

The Texas Education Agency (TEA) proposes an amendment to §150.1012, concerning local optional teacher designation systems. The proposed amendment would update provisions for local optional teacher designation systems to address the lack of State of Texas Assessments of Academic Readiness (STAAR®) testing in the 2019-2020 school year, ensure that the employing school district receives the allotment for a designated teacher, modify the percentage each district receives if a designated teacher is employed by multiple districts, add another reason designations may be voided, improve the quality of local designation systems by requiring calibration activities to be tied to the approved teacher observation rubric and requiring that the student growth and teacher observation data be from the same teaching assignment, and remove obsolete provisions.

**BACKGROUND INFORMATION AND JUSTIFICATION:** Texas Education Code (TEC), §21.3521, establishes a local optional teacher designation system, and TEC, §48.112, establishes a teacher incentive allotment. Section 150.1012 implements the statutes by establishing the requirements for school districts and charter schools to implement local teacher designation systems.

Following is a description of the proposed amendment to §150.1012.

The proposed amendment to subsection (b)(1)(B) would align the language with TEC, §48.112, to ensure that the employing district receives the generated allotment.

The proposed amendment to subsection (c)(1)(A) would specify that districts have seven business days to rectify an incomplete application. This change would provide districts with a clear expectation of the timeline of incomplete submissions.

The proposed amendment to subsection (c)(1)(B) would clarify that only the system application is eligible for the resubmission process. This change would ensure that the application process can be completed in a timely manner.

The proposed amendment to subsection (c)(1)(C) would provide clarity about the requirements for provisionally approved districts to earn full approval.

The proposed amendment to subsection (c)(2)(A)(i)(I) would update the requirements of the teacher observation component. The proposed language would state that congruence is among appraisers, that correlation is between teacher observation and student growth data, and that both congruence and correlation need to be tied to the rubric approved in subsection (c)(2)(A)(i)(II). This change would provide clarity to districts on the application requirements and ensure that their calibration practices are tied to their approved teacher observation rubrics.

The proposed amendment to subsection (c)(2)(A)(i)(II) would clarify the requirements of a district-created rubric by adding reference to the standards outlined in 19 TAC §149.1001, Teacher Standards. This change would ensure that the district-created rubric meets the same requirements as the other approved rubrics.

Proposed new subsection (c)(2)(A)(ii)(IV), relating to the student growth component, would add requirements for the quality of vendor-created assessments. This change would ensure that all assessments meet the same requirements.

The proposed amendment to subsection (c)(2)(C) would add language to require that single-year data be collected from the same teaching assignment. This change would ensure that the student growth and teacher observation data collected for each teacher can be compared. Additionally, language would be added to allow TEA administrative discretion to allow districts to submit data if there are extenuating circumstances limiting their ability to collect data for all teachers in eligible teaching assignments. This change would allow districts that were impacted by the lack of STAAR® testing in 2019-2020 and school closures to submit designations in other teaching assignments.

Language would be added in subsection (e)(1)(C) to allow TEA administrative discretion to allow districts to submit data if there are extenuating circumstances limiting their ability to collect data for all teachers in eligible teaching assignments. This change would allow districts that were impacted by the lack of STAAR® testing in 2019-2020 and school closures to submit designations in other teaching assignments.

Proposed new subsection (e)(2) would be added to allow TEA to conduct a review of a local designation system based on annual data submission. This change would allow TEA to investigate approved local designation systems to determine if there is appropriate implementation and reporting.

Proposed new subsection (f)(2)(E) would be added to specify that approval of a local optional designation system is voidable if a district fails to remove a district employee from the designation determination process who has a conflict of interest and acted in bad faith to influence designations. This change would contribute to the validity of district designations by ensuring that designations are not issued in bad faith.

Proposed new subsection (f)(3)(E) would be added to specify that approval of an individual teacher designation is voidable if the district issued a designation in bad faith by not removing a district employee from the designation determination process who had a conflict of interest. This change would contribute to the validity of district designations by ensuring that designations are not issued in bad faith.

The proposed amendment to subsection (g)(1)(A) would clarify that districts must delay designations to delay funding. This change would ensure that funding cannot be generated without active designations. Subsection (g)(1)(A)(i) and (ii) would be removed since the provisions applied only to districts that were issued funding in the 2019-2020 school year.

Subsection (g)(1)(C) would be modified to specify that funding for a teacher who works at multiple campuses would be calculated and split equally among the campuses where the employee is designated with a role code of 087 (Teacher). This change would allow teachers at multiple campuses to generate an allotment that takes into account each campus's socio-economic need and rural status.

