

The Texas Education Agency (TEA) proposes an amendment to §129.1025, concerning student attendance. The proposed amendment would adopt by reference the *2022-2023 Student Attendance Accounting Handbook*. The handbook provides student attendance accounting rules for school districts and charter schools.

BACKGROUND INFORMATION AND JUSTIFICATION: TEA has adopted its student attendance accounting handbook in rule since 2000. Attendance accounting evolves from year to year, so the intention is to annually update 19 TAC §129.1025 to refer to the most recently published student attendance accounting handbook.

Each annual student attendance accounting handbook provides school districts and charter schools with the Foundation School Program (FSP) eligibility requirements of all students, prescribes the minimum requirements of all student attendance accounting systems, lists the documentation requirements for attendance audit purposes, and details the responsibilities of all district personnel involved in student attendance accounting. TEA distributes FSP resources under the procedures specified in each current student attendance accounting handbook. The final version of the student attendance accounting handbook is published on the TEA website. A supplement, if necessary, is also published on the TEA website.

The proposed amendment to 19 TAC §129.1025 would adopt by reference the student attendance accounting handbook for the 2022-2023 school year. The proposed handbook is available on the TEA website at <https://tea.texas.gov/finance-and-grants/financial-compliance/student-attendance-accounting-handbook>.

Significant changes to the *2022-2023 Student Attendance Accounting Handbook* would include the following.

Section 2, Audit requirements

Texas Education Code (TEC), Chapter 48, specifically §48.270, establishes the requirements for violation of presenting reports that contain false information. TEC, §44.008, authorizes the commissioner to require audit reports to be submitted for review and analysis. TEC, §44.010, allows for the review of budget, fiscal, and audit reports to determine whether all legal requirements have been met. The following changes would implement reporting for audit requirements to account for attendance and funding.

Language would be revised to state that student detail reports, campus detail reports, and district summary reports show that total days present includes in-person, remote synchronous, and remote asynchronous instruction.

Language would be revised to show that student detail reports must contain total contact hours for all career and technical education codes (V1-V3) by grade and a campus total for all grades.

Language would be revised to state that reconciliation of teacher's roster information and attendance accounting records should take place on the same day for all campuses within a local educational agency (LEA).

Section 3, General Attendance Requirements

TEC, §25.081, and Chapter 48, specifically §48.005, establish the general parameters for attendance and school operation. The following changes would implement reporting requirements for attendance and funding.

Language would be added to state that Code 9 applies to a student who is enrolled in a virtual learning program but not in membership. This code applies to students who are attending a virtual program under Senate Bill (SB) 15 and are not eligible to participate in the program.

Language would be revised to add a row to the funding eligibility chart that if a student is scheduled for and provided instruction through a remote program but does not meet the eligibility requirements for the program, the student is not eligible to generate average daily attendance (ADA) but would be eligible for certain FSP allotment funding and should be reported with ADA eligibility code 9.

Language would be revised to state that the number of days of participation for any student in any special program cannot exceed the number of days present (in-person, remote synchronous, and remote asynchronous) for the same reporting period for the same instructional track.

Language would be revised to show age eligibility for a student with a disability who graduated by meeting the requirements of 19 TAC §89.1070(b)(2); (3)(A), (B), or (C); or (4)(A), (B), or (C), as determined by the student's admission, review, and dismissal (ARD) committee and who is still in need of special education services. (This student may be served through age 21 inclusive.)

Language would be revised to show ineligibility of a student with disabilities who has graduated with a high school diploma under 19 TAC §89.1070(b)(1) or (f)(1) or no longer meets the eligibility to receive services to generate ADA.

Language would be revised to show that a student with a disability who graduated by meeting the requirements of 19 TAC §89.1070(b)(2); (3)(A), (B) or, (C); or (4)(A), (B), or (C), as determined by the student's ARD committee and who is still in need of special education services may be served through age 21 inclusive.

Language would be revised to state that school district may provide instruction to a student who has already graduated with a regular high school diploma. However, unless the student is returning to school after graduating under 19 TAC §89.1070(b)(2); (3)(A), (B), or (C); or (4)(A), (B), or (C), as determined by an ARD committee, the student is not eligible for funding and must be recorded with an ADA eligibility code of 0, 4, or 5, as applicable.

