

The Texas Education Agency (TEA) proposes an amendment to §101.3031, concerning required test administration procedures and training activities to ensure validity, reliability, and security of assessments. The proposed amendment would modify the rule to implement Senate Bill (SB) 1267, 87th Texas Legislature, Regular Session, 2021, which removed the requirement for annual security and test administration training for all test administration personnel.

**BACKGROUND INFORMATION AND JUSTIFICATION:** Section 101.3031 specifies that individuals with access to secure test materials must be school district or charter school employees who have received annual training in security and test administration procedures. With changes to Texas Education Code, §39.0304, introduced by SB 1267, 87th Texas Legislature, Regular Session, 2021, TEA may now only require the employee at each district campus who oversees the administration of assessment instruments to be trained annually. TEA will still require test administration personnel to receive initial training in security and test administration procedures, but the proposed amendment to §101.3031(a)(2)(D)(ii) would remove the requirement of annual training for personnel other than an employee overseeing assessment instrument administration at a campus.

**FISCAL IMPACT:** Lily Laux, deputy commissioner for school programs, 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 limit an existing regulation by limiting the individuals who are required to receive annual assessment training, thereby decreasing the number of individuals subject to the training.

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 repeal an existing regulation; would not increase 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:** Ms. Laux 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 potentially saving time for individuals who are no longer required to attend annual assessment security training. 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 October 15, 2021, and ends November 15, 2021. 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 October 15, 2021. 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/).

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code, §39.0304, as amended by Senate Bill 1267, 87th Texas Legislature, Regular Session, 2021, which allows only the employee at each district campus who oversees the administration of assessment instruments to be trained annually in security and test administration procedures and allows that employee to require other personnel to be trained at their discretion.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §39.0304.

<rule>

**§101.3031. Required Test Administration Procedures and Training Activities to Ensure Validity, Reliability, and Security of Assessments.**

- (a) Security and confidentiality.
  - (1) All assessment instruments included in the student assessment program are considered secure, and the contents of these tests, including student information used or obtained in their administration, are confidential.
  - (2) School districts and campuses, the superintendent and campus principals in each school district, open-enrollment charter schools and campuses, and the chief administrative officer and campus principals of each charter school shall:
    - (A) implement and ensure compliance with state test administration procedures and training activities;
    - (B) notify the Texas Education Agency (TEA) as soon as the school district or charter school becomes aware of any alleged or suspected violation of the security or confidential integrity of a test as listed in paragraph (3) of this subsection;
    - (C) report all confirmed testing violations to TEA within 10 working days of the school district or charter school becoming aware of the violation in accordance with the reporting process stipulated in the test administration materials;
    - (D) ensure that the only individuals with access to secure test materials are school district or charter school employees who have:
      - (i) met the requirements to participate in the student assessment program;
      - (ii) received annual training in test security and test administration procedures; and
      - (iii) signed an oath affirming they understand their obligation to maintain and preserve the security and confidentiality of all state assessments and student information, acknowledge their responsibility to report any suspected testing violation, and are aware of the range of penalties that may result from a violation of test security and confidentiality or a departure from test administration procedures; and
    - (E) ensure the security of the test materials by:
      - (i) verifying that all boxes of testing materials have been accounted for and match the school district or charter school shipping notices upon receipt from the state's testing contractor(s);
      - (ii) requiring campuses to immediately inventory all testing materials received and to notify the school district or charter school testing coordinator of any shortages or discrepancies;

- (iii) immediately notifying the state's testing contractor(s) of any discrepancies between the materials received and the school district, charter school, and campus shipping notices;
  - (iv) placing test booklets and answer documents in secure, limited-access, locked storage when not in use;
  - (v) collecting and destroying any scratch paper, graph paper, or reference materials that students have written on, as well as any recordings, after the completion of a test administration;
  - (vi) requiring that all secure materials assigned to individual campuses have been accounted for and packaged in accordance with the procedures for returning materials as detailed in the test administration materials;
  - (vii) requiring that all test item image cards and photocopies or reproductions of secure test materials have been collected and returned to the school district or charter school testing coordinator for return to the testing contractor(s); and
  - (viii) maintaining inventory and shipping records for five years.
- (3) Violations of the security and confidential integrity of a test include:
- (A) directly or indirectly assisting students with responses to test questions;
  - (B) tampering with student responses;
  - (C) falsifying holistic ratings or student responses;
  - (D) viewing secure test content before, during, or after an administration unless specifically authorized by TEA or by the procedures outlined in the test administration materials;
  - (E) discussing or disclosing secure test content or student responses;
  - (F) scoring students' tests, either formally or informally;
  - (G) duplicating, recording, or electronically capturing confidential test content unless specifically authorized by TEA or by the procedures outlined in the test administration materials;
  - (H) responding to secure test questions;
  - (I) fraudulently exempting or preventing a student from participating in the administration of a required state assessment;
  - (J) receiving or providing unallowable assistance during calibration activities (e.g., taking notes, providing answer sheets, or sharing answers);
  - (K) encouraging or assisting an individual to engage in the conduct described in subparagraphs (A)-(J) of this paragraph or in any other serious violation of security and confidentiality;
  - (L) failing to report to an appropriate authority that an individual has engaged or is suspected of engaging in conduct described in subparagraphs (A)-(K) of this paragraph or in any other serious violation of security and confidentiality under this section;
  - (M) failing to implement sufficient procedures to prevent student cheating; and
  - (N) failing to implement sufficient procedures to prevent alteration of test documents by anyone other than the student.
- (4) If a school district or charter school determines that a student has cheated or attempted to cheat on a state assessment either by providing or receiving direct assistance, the school district or charter school shall invalidate the student's test results.
- (5) Any violation of test security or confidential integrity may result in the TEA:

- (A) invalidating student test results;
  - (B) referring certified educators to the State Board for Educator Certification for sanctions in accordance with Chapter 247 of this title (relating to Educators' Code of Ethics) and Chapter 249 of this title (relating to Disciplinary Proceedings, Sanctions, and Contested Cases); and
  - (C) lowering the school district's or charter school's accreditation status or a school district's, charter school's, or campus's accountability rating in accordance with Texas Education Code (TEC), §39.057(d), or appointment of a monitor, conservator, or management team to the school district or charter school in accordance with TEC, Chapter 39A.
- (b) Test administration procedures. Test administration procedures shall be delineated in the test administration materials provided to school districts and charter schools annually. Districts and charter schools must comply with all of the applicable requirements specified in the test administration materials. Test administration materials shall include, but are not limited to, the following:
  - (1) general testing program information;
  - (2) procedures for maintaining the security and confidentiality of state assessments;
  - (3) procedures for test administration;
  - (4) responsibilities of personnel involved in test administration; and
  - (5) procedures for materials control.
- (c) Training activities. School districts and charter schools shall ensure that test coordinators and administrators receive training to ensure that testing personnel have the necessary skills and knowledge required to administer assessment instruments in a valid, standardized, and secure manner.
- (d) Records retention. As part of test administration procedures, the commissioner shall require school districts and charter schools to maintain records related to the security of assessment instruments for five years.
- (e) Applicability. The required test administration procedures and training activities established annually in the test administration manuals and test security supplements for prior years remain in effect for all purposes with respect to the prior year to which they apply.