

The Texas Education Agency (TEA) adopts an amendment to §103.1209, concerning mandatory school drills. The amendment is adopted with changes to the proposed text as published in the February 4, 2022 issue of the *Texas Register* (47 TexReg 454) and will be republished. The adopted amendment implements Senate Bill (SB) 168, 87th Texas Legislature, Regular Session, 2021, which required the adoption of rules for best practices for conducting emergency school drills and exercises, including definitions for relevant terms.

REASONED JUSTIFICATION: Texas Education Code (TEC), Chapter 37, Subchapter D, addresses the protection of school buildings and grounds. Specifically, TEC, §37.114, addresses mandatory school drills. SB 168, 87th Texas Legislature, Regular Session, 2021, amended TEC, §37.114, to require that the commissioner of education, in consultation with the Texas School Safety Center and the state fire marshal, adopt rules for best practices related to emergency drills and exercises, including definitions for relevant terms. The adopted amendment to §103.1209 implements SB 168 by expanding definitions and establishing best practices.

Subsection (a) was amended to stipulate that drills do not include persons acting as active aggressors or other simulated threats.

Subsection (b) was amended to include additional definitions for drills and exercises and modify existing definitions. In addition, clarification was added that the definitions do not apply to an active threat exercise, which is defined in TEC, §37.1141, and any associated rules.

Technical changes were made in subsection (c) to conform the names of the drills listed in subsection (c)(1)-(5) with their definitions in subsection (b). In addition, subsection (c)(6) was modified to address the required frequency for fire evacuation drills, including for school districts without a local fire marshal.

New subsection (d) was updated to provide best practices for conducting drills and exercises.

Based on public comment, subsection (d)(3)(E) was amended at adoption to clarify that drills and exercises must be age and developmentally appropriate.

In addition, non-substantive technical edits were made at adoption to the definition of "full-scale exercise" in subsection (b)(6).

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began February 4, 2022, and ended March 7, 2022. Following is a summary of the public comments received and the corresponding agency responses.

Comment: Sandy Hook Promise, Children's Defense Fund of Texas, Hogg Foundation for Mental Health, Texas-American Federation of Teachers (Texas AFT), Texas Gun Sense, and a school administrator raised concerns about the anxiety, trauma, and negative impact on the mental health of students participating in simulation exercises and recommended amending the definitions of operation-based exercise, full-scale exercise, and functional exercise to explicitly prohibit student participation.

Response: The agency disagrees with the recommendation and provides the following clarification. The terms provide a description of each drill or exercise type and are aligned with the Texas School Safety Center's guidance on drills and exercises.

Comment: The Texas Association of School Boards (TASB) recommended changing the definitions of exercise, full-scale exercise, functional exercise, tabletop exercise, and workshop exercise to match the Homeland Security Exercise Evaluations Program and Federal Emergency Management Agency definitions.

Response: The agency disagrees with the recommendation and provides the following clarification. The terms provide a description of each drill or exercise type and are aligned with the Texas School Safety Center's guidance on drills and exercises. Aligning with one entity for guidance eliminates conflicting information and an undue burden on local education agencies (LEAs).

Comment: The Texas State Teacher's Association (TSTA), Sandy Hook Promise, Intercultural Development Research Association, Texas Coalition for Healthy Minds, and Children's Defense Fund of Texas raised concerns about the anxiety, fear, and psychological trauma that active aggressor simulations induce in children and recommended students be explicitly prohibited from participation in active shooter simulations, active aggressor simulations, and other exercises that include simulated threats.

Response: The agency provides the following clarification. The best practices for designing and conducting drills and exercises are recommendations of what LEAs should do to protect the physical and psychological safety of students, staff, and other members of the school community while designing and conducting drills and exercises. Best practices are not requirements but provide guidance in conducting the mandatory drills specified in §103.1209(c). Active threat exercises are addressed in proposed new §103.1211 and, therefore, fall outside the scope of this proposed rulemaking.