Language would be revised to state that a district can be reported to the Division of Compliance and Inquiry at TEA at (512) 463-3544 if it fails to provide required information within 10 working days regarding student records in cases of transfers.

Language would be revised to state that the student's entry date is the first day the student is physically present during the official attendance accounting period on a particular campus at the attendance taking time (Section 3.6.2, Time of Day for Attendance Taking). A student's reentry date is the first day the student is physically present during the official attendance accounting period at the attendance taking time after having been withdrawn from the same campus. Language would be revised to state that information on the school district's responsibilities toward homeless students can be found on the Texas Education for Homeless Children and Youth Program web page and by contacting a district's McKinney-Vento liaison or TEA's technical support number at 1-800-446-3142.

Language would be revised to state that a student shall be provisionally enrolled if they have begun the required immunization series. A homeless student or a student who is in foster care shall be admitted temporarily for 30 days if acceptable evidence of vaccination is not available. The school shall promptly refer the student to the appropriate health provider to obtain the required vaccines.

Language would be revised to state that a school district must not withdraw a student who is temporarily absent due to illness, hospitalization, or treatment for a mental health or substance abuse condition.

Language would be revised to state that, once withdrawn, a student in Grades 7-2 must be reported as a school leaver on the 40203 School Leaver Extension and could be considered a dropout according to the C162 Leaver Reason Code table of the Texas Student Data System Public Education Information Management System (TSDS PEIMS) Web-Enabled Data Standards.

Language would be revised to state that for a student transferring to a different Texas high school, information must be sent regarding each end-of-course assessment and the date the performance was met for State of Texas Assessments of Academic Readiness (STAAR®) and College Board College Entrance Examination Board campus code and ACT high school code (optional).

Language would be revised to state that districts must consider the best practices for truancy prevention measures found in 19 TAC §129.1045.

The condition that allows a student to be considered present for FSP purposes while participating in a mentorship program as part of an advanced measure for the Distinguished Achievement Program would be deleted.

Language would be revised to state that a student is considered present for FSP purposes if the student is being treated for a mental health or substance abuse condition in an outpatient day treatment program by a licensed health care professional. The student must not be withdrawn, and schools must enter into a written agreement with the outpatient day treatment provider to facilitate the student's schoolwork and for attendance records.

Language would be deleted to remove the requirements for the 2021-2022 school year from the low attendance day waivers.

Language would be added to provide guidance for low-attendance waivers for remote conferencing and state that on days where the attendance was at least five percentage points below the overall average attendance rate for the district or the applicable campus for the prior year, the district may apply for a waiver to have the day excluded from ADA and FSP funding calculations. A waiver may be submitted in the TEA automated system, and guidance is provided on the required documentation to be submitted with the waiver request.

Language would be revised to state that if the TEA grants a waiver for a missed school day or a low-attendance day, districts must report the day with a calendar-waiver-event-type code (E1570).

Language would be revised to state that if a student attends additional instructional days, the school in which the student is enrolled is held accountable to the 180-day requirement, regardless of whether the student is attending the additional instructional days at a different campus.

Language would be revised to state that if the district is registered with TEA to operate a year-round program and has one or more tracks ending later than the June 15, 2022, the district still must submit its initial TSDS PEIMS Summer submission data by that due date. The district may delay resubmission until August 17, 2023. Corrections made after August 17, 2023, will be handled by the State Funding Division.

Language would be revised to show emergent bilingual/English learner in the example regarding prekindergarten programs.

Language would be revised, in an example on a 21-year-old special education student, to state that since this student graduated by meeting the requirements in his individualized education program (IEP) and is receiving a full day of service as required by the ARD committee, his ADA eligibility code is 1 - Eligible for Full-Day Attendance.

Section 4, Special Education

TEC, Chapter 48, specifically §48.102, authorizes funding for special education in certain circumstances. TEC, §48.004, authorizes the commissioner to require reports that may be necessary to implement and administer the FSP. The following changes would implement reporting for special education to account for attendance and funding.

Language would be revised to state that a district must make special education available for a student who has received a regular high school diploma under 19 TAC §89.1070(b)(2); (b)(3)(A), (B), or (C); or (f)(4)(A), (B), or (C).

