

The Texas Education Agency (TEA) proposes an amendment to §129.1025, concerning student attendance. The amendment would adopt by reference the *2019-2020 Student Attendance Accounting Handbook: Version 2* that includes amendments to incorporate changes made by recent legislation, including House Bill (HB) 3, 86th Texas Legislature, 2019. The handbook provides student attendance accounting rules for school districts and charter schools.

**BACKGROUND INFORMATION AND JUSTIFICATION:** The TEA has adopted its student attendance accounting handbook in rule since 2000. Attendance accounting evolves from year to year, so the intention is to annually update 19 TAC §129.1025 to refer to the most recently published student attendance accounting handbook.

Each annual student attendance accounting handbook provides school districts and charter schools with the Foundation School Program (FSP) eligibility requirements of all students, prescribes the minimum requirements of all student attendance accounting systems, lists the documentation requirements for attendance audit purposes, and details the responsibilities of all district personnel involved in student attendance accounting. The TEA distributes FSP resources under the procedures specified in each current student attendance accounting handbook. The final version of the student attendance accounting handbook is published on the TEA website. A supplement, if necessary, is also published on the TEA website.

The proposed amendment to 19 TAC §129.1025 would adopt by reference version 2 of the student attendance accounting handbook for the 2019-2020 school year. The proposed version of the handbook would provide additional guidance to implement legislation from the 86th Texas Legislature, 2019.

Significant changes to the *2019-2020 Student Attendance Accounting Handbook: Version 2* would include the following.

### *Section 3, General Attendance Requirements*

TEC, §25.081, and Chapter 48, specifically §48.005, establish the general parameters for attendance and school operation. The following changes would implement reporting requirements for attendance and funding.

Language would be revised to clarify that districts providing a full-day prekindergarten program to eligible four-year olds would need to provide 75,600 operational minutes unless they have received a waiver from TEA.

Language would be added to include that a charter school is only approved to serve students in the geographic boundary authorized in the charter school's charter agreement, unless the student is a child of an employee of the school and regardless of whether the child resides in the geographic boundary served by the school.

Language would be added to include that a student whose parent or guardian is an active duty member of the armed forces of the United States may establish residency for the purposes of being enrolled in a school district by providing required documentation within ten days of arrival date.

Language would be added to include that a student is entitled to attend school in a particular district if the student or a parent of the student resides in a residence that is located on a parcel of property located on any part of two or more districts.

Language would be revised to clarify that a district must not excuse more than six days in the junior or senior year of a student who wants to visit an institution of higher learning to determine the student's interest in attending that institution.

The calendar chart would be updated to indicate that a full-day prekindergarten program for eligible four-year-olds will provide 75,600 minutes of operational minutes along with any applicable waivers and a half-day prekindergarten program for eligible three-year-olds and ineligible students will provide 32,400 minutes of instruction along with applicable waivers.

Language would be added to specify that beginning in the 2020-2021 school year, an additional instructional days incentive will be available to district or charter school campuses that offer up to an additional 30 days of half-day instruction for students enrolled in prekindergarten through fifth grade, provided that the regular year minimum operation and instructional minutes are met.

Language would be added to specify that no public school will be funded in excess of a 180-day calendar except for the schools that meet all the criteria for the additional days incentive funding that becomes available starting in the 2020-2021 school year.

#### *Section 4, Special Education*

TEC, Chapter 48, specifically §48.102, authorizes funding for special education in certain circumstances. TEC, §48.004, authorizes the commissioner to require reports that may be necessary to implement and administer the FSP. The following changes would implement reporting for special education to account for attendance and funding.

Language would be revised to clarify that to be eligible to receive special education services, a student must be a child with a disability who, by reason thereof, requires specially designed instruction.

Language would be revised to clarify that the admission, review, and dismissal (ARD) committee must determine the instructional setting code and speech therapy indicator code according to the committee's interim placement for the student or final placement as determined by the newly implemented individualized education program (IEP).

Language would be revised to clarify that, if services are provided on a local district campus, the student's instructional setting should be coded as a residential care and treatment facility.

Language would be revised to clarify that references to preschool programs for children with disabilities (PPCD) will be replaced and children aged three through five qualifying for special education and related services will receive services through early childhood special education (ECSE).

