

The Texas Education Agency (TEA) proposes new §150.1012 and §150.1013, concerning teacher appraisal. The proposed new sections would implement Texas Education Code (TEC), §21.3521 and §48.112, by establishing rules for teacher designation.

BACKGROUND INFORMATION AND JUSTIFICATION: House Bill 3, 86th Texas Legislature, 2019, added TEC, §21.3521, which established a local optional teacher designation system, and TEC, §48.112, which established a teacher incentive allotment. Proposed new §150.1012 and §150.1013 would implement the new statutes by specifying the requirements for school districts and charter schools to implement local teacher designation systems and the requirements for teachers with certification by the National Board for Professional Teaching Standards to be designated as recognized.

Following is a description of proposed new §150.1012 and §150.1013.

§150.1012. Local Optional Teacher Designation System

Proposed new subsection (a) would define terms used in the section. The subsection would also establish fees for teacher incentive allotment teacher designation and system renewal, as allowable under TEC, §21.3521(i).

Proposed new subsection (b) would specify the eligibility requirements for teachers to receive designations under an approved local optional teacher designation system and generate teacher incentive allotment funds for designation.

Proposed new subsection (c) would outline the application and approval requirements for school districts to be approved to designate teachers through a local teacher designation system.

Proposed new subsection (d) would address the process for districts to be approved to expand or amend their local designation systems.

Proposed new subsection (e) would specify the monitoring and program evaluation process for approved local designation systems, which includes an annual data collection.

Proposed new subsection (f) would outline the reasons a teacher's designation may be revoked or a district's approval to designate teachers through their local designation system may be revoked.

Proposed new subsection (g) would establish how a school district must use the funds received through the teacher incentive allotment.

§150.1013. National Board for Professional Teaching Standards

Proposed new subsection (a) would define terms used in the section.

Proposed new subsection (b) would specify the requirements for teachers to be eligible for designation.

Proposed new subsection (c) would establish the process for school districts to be reimbursed for fees paid to the National Board for Professional Teaching Standards. If National Board fees were paid by a teacher, the district must establish a process to ensure the teacher is reimbursed prior to the district being reimbursed by TEA.

Proposed new subsection (d) would address the use of funds received through the teacher incentive allotment.

FISCAL IMPACT: Tim Regal, associate commissioner for educator support, 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 beyond what the authorizing statute requires.

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: Proposed new §150.1012(a)(2) would impose fees on a school district requesting approval of a teacher designation system or renewal of such a system. However, in accordance with TEC, §21.3521, the proposed fees are 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 by implementing the statutory requirements of TEC, §21.3521 and §48.112, regarding local optional teacher designation systems. In addition, proposed new §150.1012 would establish fees for a school district requesting approval of a teacher designation system or renewal of such a system. However, in accordance with TEC, §21.3521, the proposed fees are not subject to Texas Government Code, §2001.0221.

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 expand, 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. Regal 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 ensuring that rule language is based on current law and providing school districts and open-enrollment charter schools with clear processes and requirements to implement a local optional teacher designation system and designate teachers with National Board certification. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal imposes a data and reporting impact on school districts and charter schools that apply to offer a local optional teacher designation system. This data collection is necessary to implement TEC, §21.3521. The data collected will include a qualitative and quantitative application, yearly performance evaluations once approved, and additional qualitative and quantitative applications as local designation systems expand.

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 April 24, 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 24, 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 new sections are proposed under Texas Education Code (TEC), §21.3521, as added by House Bill (HB) 3, 86th Texas Legislature, 2019, which specifies that the commissioner: (1) shall ensure that local optional teacher designation systems meet the statutory requirements for the system; (2) shall prioritize high needs campuses; (3) shall enter into a memorandum of understanding with Texas Tech University regarding assessment of local iterations of the local optional teacher designation system; (4) shall periodically conduct evaluations of the effectiveness of the local optional teacher designation system; (5) may adopt fees, which are

exempted from the requirements of Texas Government Code, §2001.0045 and §2001.0221, to implement the local optional teacher designation system; and (6) may adopt rules to implement the local optional teacher designation system; and TEC, §48.112, as added by HB 3, 86th Texas Legislature, 2019, which established a teacher incentive allotment and requires the commissioner to designate rural campuses and annually make available to the public a list of campuses with projected allotment amounts per teacher designation at each campus.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code, §21.3521 and §48.112, as added by House Bill 3, 86th Texas Legislature, 2019.

<rule>

§150.1012. Local Optional Teacher Designation System.

(a) General provisions.

(1) Definitions. The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise.