Language would be revised to state that the individualized family services plan or ARD committee determines the special education services and documents the frequency, location, and duration of those services that impact contact hours and weighted funding described for a child or eligible student.

Language would be revised to state that a student with a disability who has an IEP in place from a previous in-state school district and who enrolls in a new school district during the summer is not considered a transfer student.

Language would be added to state that a student with a disability who has an IEP in place from a previous in- or out-of-state school district and who enrolls in a new school district during the summer is not considered a transfer student for the purposes of 19 TAC §89.1050(i) or 34 CFR §300.323(c) or (f). For these students, the new school district must implement the IEP from the previous school district in full on the first day of class of the new school year or must convene an ARD committee meeting during the summer to revise the student's IEP for implementation on the first day of class of the new school year.

Language would be revised to show Information Specific to TSDS PEIMS 41163 Student Special Education Program Association Extension under no instructional setting (speech therapy).

Language would be revised to state that examples of special education and related services provided to a student in the general education instructional setting include, but are not limited to, direct instruction, helping teacher, team teaching, co-teaching, interpreter, education aides, curricular or instructional modifications or accommodations, special materials or equipment, consultation with the student and his or her general classroom teacher(s) or other general or special education service providers, staff development, and reduction of ratio of students to instructional staff members.

Language would be revised to state that LEAs are required to document the details of the specially designed instruction that is being provided in the student's IEP, and this documentation should describe the direct, indirect, consultive, or other support services that constitute special education service being provided to the student by certified special education personnel.

Language would be revised to state that for code 50 and code 60, a residential nonpublic school student should be reported with an ADA eligibility code of 0 - Enrolled, Not in Membership.

Language would be revised in the coding chart for services for students with disabilities - Exceptions to the norm to show students graduated by meeting requirements of 19 TAC §89.1070(b)(2); (3)(A), (B), or (C); or (4)(A), (B), or (C), and returned under 19 TAC §89.1070(i) -graduation type codes 04-06, 18-20, 35, 54-56.

Language would be revised to show that the term "emergent bilingual student" replaces the term "limited English proficient student" and also reflects a change to the term "English learner".

Language would be revised to provide an example for dyslexia instruction.

Section 5, Career and Technical Education (CTE)

TEC, Chapter 48, including §48.106, authorizes funding for CTE in certain circumstances. TEC, Chapter 29, Subchapter F, establishes general parameters for CTE programs. TEC, §48.004, authorizes the commissioner to require reports as may be necessary to implement and administer the FSP. The following changes would implement reporting for CTE to account for attendance and funding.

Language would be revised to state that students in Grades 6-12 are eligible to be served in CTE programs or approved CTE innovative courses that grant high school credit.

Language would be revised to state that students enrolled in TEA-designated Pathways in Technology Early College High School (P-TECH) campuses will generate \$50 for each student in ADA, and campuses should report the students using the TSDS PEIMS P-TECH-INDICATOR-CODE (E1612). Students coded with the indicator 1 in TSDS PEIMS submission 3 will be funded. Students enrolled on campuses that have an active agreement with the New Tech Network (NTN) will generate \$50 for each student in ADA and Campuses report using the TSDS PEIMS NEW-TECH-INDICATOR-CODE (E1647).

Language would be revised to state that a student enrolled in a CTE course for the entire semester must be reported on the TSDS PEIMS 40110 Student Section Association to be reported for CTE contact hours on the TSDS PEIMS 42401 Special Programs Reporting Period Attendance Extension record for student attendance and weighted funding.

Language would be revised to reiterate that an LEA can place a student in a disciplinary setting for five consecutive days and still claim CTE contact hours for the five days and that the student can earn graduation credit, even though CTE instruction by a certified CTE teacher is not provided.

Language would be revised to state that CTE courses must have a corresponding CTE code (V1, V2, or V3), based on the course service ID that is used to calculate contact hours for attendance accounting purposes and that the LEA personnel must use the chart provided in Section 5 to determine CTE code for each CTE course.

Language would be revised to state that each CTE course must be reviewed separately to determine the average minutes per day students attend that course in a 10-school day period and that three contact hours is the maximum a district may claim for a single course.

Language would be revised to state that each course is assigned a separate code. CTE codes cannot be combined due to varying course weights because of tiered funding.