Proposed new subsection (g)(1)(D) would allow TEA administrative discretion to redirect funds to the district where a designated teacher works if a miscoding error is discovered. This change would allow coding errors to be easily rectified to ensure appropriate distribution of funds in alignment with TEC, §48.112.

The proposed amendment to subsection (g)(2) would remove a redundant provision already addressed by subsection (g)(1)(C).

**FISCAL IMPACT:** Kelvey Oeser, deputy commissioner for educator support, 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 beyond what the authorizing statute requires.

**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 both expand and limit an existing regulation by clarifying the process and requirements for school districts to request approval of a teacher designation system.

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 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:** Ms. Oeser 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 providing school districts and open-enrollment charter schools with clear processes and requirements to implement local optional teacher designation systems. 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 or 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 January 15, 2021, and ends February 16, 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 January 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 (TEC), §21.3521, which specifies that the commissioner (1) shall ensure that local optional teacher designation systems meet the statutory requirements for the system; (2) shall prioritize high needs campuses; (3) shall enter into a memorandum of understanding with Texas Tech University regarding assessment of local iterations of the local optional teacher designation system; (4) shall periodically conduct evaluations of the effectiveness of the local optional teacher designation system; (5) may adopt fees, which are exempted from the requirements of Texas Government Code, §2001.0045 and §2001.0221, to implement the local optional teacher designation system; and (6) may adopt rules to implement the local optional teacher designation system; and TEC, §48.112, which establishes a teacher incentive allotment and requires the commissioner to designate rural campuses and annually make available to the public a list of campuses with projected allotment amounts per teacher designation at each campus.

**CROSS REFERENCE TO STATUTE.** The amendment implements Texas Education Code, §21.3521 and §48.112.

<rule>

### **§150.1012. Local Optional Teacher Designation System.**

(a) General provisions.

(1) Definitions. The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise.

(A) Active Texas certification--A valid certification labeled as provisional, professional, or standard under §230.31(a) of this title (relating to Types of Certificates) or a visiting international teacher certification under §230.41 of this title (relating to Visiting International Teacher Certificates).

(B) Charter school--A Texas public school that meets one of the following criteria:

(i) is operated by a charter holder under an open-enrollment charter granted either by the State Board of Education or commissioner of education pursuant to Texas Education Code (TEC), §12.101, identified with its own county district number;

- (ii) has a charter granted under TEC, Chapter 12, Subchapter C, and is eligible for benefits under TEC, §11.174 and §48.252; or
    - (iii) has a charter granted under TEC, §29.259, and Human Resources Code, §221.002.
  - (C) Classroom teacher--An educator, as defined by TEC, §5.001, who is employed by a school district and who, not less than an average of four hours each day, teaches in an academic instructional setting or a career and technical instructional setting. This term does not include an educational aide or a full-time administrator.
  - (D) Data capture year--The year in which the teacher observation and student growth measure is collected based on the proposed local teacher designation system.
  - (E) Designated teacher--An exemplary, master, or recognized teacher.
  - (F) Eligible teaching assignment--An assignment based on campus, subject taught, or grade taught.
  - (G) National Board certification--Certification issued by the National Board for Professional Teaching Standards.
  - (H) Provisional approval--Conditional approval of a school district local optional teacher designation system that would require resubmission of system review and/or data validation for further approval.
  - (I) Reliability--The degree to which an instrument used to measure teacher performance and student growth produces stable and consistent results.
  - (J) Rural--A campus within a school district with fewer than 5,000 enrolled students that is categorized as a rural, non-metropolitan: stable, or non-metropolitan: fast growing district type by the Texas Education Agency (TEA); a campus within a school district with fewer than 5,000 enrolled students categorized as rural by the National Center for Education Statistics; or a campus defined in TEC, §48.112(a)(1).
  - (K) School district--The definition of a school district includes charter schools as defined in subparagraph (B) of this paragraph.
  - (L) Student growth--Student academic progress achieved in response to the pedagogical practices of teachers, as measured at the individual teacher level by one or more measures of student growth aligned to the standards of the course.
  - (M) Teacher observation--One or more observations of a teacher instructing students for a minimum of 45 minutes or multiple observations that aggregate to at least 45 minutes.
  - (N) Validity--The degree to which an instrument used to measure teacher performance and student growth measures what it is intended to measure.
- (2) Fees for teacher incentive allotment teacher designation and system renewal. A school district requesting approval of a teacher designation system or renewal of such a system shall pay the applicable fees from the following list:
- (A) a \$500 fee for each teacher submitted for designation to TEA; or
  - (B) a system renewal fee to be determined by the commissioner and established in rule.
- (b) Teacher eligibility.
- (1) Teachers eligible to earn or receive designations under an approved local optional teacher designation system must meet the following requirements:
    - (A) the teacher holds an active Texas certification under Chapter 233 of this title (relating to Categories of Classroom Teaching Certificates), a Reading Specialist Certificate under Chapter 239, Subchapter D, of this title (relating to Reading Specialist Certificate), or a Legacy Master Teacher Certificate;