#### *Section 5, Career and Technical Education (CTE)*

TEC, Chapter 48, including §48.106, authorizes funding for career and technical education (CTE) in certain circumstances. TEC, Chapter 29, Subchapter F, establishes general parameters for CTE programs. TEC, §48.004, authorizes the commissioner to require reports as may be necessary to implement and administer the FSP. The following change would implement reporting for CTE to account for attendance and funding.

Language would be added to specify that when districts partner with technical or community colleges to offer dual credit, including locally articulated CTE courses, the postsecondary faculty must meet Southern Association of Colleges and Schools teacher requirements.

Language would be added to specify that students in Grades 7 and 8 are eligible for weighted funding if they are enrolled in middle school career and technical education for the disabled courses.

Language would be added to include students enrolled in a Pathways in Technology Early College High School (P-TECH) and New Tech Network (NTN) school as FSP funding eligible.

Language would be added to specify that TEA-designated P-TECH campuses will generate funding in the amount of \$50.00 per student in ADA (Grades 9-12 only).

Language would be added to specify that campuses that have an active agreement with the NTN will generate funding in the amount of \$50.00 per student in ADA (Grades 7-12 only).

Language would be revised to clarify that for students who are enrolled in more than one CTE course, CTE codes are combined to determine the correct code assigned to each student. A code of V1 will be applicable for a course that averages 45 minutes per day.

#### *Section 6, Bilingual/English as a Second Language (ESL)*

TEC, Chapter 48, specifically §48.105, authorizes funding for bilingual or special language programs in certain circumstances. TEC, Chapter 29, Subchapter B, establishes general parameters for bilingual and special language programs. TEC, §48.004, authorizes the commissioner to require reports as may be necessary to implement and administer the FSP. The following changes would implement reporting for bilingual and special language programs to account for attendance and funding.

Language would be revised that a student who is English proficient or a reclassified English learner (EL) participating in a two-way dual language program permits a district to claim eligible days present for bilingual education program funding fee for such a student.

Language would be added to clarify the procedures for identifying a student as an EL and enrolling the EL in the bilingual or ESL education program for the first time in a Texas public school.

#### *Section 7, Prekindergarten (Pre-K)*

TEC, Chapter 29, Subchapter E, establishes special general parameters for prekindergarten programs. TEC, Chapter 48, including §48.005, establishes ADA requirements and authorizes funding for certain circumstances. TEC, §48.004, authorizes the commissioner to require reports that may be necessary to implement and administer the FSP. The following changes would implement reporting for prekindergarten to account for attendance and funding.

Language would be revised to specify that a child who is eligible and enrolls in a prekindergarten class at the age of three remains eligible for enrollment in a prekindergarten class for the following year.

Language would be revised to clarify that prekindergarten classes for eligible four-year-olds must operate on a full-day basis unless a waiver has been granted.

#### *Section 8, Gifted/Talented*

TEC, Chapter 29, Subchapter A, establishes parameters for nontraditional programs. TEC, Chapter 48, including §48.005, establishes ADA requirements and authorizes funding for certain circumstances. TEC, §48.004, authorizes the commissioner to require reports that may be necessary to implement and administer the FSP. The following changes would implement reporting for gifted/talented to account for attendance and funding.

Language would be added to clarify the requirements for selecting students to be served in the gifted/talented program.

*Section 13, Appendix: Average Daily Attendance (ADA) and Funding*

Language would be revised to clarify that the weight assigned to special education is 1.15 to 5.0.

Language would be revised to clarify that dyslexia has a weight of 0.1 per student and that funding is based on actual counts of students receiving services for dyslexia or related disorders.

Language would be revised to clarify that state compensatory education funding is based on a student who is educationally disadvantaged and resides in an economically disadvantaged census block group, and, if insufficient data is available for any school year to evaluate the level of economically disadvantaged in a census block group, a district is entitled to an annual allotment equal to the basic allotment multiplied by 0.225 for each student who is economically disadvantaged and resides in that census block group.

Language for eligible funding weight of 1.35 would be added for CTE.