Language would be revised to state that LEAs must determine the CTE V-code to assign to a student's CTE course separately based on the CTE course's average minutes per day over a 10-school day period and multiply the number of eligible days present for each student in each CTE course code by the corresponding V-code.

Language would be revised to use the term "CTE V code" and the term "LEA" in multiple examples provided in Section 5.

Language would be revised to state that students in Grades 7-12 are eligible for CTE contact hours when enrolled in a CTE Texas Essential Knowledge and Skills course for high school credit.

Section 6, Bilingual/English as a Second Language (ESL)

TEC, Chapter 48, specifically §48.105, authorizes funding for bilingual or special language programs in certain circumstances. TEC, Chapter 29, Subchapter B, establishes general parameters for bilingual and special language programs. TEC, §48.004, authorizes the commissioner to require reports as may be necessary to implement and administer the FSP. The following changes would implement reporting for bilingual and special language programs to account for attendance and funding.

Language would be revised to state that in TSDS PEIMS, the terms "emergent bilingual (EB)," a term that replaces "of limited English proficiency" per SB 2066, 87th Texas Legislature, Regular Session, 2021, and "English learner (EL)" are bridged as EB/EL.

Language would be added to state that within Section 6 of the handbook, the term "parent" includes the parent or legal guardian of the student in accordance with TEC, §29.052, and the term "district" includes all school districts, open-enrollment charter schools, and districts of innovation.

Language would be revised to state that parents may request a correction on the home language survey (HLS) only if the child has not yet been assessed for English proficiency and corrections are made within two calendar weeks of the child's enrollment date. The district must assess the student for English language proficiency using the state-approved assessment.

Language would be revised to state that parental approval for bilingual or ESL programs may be obtained in writing with the parent's signature and date on the notification form, through a documented phone conversation, or by email.

Language would be revised to show that the district personnel shall obtain a student's records from the sending district, including HLS and supporting language proficiency assessment committee (LPAC) documentation, within the first four calendar weeks of a student's transfer.

Language would be revised to state that a student must have a language other than English indicated on the HLS and be identified as an emergent bilingual student to be eligible for participation in the bilingual or ESL education program.

Language would be revised to state that students who have met reclassification criteria (English-proficient students) but are continuing in a one-way dual language immersion, a transitional bilingual education, or an ESL program are not eligible for bilingual education allotment (BEA) funding.

Language would be revised to state that the district may only count the student for the BEA after parental approval has been obtained and all necessary documentation has been received.

Language would be added to state that an ESL program must be provided in prekindergarten through Grade 12, regardless of the number of identified EB students and the grade levels and primary language classifications of the EB students.

Language would be revised to state that a district will be eligible for the BEA if an emergent bilingual student is served in a bilingual education program model per the requirements in 19 TAC §89.1210(c). The four state-approved bilingual education program models include: transitional bilingual education early exit; transitional bilingual education late exit; dual language immersion one-way; and dual language immersion two-way.

Language would be revised to state that an emergent bilingual student is served in an ESL program model per the requirements in 19 TAC 89.1210(f), including instruction delivered by appropriately certified teacher(s). The two state-approved ESL program models include the ESL pull-out and ESL content-based models.

Language would be revised to clarify teacher certification requirements and duties for teachers in bilingual and ESL programs.

Language would be revised to state that districts must identify students participating in a bilingual education program, an ESL program, or an alternative language program and that the campus and district summary report must include the total eligible bilingual/ESL days present.

Language would be revised to state that for students in disciplinary settings, after five consecutive days without participation in a bilingual or ESL education program, district personnel should remove the student's days from special programs reporting.

Language would be revised to state that the Emergent Bilingual Student/English learner Reclassification Criteria Chart can be located on the TEA Bilingual and English as a Second Language Education Programs web page.

Language would be revised to state that if a student is classified as English proficient at the end of the school year, the first day of the following school year is the effective date of change unless the student continues to participate in a two-way dual language immersion program.

Language would be revised to state that a reclassified student will be monitored for an additional two years and that the Emergent Bilingual Indicator Codes of 3 and 4 are used to reflect the third and fourth years of monitoring.

Language would be revised to state that the original HLS must be retained, that districts must not administer another HLS, and that a parent signature is required on the HLS for students in prekindergarten through Grade 8.