(A) Active Texas certification--A valid certification labeled as provisional, professional, or standard under §230.31(a) of this title (relating to Types of Certificates) or a visiting international teacher certification under §230.41 of this title (relating to Visiting International Teacher Certificates).

(B) Charter school--A Texas public school that meets one of the following criteria:

(i) is operated by a charter holder under an open-enrollment charter granted either by the State Board of Education or commissioner of education pursuant to Texas Education Code (TEC), §12.101, identified with its own county district number;

(ii) has a charter granted under TEC, Chapter 12, Subchapter C, and is eligible for benefits under TEC, §11.174 and §48.252; or

(iii) has a charter granted under TEC, §29.259, and Human Resources Code, §221.002.

(C) Classroom teacher--An educator who is employed by a school district and who, not less than an average of four hours each day, teaches in an academic instructional setting or a career and technical instructional setting. This term does not include an educational aide or a full-time administrator.

(D) Data capture year--The year in which the teacher observation and student growth measure is collected based on the proposed local teacher designation system.

(E) Designated teacher--An exemplary, master, or recognized teacher.

(F) Eligible teaching assignment--An assignment based on campus, subject taught, or grade taught.

(G) National Board certification--Certification issued by the National Board for Professional Teaching Standards.

(H) Provisional approval--Conditional approval of a school district local optional teacher designation system that would require resubmission of system review and/or data validation for further approval.

(I) Reliability--The degree to which an instrument used to measure teacher performance and student growth produces stable and consistent results.

(J) Rural--A campus within a school district with fewer than 5,000 enrolled students that is categorized as a rural district type by the Texas Education Agency (TEA), a campus within a school district with fewer than 5,000 enrolled students categorized as rural by the National Center for Education Statistics, or a campus defined in TEC, §48.112(a)(1).

- (K) School district--The definition of a school district includes charter schools as defined in subparagraph (B) of this paragraph.
 - (L) Student growth--Student academic progress achieved in response to the pedagogical practices of teachers, as measured at the individual teacher level by one or more standards-aligned measures of student growth.
 - (M) Teacher observation--One or more observations of a teacher instructing students for a minimum of 45 minutes or multiple observations that aggregate to at least 45 minutes.
 - (N) Validity--The degree to which an instrument used to measure teacher performance and student growth measures what it is intended to measure.
- (2) Fees for teacher incentive allotment teacher designation and system renewal. A school district requesting approval of a teacher designation system or renewal of such a system shall pay the applicable fees from the following list:
- (A) a \$500 fee for each teacher submitted for designation to TEA; or
 - (B) a system renewal fee to be determined by the commissioner and established in rule.
- (b) Teacher eligibility.
- (1) Teachers eligible to earn or receive designations under an approved local optional teacher designation system must meet the following requirements:
- (A) the teacher holds an active Texas certification under Chapter 233 of this title (relating to Categories of Classroom Teaching Certificates), a Reading Specialist Certificate under Chapter 239, Subchapter D, of this title (relating to Reading Specialist Certificate), or a legacy Master Teacher Certificate;
 - (B) the teacher is employed or is to be employed by the recommending school district in a role ID coded as 087 (Teacher) in the Texas Student Data System Public Education Information Management System (TSDS PEIMS) description of codes for 90 days at 100% of the day (equivalent to four and one-half months or a full semester) or 180 days at 50-99% of the day and compensated for that employment; and
 - (C) the teacher is not currently designated under a local optional teacher designation system, unless the teacher is being recommended for a higher designation or is in the last year of a teacher designation.
- (2) School districts are eligible to receive funding for each designated teacher if the teacher meets the requirements in paragraph (1)(A) and (B) of this subsection.
- (c) Application procedures and approval process.
- (1) The following provisions apply to applications submitted under this section.
- (A) If TEA determines that an application is incomplete, TEA may provide the applicant with notice of the deficiency and an opportunity to submit missing required information. If the missing required information is not submitted within seven calendar days after notice is provided, the application will be denied.
 - (B) If TEA determines that an application does not meet the standards established under TEC, §21.3521, and this section, TEA may permit the applicant to resubmit the application within three months of the original submission. If no resubmission is timely made, the application will be denied.
 - (C) An applicant that demonstrates the need for ongoing support will be required to submit additional information that may result in provisional approval for one year. A school district with this approval status cannot add eligible teaching assignments to its local optional teacher designation system.

