

The Texas Education Agency (TEA) proposes an amendment to §97.1005, concerning results driven accountability. The proposed amendment would adopt in rule applicable excerpts of the 2020 Results Driven Accountability (RDA) Manual.

BACKGROUND INFORMATION AND JUSTIFICATION: House Bill (HB) 3459, 78th Texas Legislature, 2003, added the Texas Education Code (TEC), §7.027, limiting and redirecting monitoring done by the TEA to that required to ensure school district and charter school compliance with federal law and regulations; financial accountability, including compliance with grant requirements; and data integrity for purposes of the Texas Student Data System Public Education Information Management System (TSDS PEIMS) and accountability under TEC, Chapter 39. Legislation passed in 2005 renumbered TEC, §7.027, to TEC, §7.028. To meet this monitoring requirement, the TEA developed the Performance Based Monitoring Analysis System (PBMAS), later renamed as Results Driven Accountability in 2019, which is used in conjunction with other evaluation systems to monitor performance of certain populations of students and the program effectiveness of special programs in school districts and charter schools.

The TEA has adopted its PBMAS Manual in rule since 2005 and the RDA Manual in rule since 2019. The RDA Manual outlines a dynamic system that evolves over time, so the specific criteria and calculations for monitoring student performance and program effectiveness may differ from year to year. The intent is to update 19 TAC §97.1005 annually to refer to the most recently published RDA Manual.

The proposed amendment to 19 TAC §97.1005 would update the current rule by repealing the 2019 RDA Manual currently included as Figure: 19 TAC §97.1005(b) and replacing it with excerpts of the 2020 RDA Manual as Figure: 19 TAC §97.1005(b). The excerpts, Sections I-III, describe the specific criteria and calculations that will be used to assign 2020 RDA performance levels.

The 2020 RDA Manual includes several key changes from the 2019 framework. Revisions to the RDA framework include the following.

Overall, the format of the RDA manual has changed. Indicator grouping under three identified domains has created a shift in some indicators to be reordered and numbered. Domain I captures indicators of Academic Achievement; Domain II captures indicators of Post-Secondary Readiness; and Domain III captures indicators of Disproportionate Analysis.

TEA has consolidated and expanded its monitoring capacity for the special education program and the bilingual education, English as a second language, and English learner (BE/ESL/EL) program. Due to changes in monitoring structures and requirements for certain federal and state programs, and to eliminate duplication of monitoring selection processes, some program areas have been removed from the RDA report. These include career and technical education (CTE), Title I - Part A, and Title I - Part C (Education of Migratory Students). These programs continue to be monitored by other offices at TEA and through Every Student Succeeds Act (ESSA) reporting and requirements. The indicators that are removed from the manual were no longer used in making monitoring decisions. The remaining program areas for certain student populations captured under the former ESSA section of the 2019 RDA Manual will remain but are captured in the manual as other special populations (OSP) and contain indicators inclusive of students in foster care, experiencing homelessness, and military-connected.

Bilingual Education, English as a Second Language, and English Learners (BE/ESL/ELs)

In 2019, certain BE/ESL indicators were provided as "Report Only" due to various changes in the data sources and processing requirements and were not assigned indicator performance levels (PLs). For 2020, new cut points have been assigned that will allow for PLs to be assigned for the following indicators: BE/ESL/EL Indicator #1(i-v): BE STAAR 3-8 Passing Rate; BE/ESL/EL Indicator #2(i-v): ESL STAAR 3-8 Passing Rate; BE/ESL/EL Indicator #6(i-iv): EL STAAR EOC Passing Rate; BE/ESL/EL Indicator #7: TELPAS Reading Beginning Proficiency Level Rate; and BE/ESL/EL Indicator #8: TELPAS Composite Rating Levels for Students in U.S. Schools Multiple Years.

Additionally for 2020, two new indicators are included as "Report Only" in the following: BE/ESL/EL Indicator #4: EL Dyslexia STAAR 3-8 Reading Passing Rate; and BE/ESL/EL Indicator #11: EL Dyslexia Representation (Ages 6-21).