- (B) the teacher is employed ~~[or is to be employed]~~ by the recommending school district in a role ID coded as 087 (Teacher) and corresponding class roles of 01, 02, or 03, if applicable, in the Texas Student Data System Texas Education Data Standards (TEDS) for 90 days at 100% of the day (equivalent to four and one-half months or a full semester) or 180 days at 50-99% of the day and compensated for that employment; and
  - (C) the teacher is not currently designated under a local optional teacher designation system, unless the teacher is being recommended for a higher designation or is in the last year of a teacher designation.
- (2) School districts are eligible to receive funding for each designated teacher if the teacher meets the requirements in paragraph (1)(A) and (B) of this subsection.
- (c) Application procedures and approval process.
- (1) The following provisions apply to applications submitted under this section.
- (A) If TEA determines that an application is incomplete, TEA may provide the applicant with notice of the deficiency and an opportunity to submit missing required information. If the missing required information is not submitted within seven business ~~[calendar]~~ days after the original submission deadline ~~[notice is provided]~~, the application will be denied.
  - (B) If TEA determines that a system ~~[an]~~ application does not meet the standards established under TEC, §21.3521, and this section, TEA shall permit the applicant to resubmit the application within three months of the [original] submission deadline. If no resubmission is timely made, the application will be denied.
  - (C) An applicant that demonstrates the need for ongoing support will be required to submit additional information that may result in provisional approval for one year. A school district with this approval status cannot add eligible teaching assignments to its local optional teacher designation system and will be required to complete a new application or resubmit data for validation for the additional four years of approval.
  - (D) An applicant that has a local optional teacher designation system that has been paying teachers in the 2019-2020 school year may be issued provisional approval for two years if the system does not contain either a teacher observation component as specified in paragraph (2)(A)(i) of this subsection or a student growth component as specified in paragraph (2)(A)(ii) of this subsection. A school district with this approval status cannot add eligible teaching assignments to its local optional teacher designation system.
  - (E) Applications that are determined to meet the standards established under TEC, §21.3521 and §48.112, and this section shall be approved for an initial term of five years.
- (2) The application shall include the following for each eligible teaching assignment:
- (A) components of a local system for issuing designations, including:
    - (i) a teacher observation component that contains:
      - (I) a plan for calibration, using the rubric approved under subclause (II) of this clause, that includes congruence among appraisers, a ~~[and]~~ review of teacher observation data and the correlation between teacher observation and student growth data, and implementation of next steps; and
      - (II) an approved teacher observation rubric including the Texas Teacher Evaluation and Support System, Marzano's Teacher Evaluation Model and rubric created by the National Institute for Excellence in Teacher and The Danielson Group, or another rubric that is based on observable, job-related behaviors, including alignment to §149.1001 of this title (relating to Teacher Standards) [teacher implementation of discipline management and the performance of teachers' students]. A

school district may be required to provide teacher observation videos if the ratings cannot be verified from the data submitted; and

- (ii) a student growth component that:
  - (I) if using a student learning objective, is aligned to the standards of the course, measures the level of preparedness for each student at the beginning of the school, and measures the mastery level for each student at the end of the school year based on a body of evidence;
  - (II) if using a portfolio method, demonstrates that student work is aligned to the standards of the course, demonstrates mastery of standards, and includes criteria for scoring; ~~[or]~~
  - (III) if using school district- or teacher-created assessments, is aligned to the standards of the course and conforms to a district rubric for district- or teacher-created assessments. A school district must approve district- or teacher-created assessments for the purpose of determining student growth by using a district process and rubric for approval of such assessments; or
  - (IV) if using vendor-created assessments, is aligned to the standards for the course and contains questions that cover a range of student skill levels;

(B) test administration processes for all student growth that will lead to validity and reliability of results, including:

- (i) test security protocols;
- (ii) testing windows;
- (iii) testing accommodations; and
- (iv) annual training for test administrators; and

(C) data for all teachers in eligible teaching assignments, including student growth, and observation data for all teachers in eligible teaching assignments for the data capture year. Multi-year data shall include student growth and observation data from the same year and teaching assignment. Single-year data shall include student growth and observation data from the same teaching assignment. TEA may exercise administrative discretion in circumstances where data is difficult to provide and a district would otherwise be unable to provide sufficient data for application consideration.