- (D) An applicant that has a local optional teacher designation system that has been paying teachers in the 2019-2020 school year may be issued provisional approval for two years if the system does not contain either a teacher observation component as specified in paragraph (2)(A)(i) of this subsection or a student growth component as specified in paragraph (2)(A)(ii) of this subsection. A school district with this approval status cannot add eligible teaching assignments to its local optional teacher designation system.
- (E) Applications that are determined to meet the standards established under TEC, §21.3521 and §48.112, and this section shall be approved for an initial term of five years.
- (2) The application shall include the following for each teacher group:
 - (A) components of a local system for issuing designations, including:
 - (i) a teacher observation component that contains:
 - (I) a plan for calibration, congruence, and review of teacher observation data and implementation of next steps; and
 - (II) an approved teacher observation rubric including the Texas Teacher Evaluation and Support System, Marzano's Teacher Evaluation Model and rubric created by the National Institute for Excellence in Teacher and The Danielson Group, or another rubric that is based on observable, job-related behaviors, including teacher implementation of discipline management and the performance of teachers' students. A school district may be required to provide teacher observation videos if the ratings cannot be verified from the data submitted; and
 - (ii) a student growth component that:
 - (I) if using a student learning objective, is standards-aligned, measures the level of preparedness for each student at the beginning of the school, and measures the mastery level for each student at the end of the school year based on a body of evidence;
 - (II) if using a portfolio method, demonstrates that student work is standards-aligned, demonstrates mastery of standards, and includes criteria for scoring; or
 - (III) if using school district- or teacher-created assessments, is standards-aligned and conforms to a district rubric for district- or teacher-created assessments. A school district must approve district- or teacher-created assessments for the purpose of determining student growth by using a district process and rubric for approval of such assessments;
 - (B) test administration processes for all student growth that will lead to validity and reliability of results, including:
 - (i) test security protocols;
 - (ii) testing windows;
 - (iii) testing accommodations; and
 - (iv) annual training for test administrators; and
 - (C) data for all teachers in eligible teaching assignments, including student growth, and observation data for all teachers in eligible teaching assignments for the data capture year. Multi-year data shall include student growth and observation data from the same year and teaching assignment.
- (d) System expansion and amendments.
 - (1) School districts must apply for approval for additional eligible teaching assignments.

- (2) Proposed amendments to the student growth measure or teacher observation component of previously approved school district teacher designation systems must be submitted to TEA at least three months before implementing the new system. Additional information and application processes may be requested.
- (e) Monitoring and program evaluation of approved local designation systems. For the annual data submission, approved school districts shall submit the following information regarding a local teacher designation system:
- (1) the distribution of allotment funds from the previous school year in accordance with the funding provisions of subsection (g) of this section;
 - (2) a response plan to annual surveys administered to teachers, campus principals, and human resources personnel gauging the perception of a school district's local designation system; and
 - (3) teacher observations and student growth measure data for all teachers in eligible teaching assignments if school districts are submitting new teacher designations. TEA reserves the right request data for the purposes of performance evaluation and investigation based on data review outcomes.
- (f) Continuing approval and renewal.
- (1) Approved local optional teacher designation systems are subject to review at least once every five years. However, a review may be conducted at any time at the discretion of TEA.
 - (2) Approval of local optional designation systems are voidable by TEA for one or more of the following reasons:
 - (A) failure to fulfill all local optional designation system requirements;
 - (B) failure to comply with annual data submission requirements;
 - (C) failure to comply with the provisions of TEC, §21.3521 and §48.112;
 - (D) failure to implement the local optional teacher designation system as approved by TEA and Texas Tech University; or
 - (E) at the discretion of the commissioner.
 - (3) Approval of individual teacher designations are voidable by TEA for one or more of the following reasons:
 - (A) a teacher has not fulfilled all designation requirements;
 - (B) the school district at which the designation was earned has had its local optional designation system voided;
 - (C) the National Board for Professional Teaching Standards revokes a National Board certification that provided the basis for a teacher's designation;
 - (D) the suspension, revocation, cancellation, or surrender of a certificate issued by the State Board for Educator Certification to a designated teacher; or
 - (E) at the discretion of the commissioner.
- (g) Funding.
- (1) State funding.
 - (A) Teacher incentive allotment funds will be disbursed to school districts in the same school year for which the teacher designations are approved. The initial disbursement may occur either upon final approval of a local teacher designation system or in the school year following final approval.
 - (i) For the initial disbursement after the approval of a local teacher designation system or system expansion, at least 90% of each allotment received must be

spent on compensation of teachers employed at the campus at which the teacher for whom the school district received the allotment was employed for the first year of the designation.

(ii) Disbursements subsequent to the initial disbursement must meet the requirements of paragraph (2) of this subsection.

(B) A school district is eligible to earn the base allotment for each designated teacher assigned to a zero-enrollment campus or to central administration if the designated teacher meets the requirements in subsection (b)(2) of this section, plus the multiplier based on the school district's average student point value and rural status, if applicable.