Language would be revised to state that documentation impacting the emergent bilingual student must include any designated supports provided, linguistic accommodations, the date of reclassification by the LPAC, and parental notification of the reclassification.

Language would be revised to state that the appropriate LPAC members should verify the Student Detail Report to ensure that a student's coding is correct.

Language would be revised to provide the link for frequently asked questions for LPAC and EB/EL students located on the TEA Bilingual and English as Second Language Education Programs web page.

Section 7, Prekindergarten (Pre-K)

TEC, Chapter 29, Subchapter E, establishes special general parameters for prekindergarten programs. TEC, Chapter 48, including §48.005, establishes ADA requirements and authorizes funding for certain circumstances. TEC, §48.004, authorizes the commissioner to require reports that may be necessary to implement and administer the FSP. The following change would implement reporting for prekindergarten to account for attendance and funding.

Language would be revised to state that homeless students must be verified annually for pre-registration of prekindergarten students.

Section 9, Pregnancy-Related Services (PRS)

TEC, Chapter 48, including §48.104, authorizes funding for students who are pregnant under certain circumstances. TEC, §48.004, authorizes the commissioner to adopt reports that may be necessary to implement and administer the FSP. The following changes would implement reporting for PRS to account for attendance and funding.

Language would be revised to state that a student who is pregnant should be coded with an at-risk indicator code on the 40100 Student Extension and 40110 Student Program Extension.

Language would be revised to state that a student who has been confined to the home by a medical practitioner during their prenatal or postpartum period may be allowed to return to campus and remain coded PRS to receive temporary, limited support services.

Language would be revised to state that for a PRS student who only receives the normal six weeks of compensatory education home instruction (CEHI), no medical release is required to return to campus for testing during this period because a medical practitioner's note is not required. A medical release is required only during the prenatal and extended postpartum periods.

Language would be revised to state that documentation from a licensed medical practitioner is required when the prenatal or extended postpartum CEHI student returns to campus to receive temporary, limited support services or take required state assessments.

Language would be revised to state that the Life Skills Program for Student Parents will not be funded for the 2022-2023 school year.

Section 10, Alternative Education Programs (AEPs) and Disciplinary Removals

TEC, Chapter 48, specifically §48.270, establishes the requirements for violation of presenting reports that contain false information. TEC, §48.004, authorizes the commissioner to adopt reports that may be necessary to implement and administer the FSP. TEC, §44.010, allows for the review of budget, fiscal, and audit reports to determine whether all legal requirements have been met. The following changes would implement reporting for audit requirements to account for attendance and funding.

Language would be revised to note that open-enrollment charter schools are subject to fewer provisions of TEC, Chapter 37.

Language would be revised to state that conduct identified in the student code of conduct adopted under TEC, §37.001, constitutes conduct for which a student may be suspended. A student in a grade level below Grade 3 or who is homeless may not be given out-of-school suspension (OSS) unless conduct that relates to TEC, §37.005, occurs.

Section 11, Nontraditional Programs

TEC, Chapter 29, Subchapter A, establishes special general parameters for nontraditional programs. TEC, Chapter 48, including §48.005, establishes ADA requirements and authorizes funding for certain circumstances. TEC, §48.004, authorizes the commissioner to require reports that may be necessary to implement and administer the FSP. The following changes would implement reporting for nontraditional programs to account for attendance and funding.

Language would be revised to show changes in the college credit charge for the dual credit row under other consideration to state that if a student has already earned high school credit for a course, the student may not earn credit for that course again unless explicitly permitted in the TEKS for the course.

Language would be revised to state that during the 2022-2023 school year, a college may allow students to enroll in a college course with alternative measures without meeting the assessment score criteria.

Language would be revised to state that goals of the Optional Flexible School Day Program (OFSDP) are to target students who must work to support their family and help those students recover credit lost due to failure to meet attendance requirements.

Language would be revised to state that districts must not charge tuition for participation in an OFSDP, including participation in classes offered during the summer recess.

Language would be revised to state that student eligibility in any grade level for the OFSDP applies to students if they are at risk of dropping out, attending an approved innovative campus plan, attending a community-based dropout recovery plan, or not meeting attendance requirements resulting in loss of credit.

Language would be revised to state that there must be an agreement of participation for an OFSDP signed by the student if the student is over the age of 18 or by parents or persons in place of parents for students below the age of 18.

