

The Texas Education Agency (TEA) proposes an amendment to §61.1011, concerning the formula transition grant. The proposed amendment would modify the rule to clarify average daily attendance (ADA) calculations to include those related to the ADA hold harmless provisions for the 2019-2020 and 2020-2021 school years.

**BACKGROUND INFORMATION AND JUSTIFICATION:** House Bill 3, 86th Texas Legislature, 2019, enacted Texas Education Code, §48.277, Formula Transition Grant, which created an additional entitlement through the Foundation School Program for school districts that did not exceed certain thresholds related to funding under the law as it existed on January 1, 2019.

The proposed amendment to §61.1011 would update subsection (c)(4) to include additional provisions for calculating the ADA of a school district or open-enrollment charter school.

The proposed amendment would add language relative to the 2019-2020 and 2020-2021 school years and provide for consideration of the ADA hold harmless provisions adopted in response to the COVID-19 pandemic for those particular school years.

**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, 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 expand an existing regulation by allowing consideration of the ADA hold harmless provisions adopted in response to the COVID-19 pandemic for the 2019-2020 and 2020-2021 school years.

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 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 expanding provisions for ADA funding in the 2019-2020 and 2020-2021 school years. 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 February 12, 2021, and ends March 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 February 12, 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), §48.004, as transferred, redesignated, and amended by House Bill (HB) 3, 86th Texas Legislature, 2019, which specifies that the commissioner of education shall adopt rules that are necessary to implement and administer the Foundation School Program; and TEC, §48.277, as added by HB 3, 86th Texas Legislature, 2019, which details the calculation of the formula transition grant for school districts and open-enrollment charter schools. This grant is provided to eligible school districts and open-enrollment charter schools on the basis of a comparison of funding under HB 3 and funding under prior law.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §48.004 and §48.277.

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#### **§61.1011. Formula Transition Grant.**

- (a) General provisions. This section implements Texas Education Code (TEC), §48.277 (Formula Transition Grant), which provides for additional funding for school districts with new funding levels that did not exceed certain thresholds as a result of the passage of House Bill (HB) 3, 86th Texas Legislature, 2019. In accordance with TEC, §48.277, this section defines the data sources that Texas Education Agency (TEA) will use in calculating the prior law funding available to school districts.
- (b) Definitions. The following terms have the following meanings when used in this section.
  - (1) Average daily attendance (ADA)--Average daily attendance as defined by TEC, §48.005(a).
  - (2) Foundation School Program (FSP)--The program established under TEC, Chapters 46, 48, and 49, or any successor program of state-appropriated funding for school districts in this state.
  - (3) Local maintenance and operations (M&O) tax collections--The amount of local M&O taxes collected by a school district.
  - (4) Maintenance and operations revenue--The total M&O revenue available to a school district for maintenance and operations under the FSP, including state aid and M&O tax collections net of any required recapture payments.
  - (5) Public Education Information Management System (PEIMS)--The system that encompasses all data requested and received by TEA about public education, also known as the Texas Student Data System (TSDS) or TSDS PEIMS.
- (c) Data sources for calculating M&O revenue under TEC, Chapters 41 and 42, as those chapters existed on January 1, 2019.
  - (1) M&O tax rate. TEA will use a district's tax year 2018 adopted M&O tax rate, minus any pennies of tax effort adopted in response to a disaster under Texas Tax Code, §26.08(a-1).
  - (2) M&O tax collections. For the 2019-2020 and 2020-2021 school years, the M&O tax collections under prior law are equal to the product of:
    - (A) the quotient of:
      - (i) the actual M&O tax collections for the school year submitted to TEA for FSP purposes; and