Comment: Intercultural Development Research Association and TSTA recommended that drill and exercise design elements be amended to include required mental health professional involvement before, during, and after drills and exercises are conducted.

Response: The agency provides the following clarification. The best practices for designing and conducting drills and exercises are recommendations of what LEAs should do to protect the physical and psychological safety of students, staff, and other members of the school community while designing and conducting drills and exercises. Mental health professionals are recommended stakeholders in designing and conducting drills and exercises.

Comment: Texas Center for Healthy Minds, Hogg Foundation for Mental Health, and Texas AFT recommended that active aggressor simulations only be conducted when students are not present on campus.

Response: This comment is outside the scope of this proposed rulemaking. Active threat exercises are addressed in proposed new §103.1211.

Comment: Sandy Hook Promise and Texas AFT recommended that if student participation in active aggressor exercises is not explicitly prohibited, parents and guardians must be provided with control over their student's exposure to active aggressor simulations by opting their student into participation in the exercise.

Response: This comment is outside the scope of this proposed rulemaking. Active threat exercises are addressed in proposed new §103.1211.

Comment: Texas AFT, TSTA, Intercultural Development Research Association, and Sandy Hook Promise recommended that best practices include a requirement for schools to designate a reasonable amount of time for postvention services following a drill or exercise.

Response: The agency provides the following clarification. The best practices for designing and conducting drills and exercises are recommendations of what LEAs should do to protect the physical and psychological safety of students, staff, and other members of the school community while designing and conducting drills and exercises. Mental health professionals are recommended stakeholders who provide input into the design of drills and exercises, including postvention services to account for the psychological safety of participants.

Comment: A public school administrator recommended amending the definitions so that there is not a distinction between evacuation drill and fire evacuation drill and that the definitions of lockdown drill and secure drill include a statement about not assigning staff to secure school grounds, which could place their lives in jeopardy.

Response: The agency disagrees with the recommendation and provides the following clarification. The terms provide a description of each drill or exercise type and are aligned with the terms used in the Texas School Safety Center's guidance on drills and exercises.

Comment: The Texas Public Charter School Association (TPCSA) recommended adding clarity to definitions for secure, shelter for severe weather, shelter for hazmat, fire evacuation, and evacuation to reduce confusion among school district staff and local fire marshals.

Response: The agency disagrees with the recommendation and provides the following clarification. The terms provide a description of each drill or exercise type and are aligned with the terms used in the Texas School Safety Center's guidance on drills and exercises.

Comment: Intercultural Development Research Association and TSTA recommended data from drills and exercises be reviewed annually and used to update future content.

Response: The agency provides the following clarification. Section 103.1209(d)(3)(D) includes the best practice of planning for post-drill or after-action review of each drill and exercise that an LEA could use to identify opportunities to address in future drills and exercises.

Comment: Sandy Hook Promise recommended requiring students to participate in an evidence-based violence prevention program and receive training in recognizing signs of potential danger.

Response: This comment is outside the scope of this proposed rulemaking.

Comment: Intercultural Development Research Association recommended including best practices to promote a positive school climate and expand programs for student safety.

Response: This comment is outside the scope of this proposed rulemaking.

Comment: The Hogg Foundation for Mental Health recommended requiring input from stakeholders in the design of drills and exercises. The Association of Texas Professional Educators (ATPE), TASB, and an individual recommended amending the stakeholder list to explicitly identify teachers and principals in addition to school staff, include city and community emergency management personnel in addition to first responders, and include campus safe and supportive schools program team members as stakeholders.

Response: The agency provides the following clarification. The best practices for designing and conducting drills and exercises are recommendations of what LEAs should do to protect the physical and psychological safety of students, staff, and other members of the school community while designing and conducting drills and exercises. The list of recommended stakeholders is not an exhaustive list, and an LEA can include additional members.

