

The State Board of Education (SBOE) proposes the repeal of §89.61 and §89.63, concerning special education services and settings. The proposed repeals would implement House Bill (HB) 3, 86th Texas Legislature, 2019, which removed the SBOE's rulemaking authority related to instructional arrangements in special education.

BACKGROUND INFORMATION AND JUSTIFICATION: Section 89.61 allows a school district to contract for residential placement of a student when the student's admission, review, and dismissal (ARD) committee determines that a residential placement is necessary in order for the student to receive a free appropriate public education. Section 89.63 allows a school district to provide services through special education personnel to students with disabilities in order to meet the special needs of those students, defines the regular school day as the period of time determined appropriate by the ARD committee, defines special education instructional arrangements/settings, and requires that the instructional arrangements/settings be based on the individual needs and individualized education programs of eligible students receiving special education.

HB 3, 86th Texas Legislature, 2019, redesignated Texas Education Code (TEC), §42.151, as TEC, §48.102, and amended the statute to transfer rulemaking authority related to residential placements and instructional arrangements from the SBOE to the commissioner of education. New 19 TAC §89.1005, Instructional Arrangements and Settings, and §89.1092, Contracting for Residential Educational Placements for Students with Disabilities, were adopted under the commissioner's rulemaking authority effective March 14, 2021. The repeal of 19 TAC §89.61 and §89.63 is necessary as statutory authority for the rules no longer exists.

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

FISCAL IMPACT: Matthew Montaña, 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 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: Texas Education Agency (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 repeal existing regulations by removing §89.61 and §89.63 since the statutory authority for the rules no longer exists.

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 expand or limit 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. Montaña 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 removing rules whose statutory authority no longer exists. 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 repeals are proposed under Texas Education Code (TEC), §48.102(e), as amended and redesignated by House Bill (HB) 3, 86th Texas Legislature, 2019, which requires the commissioner of education by rule to prescribe the qualifications and instructional arrangements that must be met in order to be funded as a particular instructional arrangement under TEC, §48.102; and TEC, §48.102(g), as amended and redesignated by HB 3, 86th Texas Legislature, 2019, which requires the commissioner of education to adopt rules governing contracts for residential placement of special education students.

CROSS REFERENCE TO STATUTE. The repeals implement Texas Education Code, §48.102(e) and (g).

<rule>

§89.61. Contracting for Residential Educational Placements for Students with Disabilities.

§89.63. Instructional Arrangements and Settings.