Language for eligible funding weight of 0.1 or 0.15 would be added for Bilingual/EL.

Language for eligible funding weight of 0.1 would be added for Early Education.

**FISCAL IMPACT:** Leo Lopez, associate commissioner for school finance, 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 and limit an existing regulation. The proposed changes to the *2019-2020 Student Attendance Accounting Handbook: Version 2* would amend requirements and provide clarity regarding student attendance accounting procedures. In some instances, the proposed changes would add information, and in some instances, information would be removed.

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 or decrease in fees paid to the agency; would not create a new regulation; would not 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:** Mr. Lopez 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 informing the public of the existence of annual publications specifying attendance accounting procedures for school districts and charter schools. 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 February 7, 2020, and ends March 9, 2020. 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 February 7, 2020. 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), §7.055(b)(35), which states that the commissioner shall perform duties in connection with the Foundation School Program (FSP) as prescribed by the TEC, Chapter 48; TEC, §25.081, as amended by HB 3, 86th Texas Legislature, 2019, which states that for each school year, each school district must operate so that the district provides for at least 75,600 minutes, including time allocated for instruction, intermissions, and recesses, for students. TEC, §25.081(d), authorizes the commissioner to adopt rules to implement the section. TEC, §25.081(g), states that a school district may not provide student instruction on Memorial Day but that if a school district would be required to provide student instruction on Memorial Day to compensate for minutes of instruction lost because of school closures caused by disaster, flood, extreme weather conditions, fuel curtailment, or another calamity, the commissioner shall approve the instruction of students for fewer than the number of minutes required under TEC, §25.081(a); TEC, §25.0812, which states that school districts may not schedule the last day of school for students before May 15; TEC, §25.087, which requires that a school district excuse a student who is 17 years of age or older from attending school to pursue enlistment in a branch of the armed services of the United States or the Texas National Guard, provided that (1) the district may not excuse for this purpose more than four days of school during the period the student is enrolled in high school; and (2) the district verifies the student's activities related to pursuing enlistment in a branch of the armed services or the Texas National Guard. The statute requires each school district to adopt procedures to verify a student's activities as described by TEC, §25.087(b-5); TEC, §29.0822, which enables a school district to provide a program under this section that meets the needs of students described by TEC, §29.0822(a), for a school district that meets application requirements, including allowing a student to enroll in a dropout recovery program in which courses are conducted online. TEC, §29.0822, authorizes the commissioner to adopt rules for the administration of the section; TEC, §30A.153, as amended by HB 3, 86th Texas Legislature, 2019, which states that, subject to the limitation imposed under the TEC, §30A.153(a-1), a school district or open-enrollment charter school in which a student is enrolled is entitled to funding under the TEC, Chapter 48, or in accordance with the terms of a charter granted under the TEC, §12.101, for the student's enrollment in an electronic course offered through the state virtual school network in the same manner that the district or school is entitled to funding for the student's enrollment in courses provided in a traditional classroom setting, provided that the student successfully completes the electronic course. TEC, §30A.153(d), authorizes the commissioner to adopt rules necessary to implement the section, including rules regarding student attendance accounting; TEC, §48.004, as transferred, redesignated, and amended by HB 3, 86th Texas Legislature, 2019, which states that the commissioner shall adopt rules, take action, and require reports consistent with the TEC, Chapter 48, as necessary to implement and administer the FSP; TEC, §48.005, as transferred, redesignated, and amended by HB 3, 86th Texas Legislature, 2019, which states that average daily attendance (ADA) is the quotient of the sum of attendance for each day of the minimum number of days of instruction as described under the TEC, §25.081(a), divided by the minimum number of days of instruction. TEC, §48.005(m), authorizes the commissioner to adopt rules necessary to implement the section; TEC, §48.102, as transferred, redesignated, and amended by HB 3, 86th Texas Legislature, 2019, which states that for each student in average daily attendance in a special education program under the TEC, Chapter 29, Subchapter A, in a mainstream