Other Special Populations (OSP)

In 2019 certain student populations were reported under the ESSA section of the RDA manual. Title 1-A and migrant have been removed while students in foster care, experiencing homelessness, and military-connected will remain and be combined as OSP for reporting purposes and PL assignments. The decision to combine these three student populations for reporting and analysis is based on a high local educational agency (LEA) exclusion rate due to small size, an inability to meet minimum size requirements (MSR) within each of the student groups for PL assignments. Although PL assignments will be made at the combined OSP level, each of the three included separate student populations will be reported for disaggregated reporting but will not be assigned individual PLs.

LEAs that receive a PL 3 or PL 4 for any indicator in the 2020 RDA OSP report that would have otherwise not received a PL assignment in all three of the included student population groups for OSP will receive a Hold Harmless (HH) rating for the following indicators: OSP Indicator #1(i-v): OSP STAAR 3-8 Passing Rate; OSP Indicator #3(i-v): OSP STAAR EOC Passing Rate; OSP Indicator #4: OSP Graduation Rate; and OSP Indicator #5: OSP Annual Dropout Rate (Grades 7-12).

Additionally for 2020, two new indicators are included as "Report Only" in the following: OSP Indicator #2: OSP Dyslexia STAAR 3-8 Reading Passing Rate and OSP Indicator #6: OSP Dyslexia Representation (Ages 6-21).

Special Education (SPED)

To align with state and federal accountability calculation requirements in reporting the rate of students participating in the STAAR Alternate 2, SPED Indicator #5: SPED STAAR Alternate 2 Participation Rate has changed and now includes calculations for three reported subject areas: mathematics, science, and reading/ELA. This indicator will remain as a "Report Only" indicator.

Additionally for 2020, two new indicators are included as "Report Only" in the following: SPED Indicator #2: SPED Dyslexia STAAR 3-8 Reading Passing Rate and SPED Indicator #8: SPED Dyslexia Representation (Ages 6-21).

On March 16, 2020, Governor Greg Abbott waived the State of Texas Assessment of Academic Readiness (STAAR®) testing requirements for the 2019-2020 school year due to extensive school closures relating to the COVID-19 nationwide pandemic event. Indicators specific to STAAR® testing proficiency, participation, or other reliance on non-existing 2019-2020 STAAR® data will not receive 2020 RDA performance levels for those indicators. Texas's commitment to provide educators and parents with reliable information on student outcomes for mastery of grade-level content as measured on the STAAR® in future years will continue. However, for the 2019-2020 school year no data will be available for these indicators: BE/ESL/EL Indicators #1, #2, #3, #4, #5, #6, and #8; OSP Indicators #1, #2, and #3; and SPED Indicators #1, #2, #3, #4, and #5. When there is insufficient data to make monitoring decisions, TEA will carry over its monitoring activities from the prior year.

FISCAL IMPACT: Matt Montano, deputy commissioner for special populations, 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 create new regulations as required by federal law, limit some regulations by making some indicators be report-only, and repeal some regulations.

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 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. Montano 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 provides school districts with clarifications on the assignment of performance levels utilized in future district determination and status for monitoring and support assignments. 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 22, 2020, and ends June 22, 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. Public hearings on the proposal are scheduled for 1:00 p.m. on June 9 and 10, 2020. The public may participate in either or both the June 9 and June 10 hearings virtually by registering in advance for the meeting(s) at https://zoom.us/meeting/register/tJlqduumqTwiE9aBg4Oz5ZGhc-Ff0rB_ZxyA. After registering, you will receive a confirmation email containing information about joining the meeting(s). Both hearings will be recorded and made available publicly. Parties interested in testifying must pre-register online prior to 1 pm on the date of the applicable hearing and are encouraged to also send written testimony to spedrule@tea.texas.gov. The hearing(s) will conclude once all who have registered have been given the opportunity to comment. Questions about the hearing should be directed to the Office of Special Populations (512) 463-9414.

