

The Texas Education Agency (TEA) adopts new §103.1211, concerning active threat exercises. The new section is adopted with changes to the proposed text as published in the March 25, 2022 issue of the *Texas Register* (47 TexReg 1581) and will be republished. The adopted new rule implements Senate Bill (SB) 168, 87th Texas Legislature, Regular Session, 2021, which mandated the adoption of procedures that a school district must complete prior to conducting an active threat exercise.

REASONED JUSTIFICATION: Texas Education Code (TEC), Chapter 37, Subchapter D, addresses the protection of school buildings and grounds. To this subchapter, SB 168, 87th Texas Legislature, Regular Session, 2021, added TEC, §37.1141, which provides mandatory procedures that a school district must complete prior to conducting an active threat exercise. Adopted new §103.1211 implements the statute by establishing requirements related to adequate notice and the content of an active threat exercise.

Adopted new subsection (a) requires school districts and open-enrollment charter schools to follow mandatory procedures for conducting active threat exercises. This requirement will ensure that districts and open-enrollment charter schools promote physical and psychological safety of students and staff before, during, and after an active threat exercise.

Based on public comment, subsection (a) was amended at adoption to define an active threat exercise.

Adopted new subsection (b) specifies what school districts and open-enrollment charter schools must do prior to conducting active threat exercises. The requirements include adequate notice of the exercise, an announcement signaling the start of the exercise, and certain elements to be addressed in the content of the exercise.

Based on public comment, subsection (b)(1)(C) was added at adoption to require that notice be provided to parents in the parents' native language to the greatest extent practicable.

Based on public comment, subsection (b)(3)(B)(iii) was amended at adoption to include providing access to mental health supports before, as well as during and after, the exercise.

Adopted new subsection (c) specifies the statutory requirement that data regarding the efficacy and impact of an active threat exercise be collected and submitted to the Texas School Safety Center.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began March 25, 2022, and ended April 25, 2022. Following is a summary of the public comments received and the corresponding agency responses.

Comment: Sandy Hook Promise, Hogg Foundation for Mental Health, and Texas-American Federation of Teachers (Texas AFT) advocated for a ban on student participation in active threat exercises.

Response: The agency disagrees but clarifies that local education agencies (LEAs) are not required to conduct active threat exercises. If an LEA elects to conduct an active threat exercise, the exercise shall be designed and executed in a manner that accounts for the physical and psychological safety of all participants and that is developmentally appropriate for all participants.

Comment: Texas AFT and two school district employees asked for a clear definition of what constitutes an active threat exercise.

Response: The agency agrees and has amended §103.1211(a) at adoption to include a clear definition of an active threat exercise.

Comment: The Association of Texas Professional Educators (ATPE) requested that notice of the exercise is linguistically accessible to parents.

Response: The agency agrees and has added §103.1211(b)(1)(C) at adoption to require that notice be provided to the parents of students participating in the exercise in the parents' native language to the greatest extent practicable.

Comment: ATPE requested amending subsection (b)(3)(B)(iii) to read, "student access to mental health supports before, during, and after the exercise."

Response: The agency agrees and has amended subsection (b)(3)(B)(iii) at adoption to include the word "before."

Comment: ATPE and a school district employee expressed concern that the adequate notice requirements could be exploited by bad actors and create safety issues for the school and the community.

Response: The agency disagrees and clarifies that the notification requirement ensures that participants, parents of student participants, and other individuals impacted by the exercise are prepared for the exercise.

Comment: Sandy Hook Promise requested that students be required to receive evidence-based violence prevention trainings.

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

Comment: The Hogg Foundation for Mental Health, ATPE, and Texas Association of School Psychologists recommended explicitly identifying mental health professionals, special education teachers, and bilingual teachers as required stakeholders in the design of the exercise.

Response: The agency disagrees but clarifies that TEC, §37.1141(a)(5)(B), specifies members of the team that develop the content of the exercise, which include school mental health professionals and teachers.

Comment: The Hogg Foundation for Mental Health and ATPE recommended that special populations be amended to include students with mental health concerns and students with sensitivity to light or sound.