Comment: A public school administrator and an individual recommended removing the advance notice recommendation from drills that do not include active aggressor simulations so that the response of staff and students is tested.

Response: The agency disagrees with the recommendation and provides the following clarification. Advance notification is an important best-practice that reduces the potential for inducing trauma and anxiety in staff, students, and other participants of the drill or exercise.

Comment: Child Defense Fund of Texas recommended the addition of a requirement to provide an explicit disclosure of the details of an active shooter exercise.

Response: This comment is outside the scope of this proposed rulemaking.

Comment: TASB recommended removing first responders and families from the stakeholders providing input in the design of drills and exercises because their membership is included in the School Safety and Security Committee.

Response: The agency disagrees with the recommendation and provides the following clarification. First responders and families are critical stakeholders in designing and conducting drills and exercises due to the direct impact that drills and exercises may have on them.

Comment: An individual raised a concern that specifying that drills do not include persons role playing as active aggressors has a negative impact on campus preparedness. The commenter stated that this stipulation may also be

interpreted to preclude campuses from other types of simulations being used in drills. The commenter recommended changing the rule language so it only applies to drills involving students as participants.

Response: The agency disagrees with the recommendation and provides the following clarification. Drills test a single specific operation. Adding an active aggressor to a drill adds an additional element, which results in multiple operations being tested.

Comment: TPCSA recommended that best practices not be included in the rule but rather that best practices, guidance, and reporting requirements be provided by the Texas School Safety Center and no other entity.

Response: The agency disagrees with the recommendation and provides the following clarification. TEC, §37.114, requires the commissioner, in consultation with the Texas School Safety Center and the state fire marshal, to adopt rules providing for best practices for conducting mandatory drills and exercises.

Comment: ATPE recommended amending the rule to specify that only parents and guardians must receive advance notification.

Response: The agency disagrees with the recommendation and provides the following clarification. Advance notification should be provided to all members of the school community that may be impacted by the drill or exercise, including students, staff, parents, and guardians.

Comment: ATPE recommended adding "age and developmentally" to clarify the term "appropriate" as a design element of drills and exercises.

Response: The agency agrees and has modified subsection (d)(3)(E) at adoption to reflect the change.

Comment: ATPE recommended including the execution of post-drill trauma-informed care for students to the design elements.

Response: The agency provides the following clarification. Mental health professionals are recommended stakeholders who provide input into the design of drills and exercises, including postvention services that may involve trauma-informed care to account for the psychological safety of participants.

Comment: An individual raised concern that proposing that LEAs should comply with their local fire marshal regulations and recommendations may put an undue burden on the LEA. The commenter recommended that fire marshal recommendations be removed from the rule.

Response: The agency disagrees with the recommendation and provides the following clarification. Local fire marshals are best suited to provide requirements and recommendations that meet the needs of their specific communities. A recommendation by the local fire marshal is a suggested course of action that protects lives and school property.

Comment: An individual recommended amending the definition of full-scale exercise so that all public safety agencies can activate or operate the emergency operation center.

Response: The agency disagrees with the recommendation and provides the following clarification. The terms provide a description of each drill or exercise type and are aligned with the terms used in the Texas School Safety Center's guidance on drills and exercises.

Comment: TPCSA recommended that participation in non-mandatory drills and exercises by non-school entities be required only to the extent possible or practicable.

Response: This comment is outside the scope of this proposed rulemaking.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §37.114, as amended by Senate Bill 168, 87th Texas Legislature, Regular Session, 2021, which requires the commissioner of education, in consultation with the state fire marshal and Texas School Safety Center, to adopt rules providing best practices for conducting emergency drills and exercises, including definitions for relevant terms, and designating the number and type of mandatory school drills to be conducted each semester of the school year, not to exceed a total of eight drills.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §37.114, as amended by Senate Bill 168, 87th Texas Legislature, Regular Session, 2021.