(C) Funding for teachers who work at multiple campuses shall be distributed proportionally by the percent of time the employee is working in a role coded as 087 (Teacher) in the TSDS PEIMS code descriptions at each campus.

(2) Status and use of state funds. A school district that receives teacher incentive allotment funding must comply with the requirements of TEC, §48.112. Allotment funding generated by a designated teacher working for multiple school districts shall be split equally among the districts that employ the teacher.

§150.1013. National Board for Professional Teaching Standards.

(a) Definitions. The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise.

(1) Active Texas certification--A valid certification labeled as one year, provisional, professional, or standard under §230.31(a) of this title (relating to Types of Certificates) or a visiting international teacher certification under §230.41 of this title (relating to Visiting International Teacher Certificates).

(2) Charter school--A Texas public school that meets one of the following criteria:

(A) is operated by a charter holder under an open-enrollment charter granted either by the State Board of Education or commissioner of education pursuant to Texas Education Code (TEC), §12.101, identified with its own county district number;

(B) has a charter granted under TEC, Chapter 12, Subchapter C, and is eligible for benefits under TEC, §11.174 and §48.252; or

(C) has a charter granted under TEC, §29.259, and Human Resources Code, §221.002.

(3) Classroom teacher--An educator who is employed by a school or district and who, not less than an average of four hours each day, teaches in an academic instructional setting or a career and technical instructional setting. This term does not include an educational aide or a full-time administrator.

(4) National Board certification--Certification issued by the National Board for Professional Teaching Standards.

(5) School district--The definition of a school district includes charter schools as defined in paragraph (2) of this subsection.

(b) Eligibility.

(1) Teachers with current National Board certification are eligible for a recognized designation starting in the 2020-2021 school year if the teacher:

(A) meets the requirements in §150.1012(b)(1)(A) of this title (relating to Local Optional Teacher Designation System); and

(B) registers his or her National Board certification in Texas in the National Board Certified Teacher directory by the annual date set by the commissioner.

- (2) Teachers with current National Board certification are eligible for a recognized designation starting in the 2019-2020 school year if:

 - (A) the teacher meets the requirements in §150.1012(b)(1)(A) of this title;
 - (B) the teacher registers his or her National Board certification in Texas in the National Board Certified Teacher directory by the annual date set by the commissioner; and
 - (C) the school district at which the teacher with National Board certification was employed in the 2019-2020 school year can demonstrate evidence of differentiated compensation for the teacher paid during the 2019-2020 school year.
 - (3) Teachers who are designated as recognized based on paragraphs (1) and (2) of this subsection are eligible to earn and receive designations under §150.1012 of this title.
 - (4) Beginning with the 2020-2021 school year, the first year of recognized designation will be the year in which the National Board certification was earned. For National Board certifications earned prior to the 2020-2021 school year, the first year of the recognized designation will be the 2020-2021 school year unless the 2020-2021 school year is the last year of National Board certification.
 - (5) The last valid year of the recognized designation is the last school year in which the National Board certification is valid unless the teacher earned a designation in a local optional teacher designation system under §150.1012 of this title, in which case the later of last year of designation applies.
 - (6) School districts are eligible to receive funding for a designated teacher if the teacher meets the following requirements:

 - (A) the teacher meets the requirements in §150.1012(b)(1)(A) of this title; and
 - (B) the teacher has been or will be employed by the school district receiving the funding in a role ID coded as 087 (Teacher) in the Texas Student Data System Public Education Information Management System description of codes for 90 days at 100% of the day (equivalent to four and one-half months or a full semester) or 180 days at 50-99% of the day and compensated for that employment.
- (c) Reimbursement.
- (1) Beginning in the 2020-2021 school year, school districts may request reimbursement for the following eligible National Board fees paid under TEC, §21.3521, by the district or the teacher with National Board certification when National Board certification has been successfully earned:

 - (A) renewal fees up to \$1,250;
 - (B) certification fees up to \$1,900;
 - (C) maintenance of certification fees up to \$495; and
 - (D) fees for initial, renewed, or maintenance National Board certifications earned on or after the 2019-2020 school year.
 - (2) School districts requesting National Board certification reimbursement shall establish a process to ensure that teachers with National Board certification have received from the school district full reimbursement of eligible fees paid by the teacher before the school district can be reimbursed by Texas Education Agency (TEA).
 - (3) School districts are not required to apply to TEA for approval of National Board certification-based designations.
- (d) The requirements of §150.1012(g)(1) and (2) of this title apply to funding referenced in this section.