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), §7.021(b)(1), which authorizes the Texas Education Agency (TEA) to administer and monitor compliance with education programs required by federal or state law, including federal funding and state funding for those programs; TEC, §7.028, as amended by House Bill (HB) 3, and Senate Bill (SB) 2075, 86th Texas Legislature, 2019, authorizes the TEA to monitor as necessary to ensure school district and charter school compliance with federal law and regulations, financial integrity and data integrity. Section 7.028(a) also authorizes the TEA to monitor special education programs for compliance with state and federal laws. Section 7.028 also authorizes the agency to monitor school district and charter schools through its investigative process; TEC, §12.056, as amended by HB 3, 86th Texas Legislature, 2019, which requires that a campus or program for which a charter is granted under the TEC, Chapter 12, Subchapter C, is subject to any prohibition relating to the Public Education Information Management System (PEIMS) to the extent necessary to monitor compliance with the TEC, Chapter 12, Subchapter C, as determined by the commissioner; high school graduation under the TEC, §28.025; special education programs under the TEC, Chapter 29, Subchapter A; bilingual education under the TEC, Chapter 29, Subchapter B; and public school accountability under the TEC, Chapter 39, Subchapters B, C, D, F, and J, and Chapter 39A; TEC, §12.104, as amended by SB 11, SB 213, SB 372, HB 3, HB 1597, and HB 4170, 86th Texas Legislature, 2019, which states that

a charter granted under the TEC, Chapter 12, Subchapter D, is subject to a prohibition, restriction, or requirement, as applicable, imposed by the TEC, Title 2, or a rule adopted under the TEC, Title 2, relating to the PEIMS to the extent necessary to monitor compliance with the TEC, Chapter 12, Subchapter D, as determined by the commissioner; high school graduation requirements under the TEC, §28.025; special education programs under the TEC, Chapter 29, Subchapter A; bilingual education under the TEC, Chapter 29, Subchapter B; discipline management practices or behavior management techniques under the TEC, §37.0021; public school accountability under the TEC, Chapter 39, Subchapters B, C, D, F, G, and J, and Chapter 39A; and intensive programs of instruction under the TEC, §28.0213; TEC, §29.001, as amended by HB 3, 86th Texas Legislature, 2019, which authorizes the TEA to effectively monitor all local educational agencies (LEAs) to ensure that rules relating to the delivery of services to children with disabilities are applied in a consistent and uniform manner, to ensure that LEAs are complying with those rules, and to ensure that specific reports filed by LEAs are accurate and complete; TEC, §29.0011(b), which authorizes the TEA to meet the requirements under (1) 20 U.S.C. Section 1418(d) and its implementing regulations to collect and examine data to determine whether significant disproportionality based on race or ethnicity is occurring in the state and in the school districts and open-enrollment charter schools in the state with respect to the: (A) Identification of children as children with disabilities, including the identification of children as children with particular impairments; (B) Placement of children with disabilities in particular educational settings; and (C) Incidence, duration, and type of disciplinary actions taken against children with disabilities including suspensions or expulsions; or (2) 20 U.S.C. Section 1416(a)(3)(C) and its implementing regulations to address in the statewide plan the percentage of schools with disproportionate representation of racial and ethnic groups in special education and related services and in specific disability categories that results from inappropriate identification; TEC, §29.010(a), which authorizes the TEA to adopt and implement a comprehensive system for monitoring LEA compliance with federal and state laws relating to special education, including ongoing analysis of LEA special education data; TEC, §29.062, which authorizes the TEA to evaluate and monitor the effectiveness of LEA programs and apply sanctions concerning students with limited English proficiency; TEC, §29.066, which authorizes PEIMS reporting requirements for school districts that are required to offer bilingual education or special language programs to include the following information in the district's PEIMS report: (1) demographic information, as determined by the commissioner, on students enrolled in district bilingual education or special language programs; (2) the number and percentage of students enrolled in each instructional model of a bilingual education or special language program offered by the district; and (3) the number and percentage of students identified as students of limited English proficiency who do not receive specialized instruction; TEC, §29.182, which authorizes the State Plan for Career and Technology Education to ensure the state complies with requirements for supplemental federal career and technology funding; TEC, §39.051 and §39.052, which authorize the commissioner to determine criteria for accreditation statuses and to determine the accreditation status of each school district and open-enrollment charter school; TEC, §39.053, as amended by HB 330, HB 1051, and HB 4170, 86th Texas Legislature, 2019, which authorizes the commissioner to adopt a set of indicators of the quality of learning and achievement and requires the commissioner to periodically review the indicators for consideration of appropriate revisions; TEC, §39.054(b-1), which authorizes the TEA to consider the effectiveness of district programs for special populations, including career and technical education programs, when determining accreditation statuses; TEC, §39.0541, which authorizes the commissioner to adopt indicators and standards under the TEC, Chapter 39, Subchapter C, at any time during a school year before the evaluation of a school district or campus; TEC, §§39.056, 39.057, and 39.058, which authorize the commissioner to adopt procedures relating to monitoring reviews and special accreditation investigations; TEC, §39A.001, which authorizes the commissioner to take any of the actions authorized by the TEC, Chapter 39A, Subchapter A, to the extent the commissioner determines necessary if a school does not satisfy the academic performance standards under the TEC, §39.053 or §39.054, or based upon a special accreditation investigation; TEC, §39A.002, as amended by HB 4170, 86th Texas Legislature, 2019, which authorizes the commissioner to take certain actions if a school district becomes subject to commissioner action under the TEC, §39A.001; TEC, §39A.004, which authorizes the commissioner to appoint a board of managers to exercise the powers and duties of a school district's board of trustees if the district is subject to commissioner action under the TEC, §39A.001, and has a current accreditation status of accredited-warned or accredited-probation; or fails to satisfy any standard under the TEC, §39.054(e); or fails to satisfy any financial accountability standard; TEC, §39A.005, which authorizes the commissioner to revoke school accreditation if the district is subject to the TEC, §39A.001, and, for two consecutive school years has received an accreditation status of accredited-warned or accredited-probation, failed to satisfy any standard under the TEC, §39.054(e), or has failed to satisfy a financial performance standard; TEC, §39A.007, which authorizes the commissioner to impose a sanction designed to improve high school completion rates if the district has failed to satisfy any standard under the TEC, §39.054(e), due to high school completion rates; TEC, §39A.051, which authorizes the commissioner to take action based on campus

