

The Texas Education Agency (TEA) proposes an amendment to §61.1027, concerning the report on the number of disadvantaged students. The proposed amendment would implement changes made by House Bill (HB) 3, 86th Texas Legislature, 2019, by incorporating additional methods to determine a student's eligibility for state compensatory education funding.

BACKGROUND INFORMATION AND JUSTIFICATION: TEA adopted 19 TAC §61.1027 to establish requirements for reporting the number of disadvantaged students attending campuses not participating in the National School Lunch Program (NSLP) to derive an eligible student count by an alternative method for the purpose of receiving the compensatory education allotment. The rule was adopted in accordance with Texas Education Code (TEC), §42.152, as that statute existed prior to HB 3, 86th Texas Legislature, 2019. HB 3 transferred, redesignated, and amended TEC, §42.152, to §48.104. This transfer and amendment included the addition of direct certification and direct verification as methods of determining a student's eligibility for state compensatory education funding. The proposed amendment to 19 TAC §61.1027 would incorporate the changes made by HB 3 as follows.

The section title would change from "Report on the Number of Disadvantaged Students" to "Report on the Number of Educationally Disadvantaged Students for Calculating the Compensatory Education Allotment."

Proposed new subsection (a) would establish that a student who meets the income requirements for eligibility under the NSLP is eligible to be counted to generate compensatory education allotment funding under TEC, §48.104. The proposal would also specify the approved methods to consider student eligibility pursuant to TEC, §48.104, including direct certification and verification.

Proposed new subsection (b) would clarify the alternative method to calculate formula transition grant funding pursuant to TEC, §48.277, and new 19 TAC §61.1011, Formula Transition Grant. The proposal would maintain existing provisions relating to application and reporting procedures.

Proposed new subsection (c) would clarify requirements relating to the use of the Community Eligibility Provision to determine student eligibility.

Subsections (c) and (d) would be re-lettered accordingly.

Proposed new subsection (f) would establish the data source upon which the compensatory education allotment will be based.

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 an existing regulation by adding additional student eligibility methods for the purposes of receiving the compensatory education allotment.

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 limit or 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 clarity regarding student attendance accounting procedures in connection with the flow of funding for state compensatory education. 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: 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 April 10, 2020, and ends May 26, 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 April 10, 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), §5.001(4), which states that "Educationally disadvantaged" means eligible to participate in the national free or reduced-price lunch program established under 42 United States Code (USC), §§1751 et seq; TEC, §48.277(b)(4), as added by HB 3, 86th Texas Legislature, 2019, which states that if a school district or open-enrollment charter school receives a waiver relating to eligibility requirements for the national free or reduced-price lunch program under 42 USC, §§1751 et seq., the commissioner shall use the numbers of educationally disadvantaged students on which the district's or school's entitlement to compensatory education funds was based for the school year before the school year in which the district or school received the waiver, adjusted for estimated enrollment growth; TEC, §48.104(a) and (b), 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 by 2.41. For each student who is educationally disadvantaged and resides in an economically disadvantaged census block group as determined by the commissioner under TEC, §48.104(c), a district is entitled to an annual allotment equal to the basic allotment multiplied by the weight assigned to the student's census block group under TEC, §48.104(d); and former TEC, §42.152, which stated that for each student who is educationally disadvantaged or who is a 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 adjusted basic allotment multiplied by 0.2, and by 2.41 for each full-time equivalent student who is in a remedial and support program under TEC, §29.081, because the student is pregnant. TEC, §42.152(b), stated that for purposes of §42.152, the number of educationally disadvantaged students is determined: (1) by averaging the best six months' numbers of students eligible for enrollment in the national school lunch program of free or reduced-price lunches for the preceding school year; or (2) in the manner provided by commissioner rule. TEC, §42.152(b-1), stated that a student receiving a full-time virtual education through the state virtual school network may be included in determining the number of educationally disadvantaged students under §42.152(b) if the school district submits to the commissioner a plan detailing the enhanced services that will be provided to the student and the commissioner approves the plan.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §5.001(4); §48.104, as transferred, redesignated, and amended by House Bill (HB) 3, 86th Texas Legislature, 2019; §48.277, as added by HB 3, 86th Texas Legislature, 2019; and former §42.152, as that section existed prior to HB 3, 86th Texas Legislature, 2019.