Language would be revised to show that OFSDP requires a teacher to record instructional minutes on any given day and that the teacher must verify and sign the attendance records.

Language would be revised to state that minutes accumulate through the OFSDP and the regular attendance program on the same day.

Language would be revised to state that eligible students who are enrolled in Texas public schools can enroll in approved online dropout recovery programs and that these students are eligible to generate funding.

Language would be revised to state that, for an eligible OFSDP student completing OFSDP courses for credit recovery through an online dropout recovery education program, funding is limited to the attendance necessary for the student to recover class credit.

Language would be revised to state that districts may provide 71,400 minutes for not-at-risk students and 75,600 for at-risk students for the OFSDP.

Section 12, Virtual, Remote, and Electronic Instruction

TEC, Chapter 30A, establishes the general parameters for the Texas Virtual School Network (TXVSN). TEC, §30A.153, authorizes funding for the TXVSN under the FSP under certain circumstances. TEC, §48.004, authorizes the commissioner to adopt reports that may be necessary to implement and administer the FSP. The following changes would implement reporting for the TXVSN and for other permissible remote instruction to account for attendance and funding.

Language would be revised to state that information about the TXVSN is provided on the TEA Texas Virtual School Network Online Schools Program webpage.

Language would be revised to state that for remote conferencing, supporting documentation submitted with the waiver must also be submitted for each student on a case-by-case basis but must not contain identifiable information. This documentation must be retained by the LEA locally for audit purposes.

Language would be revised to state that a remote conferencing student is not eligible to generate attendance on state standardized assessment days.

Language would be revised to state that when submitting a waiver under the "other" category in TEAL, for remote conferencing regular students, one or both eligibility requirements must be cited in item 3 of the General Waivers section. For remote conferencing, funding for days extended beyond the 20 days may be claimed beginning on the date the waiver is approved.

Language would be revised to state that when submitting a waiver under the "other" category in TEAL, for remote conferencing special education students, one or both eligibility requirements must be cited in item 3 of the General Waivers section. For remote conferencing, funding for days extended beyond the 20 days may be claimed beginning on the date the waiver is approved.

Language would be revised to state that for regular education students, a waiver for remote education can be submitted using the "other" category in TEAL, and the waiver must cite one of the applicable requirements.

Section 13, Appendix: Average Daily Attendance (ADA) and Funding

Language would be revised to state that students reported in TSDS PEIMS submission 3 with indicator E1650 and a dyslexia services code of 01, 02, or 03 are counted.

Language would be revised to show the weights allotted to approved CTE courses in Grades 7-12.

Language would be revised to state that course service ID and the days eligible, days taught, and the contact hour multiplier (V1-V3) reported in TSDS PEIMS submission 3 will be used to derive contact hours and CTE full-time equivalents (FTEs).

Language would be revised to state that each CTE course must be reviewed to determine the average minutes per day, over a ten-school day period, that students attend the course and that three contact hours is the maximum an LEA may claim for a single course.

Language would be revised to state that the CTE FTEs are assigned to Tier Categories (Tier 1, 2, or 3) in TSDS PEIMS based on course level assignments and service ID and that tiered funding for the CTE FTEs is based on the applicable weight for each Tier Category.

Language would be revised to state that P-TECH campuses must be designated by TEA and listed on the Texas Education Standards website, and a list of the submission codes to be used by campuses while reporting in the TSDS PEIMS would be included.

Glossary

Language would be revised in the Glossary to state that the ARD committee is a team established by membership requirements under 19 TAC §89.1050 at each school district or special education shared services arrangement that meets to determine eligibility based on a full and individual evaluation report and to develop an IEP for the child, if applicable.

Language would be revised to state that at-risk students include students in charter schools designated as dropout recovery schools and students, regardless of age, who are in adult education programs provided under high school diploma and industry certified charter school programs.

Language would be revised to state that bilingual/ESL eligible days is a term used to describe the days that students participating in a bilingual education or ESL program were in attendance. This includes students participating in a standard bilingual education or ESL program.

Language would be revised to state that sections 3 and 4 of the handbook provide coding requirements for early education students.