(d) System expansion and amendments.

- (1) School districts must apply for approval for additional eligible teaching assignments with previously unapproved student growth or teacher observation components, new student growth components, or new teacher observation components.
- (2) Proposed amendments to other components of the application will be due at the time of annual submission. Additional information and application processes may be requested.

(e) Monitoring and program evaluation of approved local designation systems.

(1) For the annual data submission, approved school districts shall submit the following information regarding a local teacher designation system:

(A) ~~[(1)]~~ the distribution of allotment funds from the previous school year in accordance with the funding provisions of subsection (g) of this section;

(B) ~~[(2)]~~ a response and implementation plan to annual surveys developed by TEA administered to teachers, campus principals, and human resources personnel gauging the perception of a school district's local designation system; and

(C) ~~(3)~~ teacher observations and student growth measure data for all teachers in eligible teaching assignments if school districts are submitting new teacher designations. TEA reserves the right to request data for the purposes of performance evaluation and investigation based on data review outcomes. TEA may exercise administrative discretion in circumstances where data is difficult to provide and a district would otherwise be unable to provide sufficient data for application consideration.

(2) Outcomes of the annual data submission may lead to a review, pursuant to TEC, §48.272(e), and subject to the period of review limitation in TEC, §48.272(f), of the local optional designation system that may be conducted at any time at the discretion of the TEA staff.

(f) Continuing approval and renewal.

(1) Approved local optional teacher designation systems are subject to review at least once every five years. However, a review may be conducted at any time at the discretion of TEA.

(2) Approval of local optional designation systems are voidable by TEA for one or more of the following reasons:

(A) failure to fulfill all local optional designation system requirements as defined in this section ;

(B) failure to comply with annual data submission requirements;

(C) failure to comply with the provisions of TEC, §21.3521 and §48.112;

(D) failure to implement the local optional teacher designation system as approved by TEA and Texas Tech University; ~~or~~

(E) failure to remove district employees from the designation determination process who have a conflict of interest and acted in bad faith to influence designations; or

~~(F)~~ ~~(E)~~ at the discretion of the commissioner.

(3) Approval of individual teacher designations are voidable by TEA for one or more of the following reasons:

(A) a teacher has not fulfilled all designation requirements;

(B) the school district at which the designation was earned has had its local optional designation system voided;

(C) the National Board for Professional Teaching Standards revokes a National Board certification that provided the basis for a teacher's designation;

(D) the suspension, revocation, cancellation, or surrender of a certificate issued by the State Board for Educator Certification to a designated teacher; ~~or~~

(E) the district issued a designation in bad faith by not removing a district employee from the designation determination process who had a conflict of interest; or

~~(F)~~ ~~(E)~~ at the discretion of the commissioner.

(g) Funding.

(1) State funding.

(A) Teacher incentive allotment funds will be disbursed to school districts in the same school year for which the teacher designations are approved. The initial disbursement may occur either upon final approval of a local teacher designation system or in the school year following final approval if a district decides to delay designations .

~~(i)~~ For the initial disbursement after the approval of a local teacher designation system or system expansion, at least 90% of each allotment received must be spent on compensation of teachers employed at the campus at which the teacher

~~for whom the school district received the allotment was employed for the first year of the designation.]~~

~~[(ii) Disbursements subsequent to the initial disbursement must meet the requirements of paragraph (2) of this subsection.]~~

- (B) A school district is eligible to earn the base allotment for each designated teacher assigned to a zero-enrollment campus, a campus with fewer than 20 students, a juvenile justice alternative education program, a disciplinary alternative education program, a residential facility, or central administration if the designated teacher meets the requirements in subsection (b)(2) of this section, plus the multiplier based on the school district's average student point value and rural status, if applicable.
  - (C) Funding for teachers who work at multiple campuses shall be calculated and split equally among the campuses where ~~[distributed proportionally by the percent of time]~~ the employee is working in a role coded as 087 (Teacher) in the Texas Student Data System TEDS at each campus.
  - (D) TEA may exercise administrative discretion to redirect funds to the district where the designated teacher works if a miscoding error is discovered.
- (2) Status and use of state funds. A school district that receives teacher incentive allotment funding must comply with the requirements of TEC, §48.112. ~~[Allotment funding generated by a designated teacher working for multiple school districts shall be split equally among the districts that employ the teacher.]~~