for a student described by Subsection (a)(3) or enrolled in a course described by Subsection (b)(4), a course offered in a program under this section must provide for at least the same number of instructional hours as required for a course offered in a program that meets the required minimum number of minutes of operation under Section 25.081.
- (d) The commissioner may adopt rules for the administration of this section, including rules establishing application requirements. Subject to Subsection (d-1), the commissioner shall calculate average daily attendance for students served under this section. The commissioner shall allow accumulations of hours of instruction for students whose schedule would not otherwise allow full state funding. Funding under this subsection shall be determined based on the number of instructional days in the school district calendar and a seven-hour school day, but attendance may be cumulated over a school year, including any summer or vacation session. The attendance of students who accumulate less than the number of attendance hours required under this subsection shall be proportionately reduced for funding purposes. The commissioner may:
  - (1) set maximum funding amounts for an individual course under this section; and
  - (2) limit funding for the attendance of a student described by Subsection (a)(3) in a course under this section to funding only for the attendance necessary for the student to earn class credit that, as a result of attendance requirements under Section 25.092, the student would not otherwise be able to receive without retaking the class.
- (d-1) In calculating average daily attendance for students served under this section, the commissioner shall ensure that funding for attendance in a course in a program under this section is based on the same instructional hour requirements of the regular program rather than a full-time equivalent student basis that requires six hours of student contact time to qualify for a full day of attendance.
- (e) A student described by Subsection (a)(3) may enroll in a course in a program under this section offered during the school year or during the period in which school is recessed for the summer to enable the student to earn class credit that, as a result of attendance requirements under Section 25.092, the student would not otherwise be able to receive without retaking the class.