Language would be revised to state that a gifted/talented student is a child or youth who performs at or shows the potential for performing at a remarkably high level of accomplishment when compared to others of the same age, experience, or environment and who exhibits high-performance capability in an intellectual, creative, or artistic area; possesses an unusual capacity for leadership; or excels in a specific academic field.

Language would be revised to state that an IEP should include frequency, location, and duration of special education and related services the student is to receive to determine the instructional setting code.

Language would be revised to delete TEA telephone numbers.

Language would be added to state that contact information for TEA divisions and areas can be found on the TEA website at <https://tea.texas.gov/about-tea/contact-us/tea-divisions-and-areas>.

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.

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 and limit an existing regulation. The proposed changes to the *2022-2023 Student Attendance Accounting Handbook* would amend requirements and provide clarity regarding student attendance accounting procedures. In some instances, the proposed changes would add information, and in some instances, information would be removed.

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: 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 continuing to inform the public of the existence of annual publications specifying attendance accounting procedures for school districts and charter schools. 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 June 24, 2022, and ends July 25, 2022. 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 June 24, 2022. 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), §7.055(b)(35), which states that the commissioner of education shall perform duties in connection with the Foundation School

Program (FSP) as prescribed by TEC, Chapter 48; TEC, §25.081, which states that for each school year, each school district must operate so that the district provides for at least 75,600 minutes, including time allocated for instruction, intermissions, and recesses, for students. TEC, §25.081(d), authorizes the commissioner to adopt rules to implement the section. TEC, §25.081(g), states that a school district may not provide student instruction on Memorial Day but that if a school district would be required to provide student instruction on Memorial Day to compensate for minutes of instruction lost because of school closures caused by disaster, flood, extreme weather conditions, fuel curtailment, or another calamity, the commissioner shall approve the instruction of students for fewer than the number of minutes required under TEC, §25.081(a); TEC, §25.0812, which states that school districts may not schedule the last day of school for students before May 15; TEC, §25.087, which provides purposes for which a school district shall excuse a student from attending school; TEC, §29.0822, which enables a school district to provide a program under this section that meets the needs of students described by TEC, §29.0822(a), for a school district that meets application requirements, including allowing a student to enroll in a dropout recovery program in which courses are conducted online. TEC, §29.0822, authorizes the commissioner to adopt rules for the administration of the section; TEC, §30A.153, which states that, subject to the limitation imposed under the TEC, §30A.153(a-1), a school district or open-enrollment charter school in which a student is enrolled is entitled to funding under TEC, Chapter 48, or in accordance with the terms of a charter granted under TEC, §12.101, for the student's enrollment in an electronic course offered through the state virtual school network in the same manner that the district or school is entitled to funding for the student's enrollment in courses provided in a traditional classroom setting, provided that the student successfully completes the electronic course. TEC, §30A.153(d), authorizes the commissioner to adopt rules necessary to implement the section, including rules regarding student attendance accounting; TEC, §48.004, which states that the commissioner shall adopt rules, take action, and require reports consistent with TEC, Chapter 48, as necessary to implement and administer the FSP; TEC, §48.005, which states that average daily attendance is the quotient of the sum of attendance for each day of the minimum number of days of instruction as described under TEC, §25.081(a), divided by the minimum number of days of instruction. TEC, §48.005(m), authorizes the commissioner to adopt rules necessary to implement the section. Subsections (m-1) and (m-2) address virtual or remote instruction-related funding; TEC, §48.102, which states that for each student in average daily attendance in a special education program under TEC, Chapter 29, Subchapter A, in a mainstream instructional arrangement, a school district is entitled to an annual allotment equal to the adjusted basic allotment multiplied by 1.15. For each full-time equivalent student in average daily attendance in a special education program under TEC, Chapter 29, Subchapter A, in an instructional arrangement other than a mainstream instructional arrangement, a district is entitled to an annual allotment equal to the adjusted basic allotment multiplied by a weight determined according to its instructional arrangement; TEC, §48.103, which states that for each student that a district serves who has been identified as having dyslexia or a related disorder, the district is entitled to an annual allotment equal to the basic allotment multiplied by 0.1 or a greater amount provided by appropriation; TEC, §48.104, which states that for each student who does not have a disability and resides in a residential placement facility in a district in which the student's parent or legal guardian does not reside, a district is entitled to an annual allotment equal to the basic allotment multiplied by 0.2 or, if the student is educationally disadvantaged, 0.275. For each full-time equivalent student who is in a remedial and support program under TEC, §29.081, because the student is pregnant, a district is entitled to an annual allotment equal to the basic allotment multiplied by 2.41; TEC, §48.105, which states that for each student in average daily attendance in a bilingual education or special language program under TEC, Chapter 29, Subchapter B, a district is entitled to an annual allotment equal to the adjusted basic allotment multiplied by 0.1 or 0.15 if the student is in a bilingual education program using a dual language immersion/one-way or two-way program model, and for students not described in subdivision (1), 0.05 if the student is in bilingual education program using a dual language immersion/two-way program model; TEC, §48.106, which states that for each full-time equivalent student in average daily attendance in an approved career and technology education program in Grades 7-12 or in career and technology education programs, a district is entitled to an annual allotment equal to the basic allotment multiplied by a weight of 1.35 and \$50 for each student that is enrolled in two or more advanced career and technology classes for a total of three or more credits; a campus designated as a Pathways in Technology Early College High School (P-TECH) school under TEC, §29.556; or a campus that is a member of the New Tech Network (NTN) and that focuses on project-based learning and work-based education; TEC, §48.108, which states that for each student in average daily attendance in Kindergarten-Grade 3, a district is entitled to an annual allotment equal to the basic allotment multiplied by 0.1 if the student is educationally disadvantaged or a student of limited English proficiency, as defined by TEC, §29.052, and in bilingual education or special language program under TEC, Chapter 29, Subchapter B; TEC, §48.109, which states that for each student in the gifted and talented category, the district is entitled to an annual allotment equal to the basic allotment multiplied by 0.07 for each school year or a greater amount provided by appropriation. If by the end of the 12th month after receiving an allotment for