- (ii) the actual adopted M&O tax rate for the school year; and
  - (B) the adopted M&O tax rate for the 2018 tax year.
- (3) Total tax levy. For purposes of calculating a district's support of students enrolled in the Texas School for the Blind and Visually Impaired and Texas School for the Deaf under TEC, §30.003, TEA will calculate the total tax levy by adding the district's interest and sinking (I&S) tax collections to the M&O tax collections calculated in paragraph (2) of this subsection.
- (4) Average daily attendance. In calculating the ADA of a school district under former TEC, §42.005, TEA will exclude any attendance submitted to TEA under TEC, §48.0051 (Incentive for Additional Instructional Days) , and: [:]
  - (A) for the 2019-2020 school year, the calculation of ADA of a school district under former TEC, §42.005, will include adjustments related to the ADA hold harmless provided for that school year but will exclude any reduction in ADA arising from the application of the Elementary and Secondary School Emergency Relief funding toward the ADA hold harmless; and
  - (B) for the 2020-2021 school year, the calculation of ADA of a school district under former TEC, §42.005, will include adjustments related to the ADA hold harmless provided for that school year.
- (5) State compensatory education full-time equivalent (FTE) student counts. To calculate the number of students eligible for the compensatory education allotment under former TEC, §42.152, TEA will continue to average the best six months number of students eligible for enrollment in the National School Lunch Program from the preceding federal fiscal year submitted to TEA from the Texas Department of Agriculture. Districts that used alternative reporting of these students through the FSP will be able to continue to submit alternative reporting data through the FSP system for purposes of calculating prior law revenue under the formula transition grant.
- (6) Career and technical education (CTE) FTE student counts. To calculate the number of student FTEs eligible for the career and technology education allotment under former TEC, §42.153, TEA will use CTE FTEs submitted to TEA in the summer PEIMS submission for each year and exclude any CTE FTEs in Grade 7 or 8 that were authorized for FSP funding starting with the 2019-2020 school year under TEC, §48.106 (Career and Technology Education Allotment). TEA will also exclude any new CTE funding related to Pathways in Technology Early College High School (P-TECH) schools and the New Tech Network.
- (7) Bilingual education. To calculate the bilingual education allotment under former TEC, §42.153, TEA will use data submitted to PEIMS for students with limited English proficiency in bilingual or special language programs under TEC, Chapter 29, Subchapter B (Bilingual Education and Special Language Programs).
- (8) High school allotment. To calculate the high school allotment under former TEC, §42.260, TEA will continue to use PEIMS ADA for students in Grades 9-12.
- (9) Staff salary allotment. To calculate the additional state aid for staff salary increases under former TEC, §42.2513, TEA will use the numbers of full-time and part-time employees other than administrators or employees subject to the minimum salary schedule submitted to TEA through the FSP system for the 2018-2019 school year.
- (10) Additional state aid for homestead exemption. To calculate the additional state aid for homestead exemption under former TEC, §42.2518, TEA will use the values calculated for districts for the 2018-2019 school year.
- (11) Guaranteed yield. To calculate the guaranteed yield allotment under former TEC, §42.302(a-1)(1), TEA will use the amounts per student in weighted average daily attendance (WADA) per penny of tax effort established in the General Appropriations Act, Rider 3, Article III, 86th Texas Legislature, 2019, of \$126.88 for the 2019-2020 school year and \$135.92 for the 2020-2021 school year.

- (12) Chapter 41 status. For purposes of determining a district's status under former TEC, Chapter 41, TEA will calculate districts' recapture costs under the law as it existed on January 1, 2019, by assuming all districts with a final wealth per WADA in excess of the equalized wealth level(s) were notified of the requirement to pay recapture and that all districts would have exercised the option to purchase ADA credits under former TEC, Chapter 41, Subchapter D. TEA will further assume that all affected districts would have qualified for the early agreement credit as it existed under former TEC, §41.098.
- (13) School district entitlement for certain students. TEA will exclude calculations of state aid under former TEC, §42.2511, and TEC, §48.252 (School District Entitlement for Certain Students) in calculations for the formula transition grant.
- (14) Limitation on old law calculations.
  - (A) TEA will stop running prior law calculations for the 2019-2020 school year after June 30, 2021, and the amounts that a district would have received for the 2019-2020 school year under TEC, §48.277(a) and (d-1), will not be changed after that date.
  - (B) TEA will stop running prior law calculations for the 2020-2021 school year after June 30, 2022, and the amounts that a district would have received for the 2020-2021 school year under TEC, §48.277(a) and (d-1), will not be changed after that date.