<rule>

§61.1027. Report on the Number of Educationally Disadvantaged Students for Calculating the Compensatory Education Allotment .

(a) Student eligibility. To be considered educationally disadvantaged in order to be counted to generate the compensatory education allotment pursuant to Texas Education Code (TEC), §48.104, a student must meet the income requirements for eligibility under the National School Lunch Program (NSLP), authorized by 42 United States Code, §§1751, et seq. School districts and open-enrollment charter schools may use the following approved methods for the purpose of receiving the compensatory education allotment pursuant to TEC, §48.104:

- (1) parent certification, where the parent or guardian asserts meeting the income requirements for eligibility under this subsection;
- (2) direct certification, where the process by which eligible children are certified for free meals without the need for a household application based on household participation in one or more federal assistance programs; or
- (3) direct verification, where public records are used to verify a student's eligibility for free or reduced-price meals when verification of student eligibility is required.

(b) Student eligibility under the alternative method. In order to calculate the formula transition grant pursuant to TEC, §48.277, and §61.1011 of this title (relating to Formula Transition Grant), for purposes of calculating the compensatory education allotment under TEC, §42.152, as that section existed prior to House Bill (HB) 3, 86th Texas Legislature, 2019, school districts and open-enrollment charter schools with one or more campuses not participating in the NSLP may derive an eligible student count by an alternative method.

~~(a) Student eligibility. School districts and open-enrollment charter schools with one or more campuses not participating in the national school lunch program may derive an eligible student count by an alternative method for the purpose of receiving the compensatory education allotment pursuant to Texas Education Code, §42.152(b).~~

- ~~(1) To be considered educationally disadvantaged in order to be counted for compensatory education funding using the alternative method, a student must meet the income requirements for eligibility under the NSLP [national school lunch program] .~~
- ~~(2) The total number of eligible students is the average of the best six months' count of students in accordance with paragraph (1) of this subsection. For school districts and open-enrollment charter schools in the first year of operation, the count is taken from the current school year. For all others, the count is from the preceding school year.~~
- ~~(3) For the purposes of receiving compensatory education funding under this subsection, school districts and open-enrollment charter schools must apply and adhere to reporting procedures.~~

~~(b) Application and reporting procedures:~~

- ~~(A) [(1)] The commissioner of education will make available to school districts and open-enrollment charter schools appropriate income eligibility guidelines and application and reporting forms. The number of eligible students in accordance with paragraph (1) of this subsection [(a)(1) of this section] will be reported on a monthly basis to the Texas Education Agency (TEA) in a manner and with a deadline specified by the commissioner.~~
- ~~(B) [(2)] School districts and open-enrollment charter schools must request prior approval from the commissioner to claim students receiving a full-time virtual education through the state~~

virtual school network in their counts of educationally disadvantaged students. The request must include a plan detailing the enhanced services to be delivered to full-time state virtual school network students and submitted in a manner and with a deadline specified by the commissioner.

- (c) Community Eligibility Provision (CEP). School districts and open-enrollment charter schools with one or more campuses using the CEP must still determine each student's individual eligibility status under the income guidelines for the NSLP for purposes of the compensatory education allotment.
- (d) ~~(e)~~ Recordkeeping. School districts and open-enrollment charter schools that receive compensatory education program funding pursuant to this section are responsible for obtaining the appropriate data from families of potentially eligible students, verifying that information, and retaining records.
- (e) ~~(d)~~ Auditing procedures. The TEA ~~[Texas Education Agency]~~ will conduct an audit of data submitted by school districts and open-enrollment charter schools that receive compensatory education program funding pursuant to this section approximately every five years or on an alternative schedule adopted at the discretion of the commissioner.
- (f) Data source. The compensatory education allotment will be based on each student census block group submitted by school districts and open-enrollment charter schools in the Texas Student Data System Public Education Information Management Systems (TSDS PEIMS) Fall submission. A census block group number must be submitted for every educationally disadvantaged student, except those students who are homeless, not enrolled, or ineligible for average daily attendance or who reside in a residential facility and whose parents live outside the district.