<rule>

### **§103.1209. Mandatory School Drills.**

- (a) Requirement. Each school district and open-enrollment charter school shall conduct emergency safety drills in accordance with Texas Education Code (TEC), §37.114. Drills do not include persons role playing as active aggressors or other simulated threats.
- (b) Definitions and related terms. The following words and terms related to drills and exercises, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise. These definitions do not apply to an active threat exercise, which is defined in TEC, §37.1141, and associated rules, if any.
  - (1) Active aggressor--An individual actively engaged in killing or attempting to kill people in a confined and populated area.
  - (2) Drill--A set of procedures that test a single, specific operation or function. Drills do not include persons role playing as active aggressors or other simulated threats. Drill examples include evacuating for a fire or locking down from an internal threat.
  - (3) Evacuation drill --A response action schools take to quickly move students and staff from one place to another. The primary objective of an evacuation is to ensure that all staff, students, and visitors can quickly move away from the threat. Evacuation examples include a bomb threat or internal gas leak.
  - (4) Exercise--An instrument to train for, assess, practice, and improve performance in mitigation, prevention, preparedness, response, and recovery in a risk-free environment. While drills and exercises may overlap in some aspects, discussion-based and operation-based exercises are often more in depth and multi-faceted.
  - (5) Fire evacuation drill--A method of practicing how a building would be vacated in the event of a fire. The purpose of fire drills in buildings is to ensure that everyone knows how to exit safely as quickly as possible.
  - (6) Full-scale exercise--Typically the most complex and resource-intensive type of exercise. It involves multiple agencies, organizations, and jurisdictions and validates many facets of preparedness. This exercise often includes many players operating under cooperative systems such as the Incident Command System (ICS) or Unified Command. Resources and staff are mobilized as needed. All actions are taken as if the emergency is real. A full-scale exercise is the most time-consuming activity in the exercise continuum and is a multiagency, multijurisdictional effort in which all resources are deployed. A full-scale exercise tests collaborations among the agencies and participants, public information systems, communication systems, and equipment. An Emergency Operations Center is established by either law enforcement or fire services, and the ICS is activated. Because of all the logistics and resources needed for a full-scale exercise, it often takes a year to plan and is not held often. Usually, a school district is not the organizer of such an exercise, but the district or school would play a critical role in both function and potential facility use.

- (7) Functional exercise--Designed to validate and evaluate capabilities, multiple functions and/or sub-functions, or interdependent groups of functions. A functional exercise is typically focused on exercising plans, policies, procedures, and staff members involved in management, direction, command, and control functions. It allows participants to practice their specific roles or functions in an emergency. This type of exercise is conducted in a realistic, real-time simulated environment and often includes simulators (individuals who assist with the facilitation of the exercise) and follows a master scenario events list that dictates additional information, occurrences, or activities that affect the exercise scenario.
  - (8) Lockdown drill--A response action schools take to secure interior portions of school buildings and grounds during incidents that pose an immediate threat of violence inside the school. The primary objective is to quickly ensure all school students, staff, and visitors are secured away from immediate danger.
  - (9) Secure drill--A response action schools take to secure the perimeter of school buildings and grounds during incidents that pose a threat or hazard outside of the school building. This type of drill uses the security of the physical facility to act as protection to deny entry.
  - (10) Seminar exercise--A discussion-based exercise designed to orient participants to new or updated plans, policies, or procedures through informal discussions. Seminar exercises are often used to impart new information and formulate new ideas.
  - (11) Shelter-in-place for hazardous materials (hazmat) drill--A response action schools take to quickly move students, staff, and visitors indoors, perhaps for an extended period of time, because it is safer inside the building than outside. Affected individuals may be required to move to rooms without windows or to rooms that can be sealed. Examples of a shelter-in-place for hazmat drill include train derailment with chemical release or smoke from a nearby fire.
  - (12) Shelter for severe weather drill--A response action schools take to quickly move students, staff, and visitors indoors, perhaps for an extended period of time, because it is safer inside the building than outside. For severe weather, depending on the type and/or threat level (watch versus warning), affected individuals may be required to move to rooms without windows on the lowest floor possible or to a weather shelter.
  - (13) Tabletop exercise--A small group discussion that walks through a scenario and the courses of action a school will need to take before, during, and after an emergency to lessen the impact on the school community. Participants problem-solve together through a detailed discussion of roles, responsibilities, and anticipated courses of action. A tabletop exercise leverages a defined scenario to direct discussion and may need an experienced facilitator depending on the complexity and objectives of the exercise.
  - (14) Workshop exercise--A type of discussion-based exercise focused on increased participant interaction and achieving or building a product (e.g., plans or policies). A workshop exercise is typically used to test new ideas, processes, or procedures; train groups in coordinated activities; and obtain consensus. A workshop exercise often uses breakout sessions to explore parts of an issue with smaller groups.
- (c) Frequency. TEC, §37.114(2), requires the commissioner of education to designate the number of mandatory school drills to be conducted each semester of the school year, not to exceed eight drills each semester and sixteen drills for the entire school year. Neither this rule, nor the law, precludes a school district or an open-enrollment charter school from conducting more drills as deemed necessary and appropriate by the district or charter school. Following is the required minimum frequency of drills by type.
- (1) Secure drill --One per school year.
  - (2) Lockdown drill --Two per school year (once per semester).
  - (3) Evacuation drill --One per school year.
  - (4) Shelter-in-place for hazmat drill --One per school year.
  - (5) Shelter for severe weather drill --One per school year.