Response: The agency disagrees but clarifies that the term "special populations" is defined as students with particular needs who benefit from specialized programs, including dyslexia, English learner support, gifted and talented education, highly mobile and at-risk programs, Section 504 accommodations, and special education programs.

Comment: A school district employee commented that exercises that are conducted only with law enforcement, selected school staff, and other public safety professionals should not be allowed with the listed reporting requirements.

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

Comment: A Texas educator expressed concern that the required training would negatively impact the schedule during staff development.

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

Comment: Texas AFT commented that best practices for drills and exercises do not include sensorial simulations that mimic an actual incident.

Response: The agency disagrees and clarifies that the subject of this rule proposal is active threat exercises, which are defined as exercises that include a simulated active aggressor.

Comment: ATPE recommended that the audible announcement be provided to students in the language that meets their language needs.

Response: The agency disagrees and clarifies that the needs of all students, including linguistic needs, should be considered during the design and execution of the exercise.

STATUTORY AUTHORITY. The new section is adopted under Texas Education Code (TEC), §37.1141, as added by Senate Bill (SB) 168, 87th Texas Legislature, Regular Session, 2021, which allows the commissioner of

education to adopt rules regarding active threat exercises; and TEC, §12.104(b), as amended by SB 168, 87th Texas Legislature, Regular Session, 2021, which makes the provisions of TEC, §37.1141, applicable to open-enrollment charter schools.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code, §37.1141 and §12.104(b).

<rule>

### **§103.1211. Active Threat Exercises.**

- (a) Each local educational agency (LEA), which includes school districts and open-enrollment charter schools, that elects to conduct an active threat exercise, defined as any exercise that includes a simulated active aggressor or an active shooter simulation, shall do so in accordance with Texas Education Code (TEC), §37.1141, and this section.
  - (1) LEAs are not required to conduct active threat exercises.
  - (2) LEAs may consider using a tabletop exercise as defined in §103.1209 of this title (relating to Mandatory School Drills) to achieve the purpose, goals, and objectives of the exercise rather than using a functional or full-scale active threat exercise.
  - (3) LEAs may consider conducting an active threat exercise during a non-instructional time when nonparticipants are not present in the facility.
- (b) Prior to conducting an active threat exercise, an LEA must:
  - (1) provide adequate notice of the exercise directly to individuals participating in the exercise, parents of students participating in the exercise, and all other individuals impacted by the exercise. Adequate notice of the active threat exercise shall also be posted through multiple distribution networks, including, but not limited to, the LEA's website and social media platforms.
    - (A) To be considered adequate notice, notice shall be provided and posted at least two weeks prior to the exercise.
    - (B) The notice shall include the following required elements specified in TEC, §37.1141(a)(1):
      - (i) the date on which the exercise will occur;
      - (ii) the content, form, and tone of the exercise; and
      - (iii) whether the exercise will include a live simulation that mimics or appears to be an actual shooting incident;
    - (C) The notice shall be provided to parents in the parents' native language to the greatest extent practicable.
  - (2) make an audible announcement over the campus public address system immediately prior to the commencement of the exercise to signal the start of the exercise to the participants, noting that it is only an exercise and not a real emergency. The announcement must contain the elements specified in TEC, §37.1141(a)(2); and
  - (3) ensure that the content of the exercise, which includes planning and execution of the exercise, addresses the following elements:
    - (A) input from multiple stakeholder perspectives in the design of the exercise;
    - (B) the physical and psychological safety of all participants before, during, and after the exercise, including:
      - (i) planning in a trauma-informed manner to minimize potential trauma for students, staff, and other participants;

- (ii) the development and communication of a predetermined method for participants to withdraw from the exercise before or during the exercise; and
    - (iii) access to mental health supports before, during, and after the exercise; and
  - (C) the developmental appropriateness of the exercise, which includes a comprehensive perspective that supports the cognitive and emotional well-being of each individual and considers the impact that prior trauma, grief, and crisis experiences have had on a participant's development prior to the exercise. Developmental appropriateness considerations include the needs of special populations, including students with disabilities and emergent bilingual students.
- (c) In accordance with TEC, §37.1141(c), data regarding the efficacy and impact of an active threat exercise shall be collected and submitted to the Texas School Safety Center (TxSSC) using the methods developed by the TxSSC.