

The State Board of Education (SBOE) proposes an amendment to §109.25, concerning state compensatory education program reporting and auditing system. The proposed amendment would update references to statutory citations that were renumbered by House Bill (HB) 3, 86th Texas Legislature, 2019.

BACKGROUND INFORMATION AND JUSTIFICATION: Section 109.25 addresses the requirement for each school district and charter school to report financial information relating to the expenditure of the state compensatory education allotment under the Foundation School Program to the Texas Education Agency (TEA).

The proposed amendment would replace Texas Education Code (TEC), §42.152(c), with §48.104(k) and TEC, §42.152(q), with §48.104(o) to reflect the renumbering of statute by HB 3, 86th Texas Legislature, 2019.

The SBOE approved the proposed amendment for first reading and filing authorization at its June 25, 2021 meeting.

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 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 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. 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 ensuring the rule contains updated references to statute. 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 July 23, 2021, and ends at 5:00 p.m. on August 27, 2021. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About_TEA/Laws_and_Rules/SBOE_Rules_\(TAC\)/Proposed_State_Board_of_Education_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/SBOE_Rules_(TAC)/Proposed_State_Board_of_Education_Rules/). The SBOE will take registered oral and written comments on the proposal at the appropriate committee meeting in September 2021 in accordance with the SBOE board operating policies and procedures. 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 July 23, 2021.

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code, §48.104, as redesignated and amended by House Bill 3, 86th Texas Legislature, 2019, which requires the State Board of Education to adopt rules requiring a report on the use of compensatory education funds as part of the annual audit and develop minimum requirements for that report.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §48.104.

<rule>

§109.25. State Compensatory Education Program Reporting and Auditing System.

- (a) Each school district and charter school shall report financial information relating to expenditure of the state compensatory education allotment under the Foundation School Program to the Texas Education Agency (TEA). Each school district and charter school shall report the information according to standards for financial accounting provided in §109.41 of this title (relating to Financial Accountability System Resource Guide.) The financial data will be reported annually through the Public Education Information Management System. The commissioner of education shall ensure that districts follow guidelines contained in the "Financial Accountability System Resource Guide" in attributing supplemental direct costs to state compensatory education and accelerated instruction programs and services. Costs charged to state compensatory education shall be for programs and services that supplement the regular education program.
- (b) Each school district and charter school shall ensure that supplemental direct costs and personnel attributed to compensatory education and accelerated instruction are identified in district and/or campus improvement plans at the summary level for financial units or campuses. Each school district and charter school shall maintain documentation that supports the attribution of supplemental costs and personnel to compensatory education. School districts and charter schools must also maintain sufficient documentation supporting the appropriate identification of students in at-risk situations, under criteria established in Texas Education Code (TEC), §29.081.
- (c) The TEA shall conduct risk assessment and desk audit processes to identify the school districts, charter schools, or campuses most at risk of inappropriate allocation and/or underexpenditure of the compensatory education allotment. In the risk assessment and desk audit processes, the TEA shall consider the following factors:
 - (1) aggregate performance of students in at-risk situations on the state assessment instruments that is below the standards for the "acceptable" rating, as defined in the state accountability system;
 - (2) the financial management of compensatory education funds; and/or
 - (3) the quality of data related to compensatory education submitted by a school district or charter school.
- (d) The TEA shall use the results of risk assessment and desk audit processes to prioritize school districts or charter schools for the purpose of on-site visits and may conduct on-site visits.
- (e) The TEA shall issue a preliminary report resulting from a desk audit or an on-site visit before submitting a final report to the school district or charter school. After issuance of a preliminary report, a school district or charter school must file with the TEA the following:
 - (1) a response to the preliminary report within 20 calendar days from the date of the preliminary report outlining steps the school district or charter school will take to resolve the issues identified in the preliminary report; and
 - (2) a corrective action plan within 60 calendar days from the date of the preliminary report if the school district's or charter school's response to the preliminary report does not resolve issues identified in the preliminary report.

- (f) The TEA shall issue a final report that indicates whether the school district or charter school has resolved the findings in the preliminary report and whether the corrective action plan filed under subsection (e)(2) of this section is adequate.
 - (1) If the final report contains a finding of noncompliance with TEC, ~~§48.104(k) [§42.152(e)]~~, the report shall include a financial penalty authorized under TEC, ~~§48.104(o) [§42.152(g)]~~.
 - (2) If the school district or charter school responds with an appropriate corrective action plan, the TEA shall rescind the financial penalty and release the amount of the penalty to the school district or charter school.
- (g) The TEA may conduct an on-site visit to verify the implementation of a school district's or charter school's corrective action plan.