- (6) Fire evacuation drill-- School districts and open-enrollment charter schools should consult with their local fire marshal and comply with their local fire marshal's requirements and recommendations. If a district does not have a local fire marshal, it shall conduct four per school year (two per semester).
- (d) Best practices for conducting drills and exercises. This subsection highlights best practices for conducting drills and exercises. For more information about best practices, refer to Texas School Safety Center guidance.
- (1) Drills and exercises should be designed and conducted in accordance with guidance and best practice resources provided by the Texas School Safety Center.
  - (2) Drill and exercise design should include purpose, goals, and objectives that are stated in plans for each type of drill. Purpose, goals, and objectives should be developed with input from all sectors of the school community. Input in planning should be sought from multiple stakeholder perspectives for each type of drill and exercise, including from:
    - (A) the district School Safety and Security Committee;
    - (B) first responders;
    - (C) mental and behavioral health professionals;
    - (D) students and families; and
    - (E) staff, including non-traditional teachers, coaches, trade instructors, custodians, and food service workers.
  - (3) Drill and exercise design elements should include:
    - (A) physical and psychological safety for all participants;
    - (B) planning in a trauma-informed manner to maximize learning and to minimize potential trauma for students and staff;
    - (C) providing advance notification of drills and exercises;
    - (D) planning for post-drill or after-action reviews of each drill and exercise; and
    - (E) ensuring drills and exercises are age and developmentally appropriate with the understanding that more complex drills and exercises will require a hierarchy of learning to achieve or obtain more advanced goals or objectives.
  - (4) Exercises tend to be more complex than drills and should be conducted in accordance with guidance and resources provided by the Texas School Safety Center. It is imperative that districts conduct exercises that match their experience and capabilities. It is usually best to start with discussion-based exercises and work up to operation-based exercises over time. Discussion-based exercises include seminar exercises, tabletop exercises, and workshop exercises. Operation-based exercises include functional exercises and full-scale exercises. Exercises can be used for:
    - (A) testing and validating policies, plans, procedures, training, equipment, and interagency agreements;
    - (B) clarifying and training personnel in roles and responsibilities;
    - (C) improving interagency coordination and communications;
    - (D) identifying gaps in resources;
    - (E) improving individual performance; and
    - (F) identifying opportunities for improvement.