performance that is below any standard under the TEC, §39.054(e); and TEC, §39A.063, which authorizes the commissioner to accept substantially similar intervention measures as required by federal accountability measures in compliance with the TEC, Chapter 39A.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §§7.021, 7.028, 12.056, 12.104, 29.001, 29.0011(b), 29.010(a), 29.062, 29.066, 29.182, 39.051, 39.052, 39.053, 39.054(b-1), 39.0541, 39.056, 39.057, 39.058, 39A.001, 39A.002, 39A.004, 39A.005, 39A.007, 39A.051, and 39A.063.

<rule>

§97.1005. Results Driven Accountability.

- (a) In accordance with Texas Education Code, §7.028(a), the purpose of the Results Driven Accountability (RDA) framework is to evaluate and report annually on the performance of school districts and charter schools for certain populations of students included in selected program areas [~~:- bilingual education/English as a Second Language, career and technical education, special education, and certain Title programs under federal law~~]. The performance of a school district or charter school is included on the RDA report [~~reported~~] through indicators of student performance and program effectiveness and corresponding performance levels established by the commissioner of education.
- (b) The assignment of performance levels for school districts and charter schools in the 2020 [~~2019~~] RDA report is based on specific criteria and calculations, which are described in the 2020 [~~2019~~] RDA Manual provided in this subsection.
Figure: 19 TAC §97.1005(b) [~~Figure: 19 TAC §97.1005(b)~~]
- (c) The specific criteria and calculations used in the RDA framework will be established annually by the commissioner of education and communicated to all school districts and charter schools.
- (d) The specific criteria and calculations used in the annual RDA manual adopted for prior school years will remain in effect for all purposes, including accountability and performance monitoring, data standards, and audits, with respect to those school years.