

The Texas Education Agency (TEA) proposes new §61.1004, concerning special education funding for open-enrollment charter schools. The proposed new rule would reflect changes made by House Bill (HB) 3, 86th Texas Legislature, 2019, by explaining how TEA will calculate and make available additional special education funding for open-enrollment charter schools and how the regular program allotment will be impacted.

**BACKGROUND INFORMATION AND JUSTIFICATION:** HB 3, 86th Texas Legislature, 2019, changed the calculation of the basic allotment, the special education allotment, and charter school funding generally, under Texas Education Code (TEC), §§48.051, 48.102, and 12.106, respectively. Even though overall funding levels for open-enrollment charter schools increased as a result of HB 3, these changes resulted in a statewide reduction in the specific special education allotment for open-enrollment charter schools relative to prior law.

Proposed new §61.1004 would calculate the difference between the special education allotment under former TEC, §42.151, and the special education allotment for each open-enrollment charter school under new TEC, §48.102, and deliver additional funds to ensure that the overall level of funds made available for special education for each open-enrollment charter school is not reduced by the implementation of HB 3. The rule as proposed would set aside the funds described above from each open-enrollment charter school's regular program allotment, as calculated under TEC, §48.051.

Proposed new §61.1004 would expire after five years.

**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 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 a new regulation because it imposes the requirements of recently enacted legislation.

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 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:** The proposal would ensure that rule language is based on current law and ensure that open-enrollment charter schools receive appropriate levels of special education funding under HB 3. 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 May 8, 2020, and ends June 8, 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 May 8, 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 section is proposed under Texas Education Code (TEC), §12.106, as amended by House Bill (HB) 3, 86th Texas Legislature, 2019, which details the calculation of state funding that open-enrollment charter schools are entitled to under the Foundation School Program; TEC, §48.011, as added by HB 3, 86th Texas Legislature, 2019, provides the commissioner authority to resolve unintended consequences from school finance formulas upon approval from the Legislative Budget Board and the office of the governor; TEC, §48.051, as transferred, redesignated, and amended by HB 3, 86th Texas Legislature, 2019, which details the calculation of the regular program allotment that school districts and open-enrollment charter schools are entitled to under the Foundation School Program; and TEC, §48.102, as transferred, redesignated, and amended by HB 3, 86th Texas Legislature, 2019, which details the calculation of the special education allotment that school districts and open-enrollment charter schools are entitled to under the Foundation School Program.

**CROSS REFERENCE TO STATUTE.** The new section implements Texas Education Code, §§12.106, 48.011, 48.051, and 48.102, as added by House Bill 3, 86th Texas Legislature, 2019.

<rule>

**§61.1004. Special Education Funding for Open-Enrollment Charter Schools.**

- (a) This rule, made pursuant to Texas Education Code (TEC), §48.011 and §48.004, addresses calculations in TEC, §§12.106, 48.051, and 48.102.
- (b) An open-enrollment charter school shall receive additional special education funding in an amount equal to the difference, if that difference is greater than zero, between the total amount of funding the open-enrollment charter school would have received for special education purposes under former TEC, §42.151, as it existed on January 1, 2019, and the amount of total funding received for special education purposes under TEC, §48.102, for the applicable school year referenced in TEC, §48.277(b)(1).
- (c) An open-enrollment charter school's entitlement under TEC, §48.051, shall be reduced by an amount equivalent to the amount of the additional special education funding provided under subsection (b) of this section. A reduction under this section may not exceed the open-enrollment charter school's entitlement under TEC, §48.051.
- (d) This section has no application beginning with the 2024-2025 school year.