instructional arrangement, a school district is entitled to an annual allotment equal to the adjusted basic allotment multiplied by 1.15. For each full-time equivalent student in average daily attendance in a special education program under the TEC, Chapter 29, Subchapter A, in an instructional arrangement other than a mainstream instructional arrangement, a district is entitled to an annual allotment equal to the adjusted basic allotment multiplied by a weight determined according to its instructional arrangement; TEC, §48.103, as added by HB 3, 86th Texas Legislature, 2019, which states that for each student that a district serves who has been identified as having dyslexia or a related disorder, the district is entitled to an annual allotment equal to the basic allotment multiplied by 0.1 or a greater amount provided by appropriation; TEC, §48.104, as transferred, redesignated, and amended by HB 3, 86th Texas Legislature, 2019, which states that for each student who does not have a disability and resides in a residential placement facility in a district in which the student's parent or legal guardian does not reside, a district is entitled to an annual allotment equal to the basic allotment multiplied by 0.2 or, if the student is educationally disadvantaged, 0.275. For each full-time equivalent student who is in a remedial and support program under TEC, §29.081, because the student is pregnant, a district is entitled to an annual allotment equal to the basic allotment multiplied 2.41; TEC, §48.105, as transferred, redesignated, and amended by HB 3, 86th Texas Legislature, 2019, which states that for each student in average daily attendance in a bilingual education or special language program under the TEC, Chapter 29, Subchapter B, a district is entitled to an annual allotment equal to the adjusted basic allotment multiplied by 0.1 or 0.15 if the student is in a bilingual education program using a dual language immersion/one-way or two-way program model, and for students not described in subdivision (1), 0.05 if the student is in bilingual education program using a dual language immersion/two-way program model; TEC, §48.106, as transferred, redesignated, and amended by HB 3, 86th Texas Legislature, 2019, which states that for each full-time equivalent student in average daily attendance in an approved career and technology education program in Grades 7-12 or in career and technology education programs, a district is entitled to an annual allotment equal to the basic allotment multiplied by a weight of 1.35 and \$50 for each student that is enrolled in two or more advanced career and technology classes for a total of three or more credits; a campus designated as a P-TECH school under TEC, §29.556; or a campus that is a member of the New Tech Network and that focuses on project-based learning and work-based education; and TEC, §48.108, as added by HB 3, 86th Texas Legislature, 2019, which states that for each student in average daily attendance in kindergarten through third grade, a district is entitled to an annual allotment equal to the basic allotment multiplied by 0.1 if the student is educationally disadvantaged or a student of limited English proficiency, as defined by TEC, §29.052, and in bilingual education or special language program under TEC, Chapter 29, Subchapter B.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §§7.055(b)(35); 25.081, as amended by HB 3, 86th Texas Legislature, 2019; 25.0812; 25.087; 29.0822; and 30A.153, 48.004, 48.005, 48.102, 48.103, 48.104, 48.105, 48.106, and 48.108, as added or transferred, redesignated, and amended by HB 3, 86th Texas Legislature, 2019.

<rule>

**§129.1025. Adoption by Reference: Student Attendance Accounting Handbook.**

- (a) The student attendance accounting guidelines and procedures established by the commissioner of education under §129.21 of this title (relating to Requirements for Student Attendance Accounting for State Funding Purposes) and the Texas Education Code, ~~§48.004~~ ~~[§42.004]~~, to be used by school districts and charter schools to maintain records and make reports on student attendance and student participation in special programs will be published annually.
- (b) The standard procedures that school districts and charter schools must use to maintain records and make reports on student attendance and student participation in special programs for school year 2019-2020 are described in the official Texas Education Agency (TEA) publication *2019-2020 Student Attendance Accounting Handbook : Version 2*, dated January 2020 [~~September 2019~~], which is adopted by this reference as the agency's official rule. A copy of the *2019-2020 Student Attendance Accounting Handbook : Version 2*, dated January 2020 [~~September 2019~~], is available for examination during regular office

hours, 8:00 a.m. to 5:00 p.m., except holidays, Saturdays, and Sundays, at the Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701. In addition, the publication can be accessed from the TEA official website. The commissioner will amend the *2019-2020 Student Attendance Accounting Handbook : Version 2*, dated January 2020 [~~September 2019~~], and this subsection adopting it by reference, as needed.

- (c) Data from previous school years will continue to be subject to the student attendance accounting handbook as the handbook existed in those years.