developing a program a district has failed to implement a program, the district must refund the amount of the allotment to the agency within 30 days. Not more than five percent of a district's students in average daily attendance are eligible for funding under this section. If the state funds exceed amount of state funds appropriated in any year for the programs, the commissioner shall reduce the districts tier one allotment. If funds are less than the total amount appropriated for the school year, the commissioner shall transfer the remainder to any program. After each district has received allotted funds for this program, the State Board of Education may use up to \$500,000 of the funds allocated under this section for other programs; and TEC, §48.270, which states that when, in the opinion of the agency's director of school audits, audits or reviews of accounting, enrollment, or other records of a school district reveal deliberate falsification of the records, or violation of the provisions of TEC, Chapter 48, through which the district's share of state funds allocated under the authority of this chapter would be, or has been, illegally increased, the director shall promptly and fully report the fact to the State Board of Education, the state auditor, and the appropriate county attorney, district attorney, or criminal district attorney.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §§7.055(b)(35), 25.081, 25.0812, 25.087, 29.0822, 30A.153, 48.004, 48.005, 48.102, 48.103, 48.104, 48.105, 48.106, 48.108, 48.109, and 48.270.

<rule>

§129.1025. Adoption by Reference: Student Attendance Accounting Handbook.

- (a) The student attendance accounting guidelines and procedures established by the commissioner of education under §129.21 of this title (relating to Requirements for Student Attendance Accounting for State Funding Purposes) and the Texas Education Code, §48.004, to be used by school districts and charter schools to maintain records and make reports on student attendance and student participation in special programs will be published annually.
- (b) The standard procedures that school districts and charter schools must use to maintain records and make reports on student attendance and student participation in special programs for school year 2022-2023 [~~2020-2021~~] are described in the official Texas Education Agency (TEA) publication 2022-2023 [~~2021-2022~~] *Student Attendance Accounting Handbook*, dated September 2022 [~~October 2021~~], which is adopted by this reference as the agency's official rule. A copy of the 2022-2023 [~~2021-2022~~] *Student Attendance Accounting Handbook*, dated September 2022 [~~October 2021~~], is available on the TEA website with information related to financial compliance. The commissioner will amend the 2022-2023 [~~2021-2022~~] *Student Attendance Accounting Handbook*, dated September 2022 [~~October 2021~~], and this subsection adopting it by reference, as needed.
- (c) Data from previous school years will continue to be subject to the student attendance accounting handbook as the handbook existed in those years.